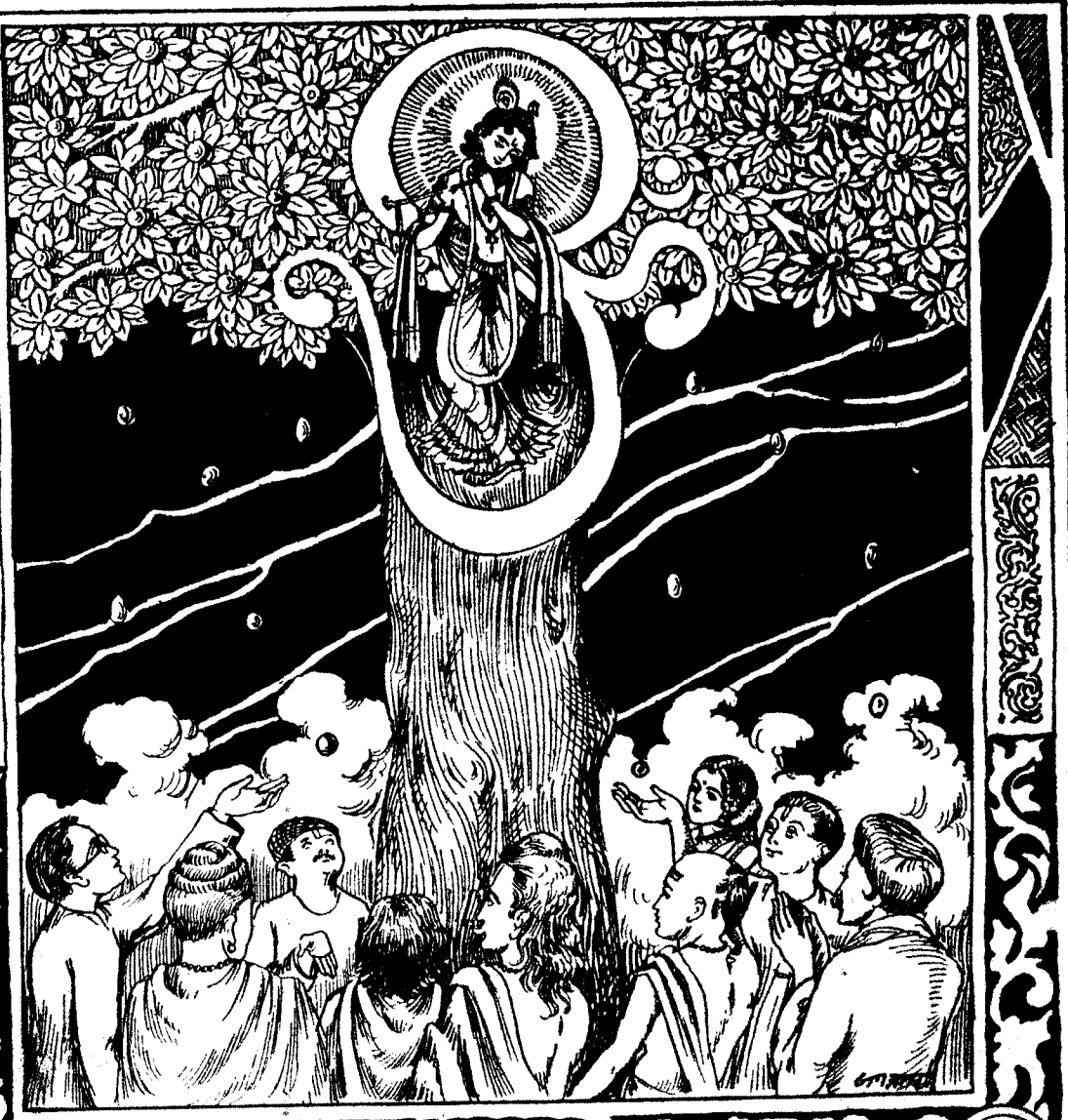
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THE NEW

# CRIMINAL COURT MANUAL:

CONTAINING SUCH OF THE

## ACTS OF THE IMPERIAL COUNCIL

AS ARE MOST FREQUENTLY REFERRED TO.

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## TWELFTH EDITION.

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BY

D. E. CRANENBURGH, [illegible]

*PLEADER.*

Calcutta:
PRINTED AND PUBLISHED BY B. BARAL
AT THE "LAW-PUBLISHING PRESS,"
3 To 5, BOW STREET.

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1 (12th.)

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PRINTED AND PUBLISHED BY B. BARAL
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# PREFACE.

THIS is an improved and revised edition. Every Act contained in it is printed as amended up to date of publication.

To each of the smaller Acts contained in this edition, a digest of rulings has been appended.

In the Evidence Act and the Penal Code the rulings are inserted in their proper places under each section. The Penal Code contains copious extracts from the Reports of the Indian Law Commissioners.

The Penal Code, as bound in this Volume, is the edition of 1897; but it has been brought up to date by reprinting certain pages in which amendments have been made. For instance, an important amendment has been made by the insertion of ss. 489A, 489B, 489C, and 489D after s. 489 by the Currency Notes Forgery Act (XII. of 1899), s. 2. I have contrived to insert the additional sections by reprinting not only the page in which s. 489 occurs, but also other pages.

The additional rulings from 1897 to 1900 could not be embodied in the Code by being inserted in their proper places.

There are a few Acts to which no annotations have been added, simply because no rulings on those Acts have yet been published.

To facilitate reference, a special index is appended to each of the longer Acts.

*April 12, 1901.* D. E. CRANENBURGH.

# THE NEW CRIMINAL COURT MANUAL.

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THE NEW

# CRIMINAL COURT MANUAL.

## ACT NO. XI. OF 1878.

### THE INDIAN ARMS ACT.*

RECEIVED G.-G.'S ASSENT ON 15TH MARCH 1878.

*An Act to consolidate and amend the Law relating to Arms, Ammunition, and Military Stores.*

WHEREAS it is expedient to consolidate and amend the law relating to arms, ammunition, and military stores; It is hereby enacted as follows :—

Preamble.

*I.—Preliminary.*

Short title. Local extent.

**1.** This Act may be called "The Indian Arms Act, 1878;" and it extends to the whole of British India.†

Savings.

But nothing herein contained shall apply to—

(*a*) arms, ammunition, or military stores on board any sea-going vessel, and forming part of her ordinary armament or equipment, or

(*b*) the manufacture, conversion, sale, import, export, transport, bearing, or possession of arms, ammunition, or military stores by order of the Government, or by a public servant, or a volunteer enrolled under the Indian Volunteers Act, 1869,‡ in the course of his duty as such public servant or volunteer.

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* For the Statement of Objects and Reasons, see Gazette of India, 1877, Pt. V., p. 650; for Discussions in Council, see *ibid*, 1877, Supplement, pp. 3016 and 3030; *ibid*, 1878, Supplement, pp. 435 and 453.

Act XI of 1878 has been declared in force in Upper Burma generally (except the Shan States) [see the Upper Burma Laws Act (XX. of 1886), s. 6]; and in the Santhal Parganas [see the Santhal Parganas' Settlement Regulation (III. of 1872) as amended by the Santhal Parganas' Laws Regulation (III. of 1886), s 3 (*a*)].

It has been declared, by notification under s 3 (*a*) of the Scheduled Districts Act (XIV. of 1874), to be in force in the Districts of Hazáribágh, Lohárdaga, and Mánbhum, and in Pargana Dhálbhum and the Kolhán in the District of Singbhum (see Gazette of India, 1881, Pt. I., p. 504). The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894.

It has been extended, by notification under s. 5 of the last-mentioned Act, to British Baluchistan, with certain exceptions.—See Gazette of India, 1895 Pt. II., p. 921.

As to the trial in a Presidency-town of offences against the Act, see the Code of Criminal Procedure (Act V. of 1898), s 184.

A license granted under the Indian Explosives Act (IV. of 1884), for the manufacture, possession, sale, transport, or importation of an explosive, may be given the effect of a license granted under the Indian Arms Act (XI. of 1878).—See Act IV. of 1884, s. 15.

† As to definition of "British India," see the General Clauses Act (X. of 1897), s. 1 (7).

‡ See Act XX. of 1869.

2,000—7-9-1900. [Cr. Ct. M.—2.]

1878. Act 11.

**2.** This Act shall come into force on such day* as the Governor-General in Council, by notification in the Gazette of India, appoints.

Commencement.

**3.** On and from that day, the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified in the third column of the said schedule But all authorities and permissions given, licenses and exemptions granted, orders and appointments made, notifications published, and rules, conditions, and forms prescribed, under any enactment hereby repealed, shall be deemed to be respectively given, granted, made, published, and prescribed under this Act.

Repeal of enactments.

And all such authorities, permissions, licenses, and exemptions shall, except as otherwise provided by this Act, continue in force for the periods for which they may have been given or granted respectively, or, where no such period is expressly fixed, for one year from the date* on which this Act comes into force, and shall then cease to have effect.

**4.** In this Act, unless there be something repugnant in the subject or context,—

Interpretation-clause.

"cannon" includes also all howitzers, mortars, wall-pieces, mitrailleuses, and other ordnance and machine-guns, all parts of the same, and all carriages, platforms, and appliances for mounting, transporting and serving the same:

"arms" includes fire-arms, bayonets, swords, daggers, spears, spearheads, and bows and arrows, also cannon and parts of arms, and machinery for manufacturing arms:

"ammunition" includes also all articles specially designed for torpedo service and sub-marine mining, rockets, guncotton, dynamite, lithofracteur, and other explosive or fulminating material, gunflints, gunwads, percussion caps, fuses, and friction tubes, all parts of ammunition, and all machinery for manufacturing ammunition, but does not include lead, sulphur, or saltpetre.

"military stores," in any section of this Act, as applied to any part of British India, means any military stores to which the Governor-General in Council may, from time to time, by notification in the Gazette of India, specially extend such section in such part,† and includes also all lead, sulphur, saltpetre, and other material to which the Governor-General in Council may, from time to time, so extend such section:

'license" means a license granted under this Act, and "licensed" means holding such license.

*II.—Manufacture, Conversion, and Sale.*

**5.** No person shall manufacture, convert, or sell, or keep, offer, or expose for sale, any arms, ammunition, or military stores, except under a license, and in the manner and to the extent permitted thereby.

Unlicensed manufacture, conversion, and sale prohibited.

Nothing herein contained shall prevent any person from selling any arms or ammunition, which he lawfully possesses for his own private use, to any person

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* Act XI. of 1878 came into force on Oct. 1, 1878—See Notification No. 1169, dated June 27, 1878, Gazette of India, 1878, Pt. I p 389

† Bird shot and bullets in excess of certain quantities have, in exercise of this power, been declared to be military stores.—See Notification No. 734, dated 19th April 1894, Gazette of India, 1894, Pt. I., p. 206.

who is not, by any enactment for the time being in force, prohibited from possessing the same; but every person, so selling arms or ammunition to any person other than a person entitled to possess the same by reason of an exemption under section 27 of this Act, shall, without unnecessary delay, give to the Magistrate of the District,* or to the officer in charge of the nearest police-station, notice of the sale, and of the purchaser's name and address.

*III.—Import, Export, and Transport.*

**6.** No person shall bring or take, by sea† or by land, into or out of British India, any arms, ammunition † or military stores, except under a license, and in the manner and to the extent permitted by such license.

Unlicensed importation and exportation prohibited.

Nothing in the first clause of this section extends to arms (other than cannon) or ammunition imported or exported in reasonable quantities for his own private use by any person lawfully entitled to possess such arms or ammunition; but the Collector of Customs or any other officer empowered by the Local Government in this behalf by name or in virtue of his office may at any time detain such arms or ammunition until he receives the orders of the Local Government thereon.

Importation and exportation of arms and ammunition for private use.

*Explanation.*—Arms, ammunition, and military stores, taken from one part of British India to another by sea or across intervening territory not being part of British India, are taken out of, and brought into, British India within the meaning of this section.

**7.** Notwithstanding anything contained in the Sea Customs Act, 1878,‡ no arms, ammunition, or military stores, shall be deposited in any warehouse licensed under section 16 of that Act without the sanction of the Local Government.

Sanction of Local Government required to warehousing of arms, &c.

**8.** [*Levy of duties on arms, &c., imported by sea.*] *Repealed by Act XI. of 1882, s. 2 and Sch. I. Re-repealed by the Repealing and Amending Act (XII. of 1891).*

**9.** [*Power to impose duty on imports by land.*] *Repealed by the Repealing and Amending Act (XII. of 1891).*

**10.** The Governor-General in Council may, from time to time, by notification in the Gazette of India,—

Power to prohibit transport.

(*a*) regulate or prohibit the transport of any description of arms, ammunition, or military stores over the whole of British India or any part thereof either altogether or except under a license, and to the extent and in the manner permitted by such license, and

(*b*) cannel any such notification.

---

* Now District Magistrate.—See the Code of Criminal Procedure (Act V. of 1898), s. 3.

† Arms, ammunition, and military stores, brought into an Indian port, and declared under manifest to be consignments to another port, and not transhipped, have been exempted from the operation of s. 6. See Notifications issued in 1879, 1880, and 1882, Gazette of India, 1879 1880, and 1882, Pt. I., pp. 580, 49, and 123, respectively.

Gun-wads, wire cartridges, and bullets, have been excluded from the operation of s. 6.—See Notification No. 591, dated 20th April 1896, Gazette of India, 1896, Pt. I. p. 266.

‡ See Act VIII of 1878.

1878. Act 11.

*Explanation.*—Arms, ammunition, or military stores, transhipped at a port in British India, are transported within the meaning of this section.

Transhipment of arms.

**11.** The Local Government, with the previous sanction of the Governor-General in Council, may, at any places along the boundary-line between British India and foreign territory, and at such distance within such line as it deems expedient, establish searching-posts, at which all vessels, carts, and baggage-animals, and all boxes, bales, and packages in transit, may be stopped and searched for arms, ammunition, and military stores by any officer empowered by such Government in this behalf by name, or in virtue of his office.

Power to establish searching-stations.

**12.** When any person is found carrying or conveying any arms, ammunition, or military stores, whether covered by a license or not, in such manner or under such circumstances as to afford just grounds of suspicion that the same are being carried by him with intent to use them, or that the same may be used, for any unlawful purpose, any person may, without warrant, apprehend him, and take such arms, ammunition, or military stores from him.

Arrest of persons conveying arms, &c., under suspicious circumstances.

Any person so apprehended, and any arms, ammunition, or military stores so taken, by a person not being a Magistrate or police-officer, shall be delivered over as soon as possible to a police-officer.

Procedure where arrest made by person not a Magistrate or a police-officer.

All persons apprehended by, or delivered to, a police officer, and all arms and ammunition seized by, or delivered to, any such officer under this section, shall be taken without unnecessary delay before a Magistrate.

*IV.—Going armed and possessing Arms, &c.*

**13.** No person shall go armed with any arms except under a license, and to the extent and in the manner permitted thereby.

Prohibition of going armed without license.

Any person so going armed without a license, or in contravention of its provisions, may be disarmed by any Magistrate, police-officer, or other person empowered by the Local Government in this behalf by name, or by virtue of his office.

**14.** No person shall have in his possession or under his control any cannon or fire-arms, or any ammunition or military stores, except under a license, and in the manner and to the extent permitted thereby.*

Unlicensed possession of fire-arms, &c.

**15.** In any place to which section 32, clause (*z*), of Act No. XXXI. of 1860,† applies at the time this Act comes into force, or to which the Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the local official Gazette, specially extend this section, no person shall have in his possession any arms of any description except under a license, and in the manner and to the extent permitted thereby.

Possession of arms of any description without license prohibited in certain places.

**16.** Any person possessing arms, ammunition, or military stores, the possession whereof by him has, in consequence of the cancellation or expiry of a license, or by the issue of a notification under section 15, become unlawful,

Arms of which possession has become unlawful to be deposited at police-station.

* In s. 14, the next three paragraphs have been omitted, having been repealed by the Repealing and Amending Act (XII. of 1891).

† Act XXXI. of 1860 has been repealed by s. 3 of this Act.—See s. 3 and Sch. I.

shall deposit the same without unnecessary delay with the officer in charge of the nearest police-station.

If the owner of anything deposited under this section does not, within three years from the date on which such thing is so deposited, produce a license authorizing him to possess the same, and apply for delivery of the same, such thing shall be forfeited to Her Majesty.

Power to make rules as to licenses.

**17.** The Governor-General in Council may, from time to time, by notification in the Gazette of India, make rules to determine the officers by whom, the form in which, and the terms and conditions* on and subject to which, any license shall be granted; and may, by such rules, among other matters,—

(*a*) fix the period for which such license shall continue in force;

(*b*) fix a fee payable by stamp or otherwise in respect of any such license granted in a place to which section 32, clause (*z*), of Act No. XXXI. of 1860,† applies at the time this Act comes into force, or in respect of any such license other than a license for possession granted in any other place;

(*c*) direct that the holder of any such license other than a license for possession shall keep a record or account, in such form as the Local Government may prescribe, of anything done under such license, and exhibit such record or account when called upon by an officer of Government to do so.

(*d*) empower any officer of Government to enter and inspect any premises in which arms, ammunition, or military stores, are manufactured or kept by any person holding a license of the description referred to in section 5 or section 6;

(*e*) direct that any such person shall exhibit the entire stock of arms, ammunition, and military stores in his possession or under his control to any officer of Government so empowered, and

(*f*) require the person holding any license or acting under any license to produce the same, and to produce or account for the arms, ammunition, or military stores covered by the same when called upon by an officer of Government so to do.

*V.—Licenses.*

Cancelling and suspension of license.

**18.** Any license may be cancelled or suspended—

(*a*) by the officer by whom the same was granted, or by any authority to which he may be subordinate, or by any District Magistrate, or Commissioner of Police in a Presidency-town, within the local limits of whose jurisdiction the holder of such license may be, when, for reasons to be recorded in writing, such officer, authority, Magistrate or Commissioner, deems it necessary, for the security of the public peace, to cancel or suspend such license; or

(*b*) by any Judge or Magistrate before whom the holder of such license is convicted of an offence against this Act, or against the rules made under this Act; and

the Local Government may, at its discretion, by a notification in the local official Gazette, cancel or suspend all or any licenses throughout the whole or any portion of the territories under its administration.

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* For conditions annexed to licenses to import arms, &c., into Aden, see Notification No 1016 dated 26th May 1879, Gazette of India, 1879 Pt. I, p. 381.

† Act XXXI of 1860 has been repealed by s. 3 of this Act.—See s. 3 and Sch. I.

## VI.—Penalties.

For breach of sections 5, 6, 10, and 13 to 17.

**19.*** Whoever commits any of the following offences (namely):—

(*a*) manufactures, converts, or sells, or keeps, offers, or exposes for sale, any arms, ammunition, or military stores, in contravention of the provisions of section 5;

(*b*) fails to give notice as required by the same section;

(*c*) imports or exports any arms, ammunition, or military stores, in contravention of the provisions of section 6;

(*d*) transports any arms, ammunition, or military stores, in contravention of a regulation or prohibition issued under section 10;

(*e*) goes armed in contravenion of the provisions of section 13;

(*f*) has in his possession or under his control any arms, ammunition, or military stores, in contravention of the provisions of section 14 or section 15;

(*g*) intentionally makes any false entry in a record or account which, by a rule made under section 17, clause (*c*), he is required to keep:

(*h*) intentionally fails to exhibit anything which, by a rule made under section 17, clause (*e*), he is required to exhibit; or

(*i*) fails to deposit arms, ammunition, or military stores, as required by section 14 or section 16,

shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

For secret breaches of sections 5, 6, 10, 14, and 15.

**20.** Whoever does any act mentioned in clause (*a*), (*c*), (*d*), or (*f*) of section 19, in such manner as to indicate an intention that such act may not be known to any public servant as defined in the Indian Penal Code, or to any person employed upon a railway, or to the servant of any public carrier,

For concealing arms, &c.

and whoever, on any search being made under section 25, conceals, or attempts to conceal, any arms, ammunition, or military stores,

shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

For breach of license.

**21.** Whoever, in violation of a condition subject to which a license has been granted, does, or omits to do, any act, shall, when the doing or omitting to do such act is not punishable under section 19 or section 20, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

For knowingly purchasing arms, &c., from unlicensed person.

**22** Whoever knowingly purchases any arms, ammunition, or military stores from any person not licensed or authorized under the proviso to section 5 to sell the same; or

For delivering arms, &c., to person not authorized to possess them.

delivers any arms, ammunition, or military stores into the possession of any person without previously ascertaining that such person is legally authorized to possess the same,

* Offences under this section are bailable.—See Sch. II, Code of Criminal Procedure, Act V. of 1898, third last entry

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Penalty for breach of rule.

**23.** Any person violating any rule made under this Act, and for the violation of which no penalty is provided by this Act, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Power to confiscate.

**24.** When any person is convicted of an offence punishable under this Act, committed by him in respect of any arms, ammunition, or military stores, it shall be in the discretion of the convicting Court or Magistrate further to direct that the whole or any portion of such arms, ammunition, or military stores, and any vessel, cart, or baggage-animal used to convey the same, and any box, package, or bale in which the same may have been concealed, together with the other contents of such box, package, or bale, shall be confiscated.

### *VII.—Miscellaneous.*

Search and seizure by Magistrate.

**25.** Whenever any Magistrate has reason to believe that any person residing within the local limits of his jurisdiction has in his possession any arms, ammunition, or military stores for any unlawful purpose,

or that such person cannot be left in the possession of any such arms, ammunition, or military stores without danger to the public peace,

such Magistrate, having first recorded the grounds of his belief, may cause a search to be made of the house or premises occupied by such person, or in which such Magistrate has reason to believe such arms, ammunition, or military stores, are or is to be found, and may seize and detain the same, although covered by a license, in safe custody for such time as he thinks necessary.

The search in such case shall be conducted by, or in the presence of, a Magistrate, or by, or in the presence of, some officer specially empowered in this behalf by name or in virtue of his office by the Local Government.

Seizure and detention by Local Government.

**26.** The Local Government may at any time order or cause to be seized any arms, ammunition, or military stores in the possession of any person, notwithstanding that such person is licensed to possess the same, and may detain the same for such time as it thinks necessary for the public safety.

Power to exempt.

**27.** The Governor-General in Council may, from time to time, by notification* published in the Gazette of India,—

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* For notification issued under this section, together with rules by the Governor-General under ss. 4, 9, 11 of the Act, see No. 518, dated 6th March 1879, Gazette of India, 1879 Pt. I., p 141.

A revised edition of this notification corrected up to the 9th July 1897 has been published by the Home Department of the Government of India.

For order exempting residents of Pondicherry, being Europeans, from payment of import-duty on guns, when holding passports from their own authorities, see Notification No. 2257, Gazette of India, 1879, Pt. I, p. 782.

For order exempting Gurkha pensioners from all prohibitions and directions in respect of Kukris, see Notification No 1201, Gazette of India, 1891, Pt. I, p. 430.

For order withdrawing part of British India from operation of any prohibition or direction contained in the Act, see Notification No. 496, dated April 14, 1893, Gazette of India, 1893, Pt. I., p. 201.

1878. Act 11.

(*a*) exempt any person by name or in virtue of his office, or any class of persons, or exclude any description of arms or ammunition, or withdraw any part of British India, from the operation of any prohibition or direction contained in this Act; and

(*b*) cancel any such notification, and again subject the persons or things, or the part of British India comprised therein, to the operation of such prohibition or direction.

**Information to be given regarding offences.**

**28.** Every person aware of the commission of any offence punishable under this Act shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information of the same to the nearest police-officer or Magistrate; and

every person employed upon any railway or by any public carrier shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information to the nearest police-officer regarding any box, package, or bale in transit which he may have reason to suspect contains arms, ammunition, or military stores, in respect of which an offence against this Act has been or is being committed

**Sanction required to certain proceedings under section 19, clause (*f*).**

**29.** Where an offence punishable under section 19, clause (*f*), has been committed within three months from the date on which this act comes into force* in any province, district, or place to which section 32, clause (2), of Act XXXI. of 1860,† applies at such date, or where such an offence has been committed in any part of British India not being such a district, province, or place, no proceedings shall be instituted against any person in respect of such offence without the previous sanction of the District Magistrate,‡ or, in a Presidency-town, of the Commissioner of Police.

**Searches in the case of offences against section 19, clause (*f*), how conducted.**

**30.** Where a search is to be made under the Code of Criminal Procedure or the Presidency Magistrate's Act, 1877, in the course of any proceedings instituted in respect of an offence punishable under section 19, clause (*f*), such search shall, notwithstanding anything contained in the said Code or Act,‡ be made in the presence of some officer specially appointed by name or in virtue of his office by the local Government in this behalf, and not otherwise.

**Operation of other laws not barred.**

**31.** Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under such other law to any higher punishment or penalty than that provided by this Act, provided that no person shall be punished twice for the same offence.

**Power to take census of fire-arms**

**32.** The Local Government may, from time to time, by notification in the local official Gazette, direct a census to be taken of all fire-arms in any local area, and empower any person by name or in virtue of his office to take such census.

---

* Came into force on Oct. 1, 1878.

† Repealed by this Act.—See s. 3 and Sch. I.

‡ For the references to Act. X. of 1872 and Act IV. of 1877 read now Act V. of 1898.

On the issue of any such notification, all persons possessing any such arms in such area shall furnish to the person so empowered such information as he may require in reference thereto, and shall produce such arms to him if he so requires.

Any person refusing or neglecting to produce any such arms when so required shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

**Notice and limitation of proceedings**

**33.** No proceeding other than a suit shall be commenced against any person for anything done in pursuance of this Act without having given him at least one month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after the expiration of three months from the accrual of such cause.

For a digest of rulings, see p. 11.

## THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(*See section 3.*)

| Number and year. | Title. | Extent of repeal. |
|---|---|---|
| XVIII. of 1841 ... | An Act for consolidating and amending the enactments concerning the exportation of Military Stores. | So much as has not been repealed. |
| XXX. of 1854 | An Act to provide for the levy of duties of customs in the Arakan, Pegu, Martaban, and Tenasserim Provinces. | In the preamble, the words, "and that the exportation of munitions of war from any of these provinces into foreign States should be prohibited." Section 11.* |
| XXXI. of 1860 ... | An Act relating to the manufacture, importation, and sale of arms and ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases. | So much as has not been repealed. |
| VI. of 1866 | An Act to continue Act No. XXXI. of 1860 relating to the manufacture importation, and sale of arms and ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases, and for other purposes. | The whole. |
| III. of 1872 | The Santhal Purganas' Settlement Regulation. | So much of the Schedule† as relates to Act XXXI. of 1860 and Act VI. of 1866. |
| IX. of 1874‡ | The Arakan Hill District Laws Regulation, 1874. | So much of the Schedule as relates to Act XVIII. of 1841. |
| XV. of 1874 | An Act for declaring the local extent of certain enactments, and for other purposes | So much of the First Schedule as relates to Act XVIII. of 1841. |

* The rest of Act XXX. of 1854 has been repealed by the Upper Burma Laws Act (XX. of 1886), s. 5.

† In Ben. Reg. III. of 1872, a new schedule has since been substituted for the schedule here mentioned to have been repealed.

‡ A Regulation made by the Governor General in Council under the Government of India Act, 1870 (Stat 33 Vict., c. 3), for application to the Hill District of Arakan in Burma.

## THE SECOND SCHEDULE.

ARMS, &c., LIABLE TO DUTY.

[*Repealed by the Repealing and Amending Act (XII. of 1891).*]

RULINGS UNDER THE ARMS ACT.

A MAGISTRATE issued a notification that all persons desirous of carrying arms should take out a license enabling them to do so under s. 26 of Act XXXI. of 1860; and certain persons were, in consequence of this notification, arrested and brought before him, charged in a police-report with carrying arms without license. *No* summons or warrant had been applied for, or any complaint lodged before the Magistrate previous to the arrest of the prisoners. No charge in writing was framed as required under ss. 250 and 251 of the Criminal Procedure Code No evidence was taken; but the prisoners admitted carrying the fire-arms. The Magistrate convicted them, under s. 188 of the Penal Code, of disobedience to an order duly promulgated by a public servant. There was no evidence that the disobedience would cause or tend to cause annoyance, obstruction, or injury to human life, health, or safety. *Held* that the convictions must be quashed. Necessity of observing the rules laid down in the Criminal Procedure Code remarked on. — QUEEN *v.* NANDKUMAR BOSE, 3 B. L. R Ap 149 [Markby and Glover, JJ. Sep 14 1869.

THE mere possession of arms in a certain district being an offence if there be satisfactory evidence that the prisoners were in the possession of arms, they would be punishable for such illegal possession, notwithstanding the police may have also committed an illegality in their procedure in conducting the search for the same.—QUEEN *v.* SHRUPERSHUN REA, 2 N.-W. P. 57 [Turner and Spankie JJ. Feb. 1 1870.

THE proceedings of the Magistrate directing the issue of a summons to appear, and of a warrant of arrest against a person for the possession of arms without a license under Act XXXI. of 1860, were quashed as illegal. — *In re* RAMESHUR PERSHAD NARAIN SING, 18 W. R. 1, 9 B. L. R Ap. 34. [Bayley and Mitter, JJ. May 11, 1872.]

THE mere possession of arms without a license in Gya was held to be no offence under the Arms Act (XXXI. of 1860), the provisions of s. 32 of that Act not having been extended to that district. — *In re* MODNARAIN PURI, 18 W. R. 26; 9 B. L. R. 34*n*. [Kemp and Glover, JJ. July 5, 1872.]

IN a district where bison are notoriously in the habit of injuring crops, a license under form xi., rule 16, of the Arms Act, 1878 (rules to kill wild beasts which injure crops), justifies the holder thereof in shooting bison for the sake of sport without taking out a sporting license under form viii., rule 13, of the same rules —REG. *v.* BOMMAYA, I. L. R., 5 Mad. 26 [Kernan and Kindersley, JJ. Feb. 27, 1882.]

A COLLECTION of fire-arms, consisting of four small cannons four pistols, and thirty-one muskets, had been kept as objects of worship in a Sikh temple in Patna for upwards of two centuries. The mohunt of the temple neglected to take out a license in respect of these arms under Act XI. of 1878. A police-inspector who was appointed to see that the provisions of the latter Act were obeyed, searched the temple on information received, and, having found the arms, prosecuted the person who had charge of the temple The latter was convicted by the Deputy Magistrate of Patna under s. 19, cl. (*f*), of Act XI of 1878, and sentenced to pay a fine of Rs 50 or to be rigorously imprisoned for two months The Deputy Magistrate also ordered the arms to be confiscated, and directed that their value and the fine should be divided between the informer and the police-inspector On a reference from the Sessions Judge of Patna, *held* with reference to Act X. of 1872, s. 579, and the last heading to Sch IV of the same Act, and to s. 19, cl. (*f*), of Act XI of 1878, that the proceedings of the police-inspector and the conviction of the accused were not illegal. There is nothing in the Arms Act to exempt the custodians of a temple from complying with the requirements of the Arms Act, either by taking out a license, or obtaining exemption under s. 27. S. 25 of the Arms Act appears to refer to cases in which the Magistrate considers that arms, whether under a license or not, are possessed for an illegal purpose, or under circumstances such as to endanger the public peace. S. 30 of the Arms Act appears to contemplate the presence of some specially-empowered officer besides the officer conducting the search.—EMPRESS *v.* TEGHA SINGH, I. L. R., 8 Cal. 473

1878. RULINGS UNDER THE ARMS ACT—(*continued*).

Act 11. [Cunningham and Tottenham, JJ. March 7, 1882.]

THE manufacture or possession of fire-works, including rockets, which are mere fire-works, without a license, is not prohibited by s. 5 of the Arms Act, 1878. The rockets referred to in s 4 are war-rockets.—REG. v. SUPPI, I. L. R., 5 Mad. 159 [Innes and Muttusami Ayyar, JJ. March 16, 1882.]

A GUN rendered unserviceable by the loss of the trigger does not fall within the definition of "arms" in s 4 of the Arms Act, 1878. Possession of such a weapon without a license is no offence.—QUEEN v. SIDDAPPA, I. L. R., 6 Mad 60 [Innes, Offg. C.J., and Muttusami Ayyar and Tarrant, JJ. Aug 21, 1882.]

As a gun barrel and nipple in serviceable condition fall within the definition of "arms" in s 4 of the Arms Act, 1878, the possession of such articles without a license is punishable under s. 19 (*f*) of the said Act.—QUEEN v. VYAPURI, I. L. R., 7 Mad. 70 [Turner, C.J. May 25, 1883.]

THE possession of gun-powder without a license, whether intended for the manufacture of fire works or not, is an offence under s. 19 of the Arms Act, 1878. *Queen* v *Suppi* (I. L. R., 5 Mad 159) distinguished.—QUEEN-EMPRESS v. KHASIM, I. L. R., 8 Mad 202. [Turner, C.J., and Muttusami Ayyar, J. Dec 19, 1884.]

CL. 2, s 32 of Act XXXI. of 1860, relating to the manufacture, importation and sale of arms, did not apply to the Badami Taluka of the Kaladgi Collectorate at the time when the Arms Act (XI. of 1878) came into force; and the notification of the Government of Bombay, No. 1112 of the 19th February 1878, which declares that the provisions of Act XXXI. of 1860, as modified by Act VI. of 1866, are in force in Badami amongst other places is not an order of disarmament under cl. (*1*), s 32 of Act XXXI of 1860. In the absence, therefore, of a notification, under s 15 of Act XI of 1878, extending, with the previous sanction of the Governor-General in Council, the provisions of the section to Badami the possession of arms without a license in that taluka is not punishable under s. 19.—GOVERNMENT OF BOMBAY v. DADYAMA BASAPA, I. L. R., 9 Bom. 478. [Nanabhai Haridas and Wedderburn, JJ. June 18 1885.]

B, HAVING obtained a license under the Arms Act, 1878, for a matchlock, had the same converted into a percussion gun. He was convicted under s. 19 of the said Act, on the ground that the license did not permit him to keep a percussion-gun. *Held* that the conviction was bad.—QUEEN-EMPRESS v. BODAPPA, I. L. R., 10 Mad. 131. [Muttusami Ayyar and Brandt, JJ. Dec. 17, 1886.]

SALE of sulphur and ammunition by the agent of one holding a license (in form vi.) under Act XI. of 1878 is not illegal.—QUEEN-EMPRESS v. SITHARAMAYYA, I. L. R., 12 Mad 473. [Collins, C.J., and Wilkinson, J. April 10, 1889.]

WHERE a person is found carrying arms apparently in contravention of the provisions of the Arms Act, it must be presumed, in the absence of proof to the contrary, that he is carrying such arms with the intention of using them should an opportunity of using them arise *Queen Empress* v *Alexander William* (Weekly Notes, 1891, p. 208) explained and approved.—QUEEN-EMPRESS v. BHURE, I. L. R., 15 All. 27 [Edge, C.J. Sep 12, 1892.]

WHEN a Magistrate issues a search-warrant under s 25 of the Indian Arms Act, 1878 it is necessary that he should record the grounds of his belief that the person against whom the warrant is issued has in his possession arms, ammunition, or military stores for an unlawful purpose Where proceedings under the Indian Arms Act, 1878, in respect of the unlawful possession of arms, are taken against a member of a joint Hindu family, not being the head of such joint family, and arms are found in a common room of the joint-family-house, it is incumbent upon the prosecution to give good evidence that such arms are in the exclusive possession and control of the particular member of the joint family who is sought to be charged with their possession.—QUEEN-EMPRESS v. SANGAM LAL, I. L. R., 15 All 120. Knox and Blair, JJ. Jan 21, 1893.

A SERVANT of a person who possessed a license for two swords and a gun, which license also covered one retainer, was stopped by the police on the road while carrying a sword On being asked to produce his license, he was unable to do so, it not then being with him No opportunity was afforded him of producing the license, but he was charged with an offence under s 19 of Act XI. of 1878; and on these materials convicted and fined *Held* that the conviction was wrong. The law does not require a licensee always to have his license with him if, under such circumstances, on being required to produce it he is prepared to do so on a reasonable opportunity being given

him to get it, and it exists, he should not be prosecuted; if prosecuted, the production of the license at the trial is a sufficient answer to the charge of infringing the Arms Act. *Held*, further, that a license granted to a person to carry arms, and including a retainer, authorizes any retainer to carry the arms specified with the permission of his master, and does not restrict him merely to carry them while in the actual presence of his master.—QUEEN-EMPRESS *v.* KISHUNWA, I. L. R., 20 Cal. 444. [Prinsep and Ameer Ali, JJ. Jan. 24, 1893.]

EXEMPTION of the master from the operation of the Indian Arms Act (XI. of 1878) extends to his servant and it applies to the possession of arms so long as the arms are the property of the licensee or person exempted, and the mere fact that the arms happened at the time to be carried by a servant does not make the servant liable for not having himself a license. *Queen Empress v. Kishunwa* (I. L. R., 20 Cal. 444, 1893) referred to and followed. An order extending the time for renewal of license has the effect of keeping a license previously granted practically in force, and a person cannot be convicted of an offence under s. 19 (*f*) of the Arms Act for a breach of its provisions within the extended time.—IN THE MATTER OF KALI NATH SINGH, 3 Cal. W. N. 394 [Prinsep and Stanley JJ. March 20, 1899.

THE mere temporary possession without a license of arms for purposes other than their use as such, as, for instance, where a servant is carrying his master's gun to a blacksmith for repairs, or where a blacksmith has a gun left with him for repairs, is not an offence within the meaning of s. 19 of the Indian Arms Act, 1878. *Queen-Empress v. Alexander William* (Weekly Notes, 1891, p. 208) and *Queen-Empress v. Bhure* (Weekly Notes, 1892, p. 221; s. c., I. L. R., 15 All. 27) referred to.—QUEEN-EMPRESS *v.* TOTA RAM, I. L. R., 16 All. 276 [Burkitt J. March 9, 1894.]

A REVOLVER with a broken trigger is within the definition of "arms" in the Indian Arms Act, 1878, s. 4. Whether, in any particular case, an instrument is a fire arm or not, is a question of fact to be determined according to circumstances and the circumstance, that it is in an unserviceable condition, is not conclusive.—QUEEN-EMPRESS *v.* JAVARAMI REDDI, I. L. R., 21 Mad. 360 [Shephard, Subramania Ayyar, Davies, and Boddam, JJ. Sep. 16, Nov. 5, 10, 1897.]

CERTAIN persons were convicted under s. 5 of Act XXXI. of 1860 of manufacturing and selling gunpowder without a license, and sentenced to fine or, in default, imprisonment. S. 44 of the Act provides a special procedure for levying the fine by distress. *Held* that the sentence was legal, the Act giving power to imprison or fine upon conviction.—PRO., JUNE 1, 1870, 5 Mad. H. C. R. Ap. XXIII.

# ACT NO. XIII. OF 1859.

## THE WORKMAN'S BREACH OF CONTRACT ACT, 1859.*

RECEIVED G.-G.'s ASSENT ON 4TH MAY 1859.

*An Act to provide for the Punishment of Breaches of Contract by Artificers, Workmen, and Labourers in certain cases.*

Preamble.

WHEREAS much loss and inconvenience are sustained by manufacturers, tradesmen, and others in the several presidency-towns of Calcutta, Madras, and Bombay, and in other places, from fraudulent breach of contract on the part of artificers, workmen, and labourers who have received money in advance on account of work which they have contracted to perform; and whereas the remedy by suit in the Courts for the recovery of damages is wholly insufficient; and it is just and proper that persons guilty of such fraudulent breach of contract should be subject to punishment; It is enacted as follows: —

Complaint to Magistrate if workman neglect to perform work for which he has received advance.

**1.** When any artificer, workman, or labourer, shall have received, from any master or employer resident or carrying on business in any presidency-town,† or from any person acting on behalf of such master or employer, an advance of money on account of any work which he shall have contracted to perform, or to get performed by any other artificers, workmen, or labourers, if such artificer, workman, or labourer shall wilfully, and without lawful or reasonable excuse, neglect or refuse to perform, or get performed, such work according to the terms of his contract, such master or employer, or any such person as aforesaid, may complain to a Magistrate of Police, and the Magistrate shall thereupon issue a summons or a warrant, as he shall think proper, for bringing before him such artificer, workman, or labourer, and shall hear and determine the case.

Magistrate may order repayment of advance or performance of contract.

**2.** If it shall be proved to the satisfaction of the Magistrate that such artificer, workman, or labourer, has received money in advance from the complainant on account of any work, and has wilfully, and without lawful or reasonable excuse, neglected or refused to perform, or get performed, the same according to the terms of his contract, the Magistrate shall, at the option of the complainant, either order such artificer, workman, or labourer, to repay the money advanced, or such part thereof as may seem to the Magistrate just and proper, or order him to perform, or get performed, such work according to the terms of his contract; and, if such artificer, workman, or labourer, shall fail to comply with the said order, the Magistrate may sentence him to be imprisoned with hard labour for a term not exceeding three months, or, if the order be for the repayment of a sum of money,

Penalty if workman fail to comply with order.

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* This is the short title given to the Act.—See the Indian Short Titles Act (XIV. of 1897).

Act XIII. of 1859 has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

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| The Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum | ... | See Gazette of India, Oct. 22, 1881, Pt. I., p. 504 |
| Coorg | ... | Ditto, Dec. 28, 1878, Pt. I., p. 747. |

† The words "or in any station of the Settlement of Prince of Wales' Island, Singapore, and Malacca," repealed by the Repealing Act (XVI. of 1874), have here been omitted

1859. Act 13.

for a term not exceeding three months, or until such sum of money shall be sooner repaid: Provided that no such order for the repayment of any money shall, while the same remains unsatisfied, deprive the complainant of any civil remedy by action or otherwise which he might have had but for this Act.

Magistrate may require workman to give security for due performance of order.

**3.** When the Magistrate shall order any artificer, workman, or labourer, to perform, or get performed, any work according to the terms of his contract, he may also, at the request of the complainant, require such artificer, workman, or labourer, to enter into a recognizance, with sufficient security, for the due performance of the order; and, in default of his entering into such recognizance, or furnishing such security to the satisfaction of the Magistrate, may sentence him to be imprisoned with hard labour for a period not exceeding three months.

To what contracts Act extends.

**4.** The word "contract," as used in this Act, shall extend to all contracts and agreements, whether by deed, or written or verbal, and whether such contract be for a term certain, or for specified work, or otherwise.

Act may be extended by Government.

**5.** This Act may be extended by the Governor-General of India in Council, or by the Executive Government of any presidency or place, to any place within the limits of their respective jurisdictions.* In the event of this Act being so extended the powers hereby vested in a Magistrate of Police shall be exercised by such officer or officers as shall be specially appointed by Government to exercise such powers.

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RULINGS UNDER THE WORKMAN'S BREACH OF CONTRACT ACT.

THE imprisonment of a defendant by order of the Magistrate under Act XIII of 1859 does not preclude the plaintiff from proceeding by civil suit for recovery of money advanced to the defendant for the performance of work.—VERNEDE *v.* ABDUL GIRI CHINNA SWAMI, 2 Mad. H. C. R. 427 [Scotland, C. J., and Freere, J. July 17, 1865.]

COOLIES in Assam, who have received advances in contemplation of work to be done may be proceeded against under Act XIII of 1859.—QUEEN *v.* GADU GARAH CANHARRE, 8 W. R. 6 [Jackson and Hobhouse, JJ. June 4, 1867.]

WHERE a contract was made by the defendant that a number of coolies should be brought by him to an estate, and remain at work on the estate for a specified time, and there had been a breach of the contract, *held* that the case is within s. 2 of Act XIII. of 1859.—PEO, [JULY 13, 1867. 3 Mad. H. C. R. Ap. xxv.]

AN order of a Magistrate, passed under s. 2 of Act XIII. of 1859—"that the prisoner should work for a certain period, and, in case he failed to do so, should suffer rigorous imprisonment for one month"—annulled as to the latter part, the Magistrate having no power to make that order until the failure had occurred and been proved before him.—REG. *v.* JOMA BIN BALU, 4 Bom. H. C. R. 37. [Couch, C. J., and Newton and Gibbs, JJ. Aug. 15, 1867.]

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* Extended to the Punjab, 13th July 1859, to all Collectorates in the Bombay Presidency (see Bombay List of Local Rules and Orders Ed. 1896, Vol. I., p. 25), to the Military Cantonment and Zilla of Poona (*ibid*), to Sindh (*ibid*), to all districts of the Madras Presidency (see Madras List of Local Rules and Orders Ed. 1894, p. 7), to the town and cantonment of Rangoon by Notification No. 6962, dated 30th December 1864 (see Burma Rules Manual, Ed. 1897, p. 20), to the Stations of Jabalpore and Saugor by Notification, dated 16th August 1859 (see Calcutta Gazette 1859, p. 1954), to the Station of Howrah and to the Suburbs of Calcutta, as defined in the Schedule to Act XXI. of 1857, and to the districts of Birbhum, Darjiling, Murshidabad, Nuddea, and Rajshahye, by Notification, dated 2nd January 1863 (see Calcutta Gazette, 1863, p. 24), to the districts of Cachar, Lakhimpur and Sibsagar, and to the districts of Darrang, Kamrup, and Nowgong, by Notification, dated 16th May 1864 (see Calcutta Gazette, 1864, p. 1008); to the districts of Goalpara, and Sylhet by Notification No. 408, dated 14th March 1876 (see Assam Gazette 1876, Pt. I., p. 211). See also pp. iv & v. of the Assam List of Local Rules and Orders, Ed. 1893.

For extensions of the Act to districts, stations, cantonments, and towns in the North-Western Provinces and Oudh, see N.-W. P. and Oudh List of Local Rules and Orders, Ed. 1894, p. 14.

RULINGS UNDER THE WORKMAN'S BREACH OF CONTRACT ACT—(*continued*). **1859.**

**Act 13.**

ACT XIII. of 1859 relates to fraudulent breaches of contract, and does not apply where an advance had not only been worked off by a labourer, but an actual balance is due to him —TARA DASS BHATTACHARJI ON BEHALF OF MESSRS. LYALL & Co. *v.* BHALOO SHEIKH, 8 W. R 69. [Jackson and Hobhouse, JJ. Sep. 7, 1867.]

ACT XIII. of 1859 does not apply to contracts for a "chakri" (domestic or personal service), but to contracts to serve as artificer, workman, or labourer —IN THE MATTER OF DOMESTIC SERVANTS, 3 B L R. A Cr. 32; 12 W R 26. [Jackson and Markby, JJ July 10, 1869.]

MAD. Act III of 1865 authorizes every Magistrate to take cognizance of offences against Act XIII. of 1859.—PRO., Aug. 9, 1869. 4 Mad. H. C. R Ap. lxiv.

AN order directing compensation under Act XIII. of 1859 is illegal. Such portion of the money advanced to defendant as has been appropriated to the fulfilment of the contract, or as could justly be set off against a part-fulfilment of the contract, ought not to be ordered to be refunded —PRO., AUG. 17, 1869 4 Mad. H. C. R. Ap lxvii

A BREACH of contract to supply wood does not fall within the purview of Act XIII. of 1859.—IN THE CASE OF THE UPPER ASSAM TEA COMPANY *v.* THOPOOR, 4 B L. R. Ap 1 [Kemp and Glover, JJ. Oct 27, 1869.]

WHERE a labourer contracted with the manager of a silk-factory for a money consideration to work at the factory for four months in a year for a period of three years, and broke the terms of his contract, he was held liable to a prosecution under Act XIII. of 1859, and the order of the Magistrate holding that such a contract was an unreasonable one, and therefore one which ought not to be enforced by him, was set aside. —KOONJOBEHARY LALL *v.* RAJA DOOMNRY: KOONJOBEHARY LALL *v.* RUGHOONATH DOME, 14 W. R 29. [Loch and Hobhouse, JJ. Aug. 10, 1870.]

WHERE there is no provision in the Penal Code, and any other law (such as the Breach of Trust Law, Act XIII. of 1859) provides punishment for an offence, any person committing such offence may be tried under that law —MESSRS. WATSON & Co *v.* BYKANTNATH DASS, 14 W R. 80. [Bayley and Paul, JJ. Dec. 12, 1870.]

ON the construction of s. 2 of Act XIII. of 1859. *held* that gold or silver money given to an artificer as raw material wherewith to make the article contracted for is an "advance of money" within the meaning of the section. *Held* also that a sentence of imprisonment should not be announced beforehand in the order directing performance of the contract, but should follow on a complaint of non-compliance.—PRO., APRIL 26, 1871, 6 Mad. H. C. R. Ap xxiv.

IN cases falling under Act XIII. of 1859, the Calendar should be submitted to the appellate authority immediately that an order under the first part of s. 2 is passed. When further proceedings under the latter part of s 2 are taken, a simple copy of the order, containing a reference to the Calendar, should be sent.—PRO., JAN 5, 1872, 7 Mad. H. C R. Ap. i.

A LABOURER agreed to serve in consideration of money due from him on account of previous debts. He served for three months only, and then quitted service in violation of the agreement. He was prosecuted and convicted of breach of contract of service under Act XIII. of 1859. *Held* that he was not liable to be dealt with criminally, because there was no fraudulent breach of contract within the meaning of Act XIII. of 1859, and because, further, no money in advance was received, the consideration for the agreement to serve being an old debt —REG. *v.* JETHYA *valad* VESTYA, 9 Bom H. C. R. 171. [Bayley and Kemball, JJ. May 28, 1872.]

THE High Court declined to exercise their extraordinary powers of revision in a case in which the Joint-Magistrate dismissed a complaint of breach of contract under Act XIII. of 1859 on the ground that that Act did not apply to this contract, which was a contractt o work at a certain factory. —MESSRS JAMES LYALL & Co. *v.* RAM CHUNDER BAGDEE, 18 W R. 53. [Bayley and Mitter, JJ. Sep 13, 1872.]

A BUTCHER contracting to supply skins is not within Act XIII. of 1859 —PRO., NOV. 26, 1872; 7 Mad. H. C R. Ap xii.

DEFENDANT, in consideration of an advance of money received from complainant, bound himself to work for complainant until the repayment of the sum advanced. For breach of this contract, complainant proceeded against defendant under Act XIII. of 1859. *Held* that the contract was not within the Act.—PRO. DEC 12, 1873; 7 Mad. H. C. R, Ap. xxx.

A WASHERMAN is not an artisan within the meaning of Mad. Act III. of 1871 —*Ex-parte* PONEN, 1 L. R. 1 Mad. 174 [Holloway and Kindersley, JJ. Dec. 11, 1876.]

A CONTRACT to supply labourers, and get labour performed by them, even though the nature and extent of the work are not clearly specified, falls within the provisions of Act XIII. of 1859.—ROWSON *v.* HANAMA MESTRI.

I. L. R., 1 Mad. 280. [Morgan, C. J., and Innes, J. July 20, 1877.]

A MAHOUT (or elephant-driver) does not come within the provisions of Act XIII. of 1859.—MUNI CHUNDRA AND HORIRAM AHOM. 8 C. L. R. 254. [Pontifex and Field, JJ. March 31, 1881.]

AN employer of workmen residing or carrying on business in the city of Mirzapur, alleging that he had advanced money to certain workmen on the understanding that they would work for him and no one else until they had repaid such money, and that they had broken such contract by leaving his employment, made a complaint against such workmen under Act XIII. of 1859, which had been extended to the "station" of Mirzapur by the Local Government. It appeared that such money was advanced by way of loan, and without any reference to the wages of such workmen or the payment for the work performed by them, and that no deduction on account of such advance was ever made from their wages for the payments made to them. *Held* that the contract between the parties was something quite different from any contract contemplated by Act XIII of 1859, and that that Act was therefore not applicable. *Held*, also, that it was doubtful whether that Act applied locally, as it was not shown that the city of Mirzapur was comprised within the "station" of Mirzapur.—IN THE MATTER OF THE PETITION OF RAM PRASAD v. DIRGPAL. I. L. R., 3 All. 744. [Oldfield, J. April 7, 1881.]

THE inquiry to be made under s. 2 of Act XIII. of 1859 is not an inquiry into an offence which may be tried summarily.—POLLARD v. MOTHIAL. I. L. R., 4 Mad. 234. [Kindersley and Muttusami Ayyar, JJ. Oct. 31, 1881.]

WHERE an order has been made by a Magistrate under Act XIII of 1859 s. 2, for the fulfilment of a labour-contract a sentence of imprisonment for disobeying such order without complaint made, and without taking statements from the accused, is illegal, although the accused, before the order was made, may have stated their inability to perform the work stipulated for.—SRINIVASA v. PONNAMBALAM. I. L. R., 5 Mad. 376. [Muttusami Ayyar and Tarrant, JJ. Aug. 5, 1882.]

ACT XIII of 1859 (to provide for the punishment of breaches of contract by artificers, workmen, and labourers in certain cases, extended to all the collectorates of the Bombay Presidency by Notification of the Government of Bombay, dated 10th of May 1860) does not apply to a contract whereby a person, in consideration of receiving Rs. 45, bound himself to another to render service for "agricultural and other purposes" for the period of one year.—EMPRESS v. BHAGVAN BHISAN. I. L. R., 7 Bom. 37. [Kemball and Pinhey, JJ. March 29, 1883.]

HAVING agreed to work for wages in a tannery, and received Rs. 10 from M, his employer, T promised to work off the advance by allowing M to deduct 8 annas a week from his weekly wages. *Held* that the provisions of Act XIII. of 1859 were applicable to this contract.—QUEEN v. TULUKAMAN. I. L. R., 7 Mad. 131. [Turner, C.J., and Kindersley, J. Aug. 3, 1883.]

A PERSON, whose ordinary business was that of a contracting bricklayer, and who did not himself work, received an advance, contracted to get certain earthwork done on a race-course, and committed a breach of contract. *Held* that he was not an artificer, workman, or labourer within the meaning of Act XIII. of 1859.—GILBY v. SUBBU. I. L. R., 7 Mad. 100. [Turner, C.J. Aug. 17, 1883.]

B, HAVING contracted in foreign territory to labour for S in British territory, broke his contract. He was arrested in foreign territory, brought into British territory, prosecuted under Act XIII. of 1859, and ordered to perform the contract. *Held* that the Court had no jurisdiction.—SIDDHA v. BILLIGIRI. I. L. R., 7 Mad. 354. [Hutchins, J. Mar. 18, 1884.]

A CONTRACT, in consideration of an advance of money to supply labourers to do certain work on an estate, falls within the scope of Act XIII of 1859 and the fact that such contract contains covenants to pay penalties in default of supplying the labourers, and to repay the advance, if necessary, by personal labour for five years, does not take the contract out of the operation of the Act, so as to make illegal an order directing the contractor to be imprisoned for failure to comply with an order to repay the advance.—RAMASAMI v. KADASAMI. I. L. R., 8 Mad. 379. [Turner, C.J., and Brandt, J. Jan. 19, 1885.]

AN advance of money and grain having been made to a labourer for work to be done, the labourer failed to complete the work, and an order was passed by a Magistrate, under s. 2 of Act XIII. of 1859, directing repayment of the balance of the advance not worked off by the labourer. *Held* that, as it was not proved that the labourer was offered and accepted the grain in lieu of money to be advanced, the order was illegal.—KONDADU v. RAMUDU. I. L. R., 8 Mad. 294. [Muttusami Ayyar and Brandt, JJ. Feb. 12, 1885.]

RULINGS UNDER THE WORKMAN'S BREACH OF CONTRACT ACT—(*continued*). 1859 Act 13.

THE petitioner, who, as sub-contractor, had engaged to do certain work for which he was paid an advance, but did not himself work, was convicted by a Magistrate, under s. 2 of Act XIII. of 1859, of the offence of breach of contract, and sentenced to undergo one month's imprisonment in default of his failure to fulfil the contract. *Held* that he was not an artificer, workman, or labourer within the meaning of s. 2 of Act XIII of 1859. The conviction and sentence were accordingly set aside.—*In re* THE PETITION OF BALKRISHNA SHALIGRAM, I. L. R., 10 Bom. 96 [Nanabhai Haridas and Wedderburn, JJ. Aug. 18, 1885.]

V, HAVING received an advance of money from G, contracted to labour for him in foreign territory. Having broken the contract, V was prosecuted under Act XIII of 1859, ordered to repay, and sentenced to imprisonment in default. *Held* that the order was illegal.—GREGORY *v.* VADAKASI KANGANI, I. L. R., 10 Mad. 21. [Parker, J. Sep. 28, 1886.]

ACT XIII. of 1859 being a penal enactment, the Limitation Act is no bar to a claim under s. 2 to recover an advance made to a labourer.—IN THE MATTER OF KITTU, I. L. R., 11 Mad. 332. [Collins, C.J., and Muttusami Ayyar, J. Dec. 15, 1887.]

OFFENCES under s. 2 of Act XIII of 1859 are triable summarily under s. 260 of the Criminal Procedure Code. The offence made punishable by s. 2 of Act XIII. of 1859 is the wilful, and without lawful and reasonable excuse, neglecting or refusing to perform the contract entered into by persons whom the Act concerns. Notwithstanding the preamble of the Act, it is not necessary to prove that a breach of contract is fraudulent in order to sustain a conviction under s. 2. *Taradoss Bhattacharjee v. Bhalloo Sheikh* (8 W. R. Cr. 69) dissented from. Where the enacting sections of a statute are clear, the terms of the preamble cannot be called in aid to restrict their operation, or to cut them down.—QUEEN-EMPRESS *v.* INDARJIT, I. L. R., 11 All. 262. [Straight, J. March 15, 1889.]

AN advance was made under a contract by which the party who received the advance undertook to convey salt by boat, but did not bind himself to render personal labour. The party who received the advance broke the contract. *Held*, the parties to the contract were not an employer of labour and a labourer respectively, and consequently the contract did not fall within the provisions of Act XIII. of 1859.—CALURAM *v.* CHENGAPPA, I. L. R., 13 Mad. 351. [Arthur Collins and Parker, JJ. Oct. 24, Nov. 1, 1889.]

ACT XIII. of 1859 (an Act to provide for the punishment of breaches of contract by artificers, workmen, and labourers in certain cases) applies only "where there has been an advance of money on account of any work," which words do not include mere loans or old debts. The interference of the Magistrate under the Act is limited to cases where the neglect or refusal to perform is wilful, and without lawful and reasonable excuse. As a rule, a mere breach of contract ought not to be an offence, but only to be the subject of a civil action. And a man cannot be treated as a criminal for not performing a contract which could not be enforced against him by civil process.—QUEEN-EMPRESS *v.* RAJAB, I. L. R., 16 Bom. 368. [Jardine and Telang, JJ. Jan. 12, 1892.]

IN a prosecution for breach of contract under Act XIII. of 1859, it appeared that the complainant had advanced certain sums of money to the accused, but that a suit to recover the same was barred by limitation; and the Magistrate thereupon dismissed the charge. *Held* that there was no reason why the Magistrate should not have ordered repayment to be made by the accused under s. 2.—QUEEN-EMPRESS *v.* KONDA, I. L. R., 16 Mad. 347. [Collins, C.J., and Shephard, J. March 1, 3, 1893.]

A CONVICTION for breach of contract of service under s. 2, Act XIII. of 1859, is a bar to any subsequent conviction on the same contract for a further breach for not returning to service.—GRIFFITHS *v.* TEZAI DOSADH, I. L. R., 21 Cal. 262. [Prinsep and Amir Ali, JJ. Jan. 4, 1894.]

S. 83 of the Criminal Procedure Code applies to warrants issued under s. 1 of Act XIII. of 1859, and consequently such warrants may be executed outside the local jurisdiction of the Magistrate issuing them.—QUEEN-EMPRESS *v.* KATIYAN, I. L. R., 20 Mad. 235. [Arthur Collins, C.J., and Shephard, J. July 15, 1897.]

HELD that s. 83 of the Code of Criminal Procedure is applicable to warrants issued under Act XIII. of 1859. *Queen-Empress v. Kattayan* (I. L. R., 20 Mad. 235) followed.—GAURI SANKAR *v.* MATA PRASAD, I. L. R., 20 All. 124. [Edge, C.J., and Burkit, J. Nov. 16, 1897.]

A PRESIDENCY MAGISTRATE of Calcutta may lawfully take cognizance, under s. 1 of Act XIII. of 1859, of a complaint in respect of a contract made in Calcutta, the breach of which has been committed beyond the local jurisdiction of his Court. The expression "Magistrate of Police," in s. 1, Act XIII of 1859, means "Presidency Magistrate."—LAL MOHAN CHOBEY *v.* HARI CHARAN DAS

1859. RULINGS UNDER THE WORKMAN'S BREACH OF CONTRACT ACT—(*concluded*).

Act 13. BAIRAGI, I. L. R., 25 Cal. 637. [Hill and Stevens, JJ. Jan. 13, 1898.]

IN the trial of a case under the Workman's Breach of Contract Act (XIII. of 1859) the Magistrate is not bound to frame his record in accordance with the provisions of s 370 of the Criminal Procedure Code. It is doubtful whether a proceeding under the first clause of s 2, and under s. 3 of Act XIII. of 1859, is a criminal proceeding. There is no *offence* committed, and there is no *accused*. The provisions of s. 370 of the Criminal Procedure Code are, therefore, inapplicable to a case of this nature.—AVERAM DAS MOCHI *v.* ABDUL RAHIN, I. L. R., 27 Cal 131. [Rampini and Pratt, JJ. Aug. 23, 1899.

# ACT NO. XIII. OF 1889.

## THE CANTONMENTS ACT, 1889.*

RECEIVED G.-G.'s ASSENT ON 11TH OCTOBER 1889.

*An Act to amend the Law relating to Cantonments.*

WHEREAS it is expedient to amend the law relating to cantonments; It is hereby enacted as follows:—

### CHAPTER I.

### PRELIMINARY.

Title, extent, and commencement.

**1.** (*1*) This Act may be called the Cantonments Act, 1889.

(*2*) It extends to the whole of British India, † and

(*3*) It shall come into force on such day ‡ as the Governor-General in Council, by notification in the Gazette of India, appoints in this behalf.

Repeal.

**2.** (*1*) On and from that day, the enactments specified in the Schedule are repealed to the extent mentioned in the third column thereof:

(*2*) But all orders, declarations, rules, and regulations made, directions, licenses, and permits given, taxes imposed, and notifications published under any enactment repealed by this Act, or under any enactment repealed by any enactment repealed by this Act, and all limits defined as the local limits of a cantonment with the approval of the Governor-General in Council or a Local Government before the passing of this Act, shall be deemed to have been respectively made, given, imposed, and published, and to have been defined, under this Act.

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* For Statement of Objects and Reasons see Gazette of India, 1888, Pt. V., p 100: for Report of the Select Committee see *ibid*, p 183, and for Proceedings in Council see *ibid*, Pt. VI, pp 108 and 136, and *ibid*, 1889, Pt. VI, pp 139 and 165.

Act XIII. of 1889 has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act (XIII. of 1898).

The Act has been applied to British Baluchistan by the British Baluchistan Laws Regulation (I. of 1890), s 3, as amended by the British Baluchistan Forest Regulation (V. of 1890). It has been applied to the Agency Territories by the Baluchistan Agency Laws Law, 1890, and by Notification No 9½-E A., dated 24th January 1898.—See Gazette of India, 1898, Pt I., p 31

It has been applied with modifications, by notifications under ss. 4 and 5 of the Foreign Jurisdiction and Extradition Act (XXI. of 1879), to the following British Cantonments in Native States, namely:—

(*1*) Sikandarabad (Hyderabad State), see Notification No. 1374-I. dated 25th April 1892, Gazette of India, 1890, Pt. I., p. 262, as amended by Notification No. 1811-I. B., dated 1st July 1898, *ibid*, 1898, Pt. I, p. 704,

(*2*) Mhow (Indore State)
(*3*) Neemuch (Gwalior State)
(*4*) Nowgong (Chhatarpur in Bundelkhand),
} see Macpherson's Lists of British Enactments in force in Native States, Central India, Ed. 1893, pp. 102, 140 and 162, respectively

(*5*) Disah (Palanpur State)
(*6*) Bhuj (Cutch State)
(*7*) Baroda (Baroda State)
} see Macpherson's Lists of British Enactments in force in Native States, Western India, pp. 214, 234, and 347, respectively.

† The words, "inclusive of Upper Burma," repealed by the Fifth Schedule to the Burma Laws Act (XIII. of 1898), have here been omitted.

‡ The 1st January 1890.—See Gazette of India, 1889, Pt. I, p. 678.

1889. Act 13.

(3) Any enactment or document referring to any enactment repealed by this Act, or to any enactment repealed by any enactment repealed by this Act, or to any Regulation of the Bengal, Madras, or Bombay Code respecting the fixing of the local limits of cantonments and military bazars, shall, so far as may be, be construed to refer to this Act, or to the corresponding portion thereof.

Interpretation.

**3.** (1) In this Act, and in the rules thereunder, unless there is something repugnant in the subject or context,—

(a) "officer" means—

(i) a person who, being an officer within the meaning of the Army Act,* is commissioned and in pay as an officer doing military duty with Her Majesty's regular forces as defined in that Act, or as an officer doing such duty in any arm, branch, or part of those forces, and

(ii) a person doing military duty as a warrant-officer with those forces, or with any arm, branch, or part thereof, whether he is or is not an officer within the meaning of the Army Act:*

(b) "soldier" means a person who is a soldier of Her Majesty's regular forces within the meaning of the Army Act,* and is not an officer within the meaning of this Act:

(c) "spirituous liquor" means any fermented liquor, any wine, any alcoholic liquid obtained by distillation, and the sap of any kind of palm tree, and includes any other liquid consisting of or containing alcohol, which the Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the official Gazette, declare to be a spirituous liquor for the purposes of this Act:

(d) "intoxicating drug" means opium, ganja, bhang, charas, and every preparation and admixture thereof, and includes any other intoxicating substance or liquid which the Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the official Gazette, declare to be an intoxicating drug for the purposes of this Act: and

(e) "owner" includes the person who is receiving, or entitled to receive, the rent of any building or land, whether on his own account, or on behalf of himself and others, or as an agent or trustee, or who would so receive the rent, or be entitled to receive it, if the building or land were let to a tenant.

(2) The provisions of the General Clauses Acts, 1868† and 1887,† shall, so far as they can be made applicable, apply to all rules which may be made under this Act by the Governor-General in Council.

## CHAPTER II.

### CANTONMENTS AND CANTONMENT AUTHORITIES, COURTS, AND POLICE.

*Cantonments.*

Definition of cantonment.

**4.** (1) The Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the official Gazette, declare any place in which any of Her

* Here the figures, "1881," have been omitted, having been repealed by the Repealing and Amending Act (XII. of 1891).

† See now the General Clauses Act (X. of 1897), ss. 20 to 24.

Majesty's regular forces are quartered within the territories administered by such Government to be a cantonment for the purposes of this Act, and of all other enactments for the time being in force,* and may withdraw any such declaration.† 1889. Act 13.

(2) The Local Government, with the like sanction, may also, by a like notification, define the limits of any cantonment for the like purposes.‡

*Cantonment Authorities and Magistrates.*

Cantonment authority and Magistrate.

**5.** For every cantonment beyond the limits of a presidency-town, there shall be a cantonment authority and a Cantonment Magistrate.

Cantonment authority.

**6.** (1) The expression, "cantonment authority," as used in this Act, means a cantonment committee, or, in the case of a cantonment for which such a committee has not been constituted, the commanding officer of the cantonment.

(2) The Local Government shall determine, with respect to every cantonment in which troops are for the time being quartered, whether or not a cantonment committee is to be constituted.§

(3) The cantonment authority shall be deemed to be a local authority as defined in the Local Authorities Loan Act, 1879,‖ "the Cattle Trespass Act, 1871,¶ the Indian Telegraph Act, 1885,** and the General Clauses Act, 1887.††

Cantonment Magistrate.

**7.** The Cantonment Magistrate shall be a Magistrate appointed by the Local Government under section 12 of the Code of Criminal Procedure, 1882,‡‡ and, as such, subordinate to the District Magistrate, or to the District Magistrate and the Sub-divisional Magistrate, as the case may be, under section 17 of that Code.

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* For notification declaring places to be cantonments in—
(1) the Bombay Presidency, see Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, p. cxxxv;
(2) Burma, see Burma Laws List, Ed. 1897, p. 294;
(3) Central Provinces, see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 257;
(4) North-Western Provinces and Oudh, see the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 127.

† For instance of notification withdrawing a declaration as to a place being a cantonment, see Burma Gazette, 1886, Pt. I., p. 125. The notification is kept in force by s. 2 (2) of this Act.

‡ For notifications defining the limits or fixing the boundaries of cantonments in—
(1) Assam, see Assam Manual of Local Rules and Orders, Ed. 1893, pp. 270, 271, and 273 to 275;
(2) the Presidency of Bombay, see Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, pp. cxxxv and cxxxvi;
(3) Burma, see Burma Laws List, Ed. 1897, p. 294;
(4) Central Provinces, see Central Provinces List of Local Rules and Orders, Ed. 1896, pp. 251 and 257;
(5) Madras, see Madras List of Local Rules and Orders, Vol. I., Ed. 1898, p. 238;
(6) North-Western Provinces and Oudh, see North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, pp. 127 to 130.

§ For instance of the issue of such a notification, see N.-W. P. and Oudh List of Local Rules and Orders, Ed. 1894, p. 130.

‖ Act XI of 1879.

¶ Act I. of 1871. In s. 6, sub-s. (3), the words and figures quoted have been substituted for the words and figures, "Act XVIII of 1883 (*to amend the Cattle Trespass Act, 1871*)" by s. 11 of the Cattle Trespass Act (1871) Amendment Act (I. of 1891).

** Act XIII. of 1885.

†† Act I. of 1887. See now the General Clauses Act (X. of 1897), s. 3 (*28*).

‡‡ Act X. of 1882. See now the Code of Criminal Procedure (Act V. of 1898).

1889. Act 13.

*Cantonment Court of Small Causes.*

Appointment of Cantonment Magistrate as Judge of Cantonment Court of Small Causes.

**8.** (*1*) When the Local Government appoints the Cantonment Magistrate to be the Judge of a Court of Small Causes established within a cantonment under the Provincial Small Cause Courts Act, 1887,* it shall, in its order appointing him to be such Judge, declare, and may, by notification in the official Gazette, vary, within a limit of 500 rupees, the value of the suits which are to be cognizable by him under that Act.

(*2*) The provisions of section 15, sub-section (*3*), of the said Act, shall not apply to a Court of Small Causes of which a Cantonment Magistrate is the Judge.

Appointment of Additional Judge of Cantonment Court of Small Causes.

**9.** When the Local Government appoints an Additional Judge of a Court of Small Causes of which a Cantonment Magistrate is the Judge, it shall, in its order appointing him to be such Additional Judge, declare, and may, by notification in the official Gazette, vary, within a limit of 50 rupees, the value of the suits with respect to which the functions of the Judge of the Court may be assigned to, and discharged by, the Additional Judge under section 8 of the Provincial Small Cause Courts Act, 1887.*

Judges of existing Cantonment Courts of Small Causes

**10.** Every Cantonment Magistrate presiding over a Court of Small Causes in a cantonment at the commencement of this Act, and every Assistant Cantonment Magistrate then having any of the powers of the Judge of such Court, shall be deemed to have been appointed Judge and Additional Judge respectively under section 6 and section 8 of the Provincial Small Cause Courts Act, 1887,* and, in the absence of any order of the Local Government to the contrary, to have jurisdiction with respect to all suits which are cognizable by a Court of Small Causes under that Act, and of which the value does not exceed, in the case of a Cantonment Magistrate, 500 rupees, and, in the case of an Assistant Cantonment Magistrate, 50 rupees.

Continuance of jurisdiction of Cantonment Court of Small Causes in certain cases, notwithstanding reduction of jurisdiction of Judge.

**11.** A Cantonment Magistrate, as Judge of a Court of Small Causes, may, whatever may be the value of the suits cognizable by him as such Judge, dispose of any suit which was within the pecuniary limits of the jurisdiction of the Judge presiding over the Court at the time of the institution of the suit, and may entertain and dispose of any proceeding after decree in any such suit.

*Cantonment Police.*

Police.

**12.** (*1*) The police-force employed in a cantonment beyond the limits of a presidency-town shall, for the purposes of Act XXIV. of 1859 (*for the better regulation of the Police within the territories subject to the Presidency of Fort St. George*), or Act V. of 1861 (*for the regulation of police*), or the corresponding law for the time being in force in the territories administered by the Governor of Bombay in Council, as the case may be, be deemed to be part of the general police-establishment under the superintendence of the Local Government in whose territories the cantonment is situated.

(*2*) The area comprised within the limits of a cantonment shall be deemed to be a town for the purposes of section 34 of Act V. of 1861.

* Act IX. of 1887.

## CHAPTER III.

1889.
Act 13.

### SPIRITUOUS LIQUORS AND INTOXICATING DRUGS.

**Unauthorized sale of spirituous liquor or intoxicating drug.**

**13.** If, within a cantonment, or within such limits around a cantonment as the Local Government may, by notification* in the official Gazette, prescribe in this behalf, any person not subject to military law, or any person subject to military law otherwise than as an officer or soldier, knowingly barters, sells, or supplies, or offers or attempts to barter, sell, or supply, any spirituous liquor or intoxicating drug to or for the use of any European soldier, or to or for the use of any European or Eurasian being a follower or a soldier's wife, without the written permission of the commanding officer of the cantonment, or of some person authorized by the commanding officer to grant such permission, he shall be punished with a fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

**Unauthorized possession of spirituous liquor.**

**14.** If, within a cantonment, or within such limits around a cantonment as the Local Government may, by notification in the official Gazette, prescribe in this behalf,—

(*a*) any person subject to military law otherwise than as an officer or soldier, or

(*b*) the wife or servant of any such person, or of a soldier,

has in his or her possession, except on behalf of the Government, or for the private use of an officer, more than one quart of any spirituous liquor other than fermented malt-liquor without the written permission of the commanding officer of the cantonment, or of some person authorized by the commanding officer to grant such permission, he or she shall be punished, in the case of a first offence against this section, with fine which may extend to fifty rupees, and in the case of a subsequent offence against this section, with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months.

**Arrest of persons, and seizure and confiscation of things, for offences against the two last-foregoing sections.**

**15.** (*1*) Any police officer may, without an order from a Magistrate, and without a warrant, arrest any person whom he finds committing an offence against either of the two last-foregoing sections, and may seize and detain any spirituous liquor or intoxicating drug in respect of which such an offence has been committed, and any vessels or coverings in which the liquor or drug is contained.

(*2*) Where a person accused of an offence against section 13 has been previously convicted of an offence against that section, an officer in charge of a police-station may, with the written permission of a Magistrate, seize and detain any spirituous liquor or intoxicating drug within the cantonment, or within the limits prescribed under section 13, which, at the time of the alleged commission of the subsequent offence, belonged to, or was in the possession of, the person.

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* For notifications issued under s. 13 in—

(*1*) The Bombay Presidency, see Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, pp. cxxxv. and cxxxvi.;

(*2*) Burma, see Burma Gazette, 1895, Pt. I., p. 186;

(*3*) North-Western Provinces and Oudh, see North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, pp. 130 and 131.

1889. Act 13.

(3) The Court convicting a person of an offence against section 13 or section 14 may order the confiscation of the whole or any part of anything seized under sub-section (1) or sub-section (2).

(4) Subject to the provisions of Chapter XLIII. of the Code of Criminal Procedure, 1882,* anything seized under sub section (1) or sub-section (2), and not confiscated under sub-section (3), shall be restored to the person from whom it was taken.

Saving of article sold or supplied for medicinal purposes.

**16.** The foregoing provisions of this chapter shall not apply to the sale or supply of any article for medicinal purposes by a medical practitioner, chemist, or druggist.

## CHAPTER IV.

### TAXATION AND CANTONMENT FUND

*Taxation.*

General power of taxation.

**17.** (1) With the previous sanction of the Governor-General in Council, the Local Government may, by notification in the official Gazette,—

(a) impose, in any cantonment which is not included in a municipality, any tax which, under any enactment in force at the date of the notification, can be imposed in any municipality within the territories administered by such Government,† and

(b) abolish or modify any tax so imposed.

(2) When any tax is leviable in a cantonment in pursuance of a notification under sub-section (1), the Local Government, with the like sanction, may, by a like notification, apply or adapt to the cantonment the provisions of any enactment or rules in force at the date of the notification for the assessment and recovery of any tax in any municipality within the territories administered by such Government.‡

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* See now the Code of Criminal Procedure (Act V of 1898).

† For notifications imposing taxes in cantonments in—

(1) Assam, see Assam Manual of Local Rules and Orders, Ed. 1894, pp. 268 and 269:

(2) Bombay Presidency, see Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, pp. cxxxvii. and cxxxviii.

(3) Burma, see Burma Laws List, Ed. 1897, p. 296.

(4) Central Provinces see Central Provinces List of Local Rules and Orders, Ed. 1896, pp. 253 and 254 to 256:

(5) Madras, see Madras List of Local Rules and Orders, Vol. I., Ed. 1898, p. 298:

(6) North-Western Provinces and Oudh, see North-Western Provinces and Oudh List of Local Rules and Orders Ed. 1894, pp. 131 to 141.

‡ For notifications prescribing rules for the assessment and recovery of taxes imposed in cantonments in—

(1) the Bombay Presidency, see Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, pp. cxxxix and cxl.

(2) Burma, see Burma Laws List, Ed. 1897, pp. 296 and 298.

(3) Central Provinces, see Central Provinces List of Local Rules and Orders, Ed. 1896, pp. 253 to 256.

(4) Madras, see Madras List of Local Rules and Orders, Vol. I., Ed. 1898, pp. 238 and 239:

(5) North-Western Provinces and Oudh, see North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, pp. 131 to 141.

**18.** (*1*) The Local Government may, by notification in the official Gazette, extend the provisions of Act XX. of 1856 (*to make better provision for the Appointment and Maintenance of Police Chaukidars in Cities, Towns, Stations, Suburbs, and Bazars in the Presidency of Fort William in Bengal*) to any cantonment which is not included in a municipality, and which is situated in any part of British India in which that Act is in force, and the Cantonment Magistrate may exercise all the powers of the Magistrate under that Act, subject only to the control of the District Magistrate and the Local Government. 1889. Act 13.

Extension of Act XX. of 1856 to certain cantonments.

(*2*) The Local Government may order that a cantonment to which the provisions of Act XX. of 1856 have been extended shall be divided into any number of cantonment divisions, and may determine the nature of the tax to be levied in each such divisions according to section 10 of that Act.

(*3*) The Local Government may, by notification in the official Gazette, cancel any notification under sub-section (*1*), and may revoke or vary any order under sub-section (*2*).

**19.** While a tax assessed according to the circumstances, and the property to be protected, of the persons liable thereto, or according to the annual value of houses and grounds, is levied under Act XX. of 1856 in a cantonment, a tax on persons practising any profession or art, or carrying on any trade or calling, or a tax on buildings and lands, as the case may be, "shall not be leviable in the cantonment in pursuance of a notification under section 17 of this Act."*

Restriction of power of taxation in cantonments in which Act XX. of 1856 is in force.

**20.** (*1*) Notwithstanding anything in any enactment for the time being in force, the Governor-General in Council may, by notification in the Gazette of India, prohibit the levy of the whole or any part of any tax imposed in a cantonment,† or exempt any person by name, or in virtue of his office, or any class of persons,‡ or any property, or any class of property,§ from the operation of any such tax, and may, by a like notification, rescind any such prohibition or exemption.

Power to prohibit or exempt from taxation.

(*2*) Where the area subject to the authority of a municipal committee as defined in section 2 of the Municipal Taxation Act, 1881, includes the whole or part of a cantonment, nothing in section 4 or section 5 of that Act, or in any other like enactment for the time being in force, shall apply to so much of that area as is comprised in the cantonment.

*Cantonment Fund.*

**21.** (*1*) There shall be formed, for every cantonment which is not included in a municipality, a Cantonment Fund, and there shall be placed to the credit thereof, among other sums, the following, namely:—

Cantonment fund.

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* In s 10, the words quoted have been substituted for the words, "shall not be imposed under section 17 of this Act in the cantonment," by the Repealing and Amending Act (XII. of 1891). This amendment is to have effect as from the commencement of Act XIII. of 1889.—See s. 2 (*3*) of Act XII. of 1891.

† For notification exempting, from octroi-duty, fodder brought into cantonments for use of Native Sillahdar Cavalry Regiments, see Gazette of India, 1895 Pt I, p 76

‡ For notification exempting certain persons when on duty in cantonments brought under the operation of a Municipal Act from certain taxes, see Gazette of India, 1881, Pt. I., p. 758. The notification is kept in force by s. 2 (*2*) of this Act.

For notification exempting departmental and honorary commissioner and warrant-officers and departmental non-commissioned officers from the conservancy tax imposed in cantonments in Burma, see Gazette of India, 1895, Pt I., p. 722.

§ For notification exempting houses in certain cases from houses tax, see Gazette of India, 1894, Pt. I., p. 492.

Act XV. 1881.

(*a*) subject to deductions under section 545 of the Code of Criminal Procedure, 1882,* or under any other enactment for the time being in force, or under any order of the Local Government, all fines recovered from persons convicted of offences committed within the cantonment against this Act, or against any enactment extended or rule made thereunder, or against the provisions of section 34 of Act V. of 1861, or the corresponding enactment for the time being in force in the territories administered by the Governor of Fort St. George in Council, or by the Governor of Bombay in Council, or against the provisions of Chapter XIII. or Chapter XIV. of the Indian Penal Code, or of section 156 of the Army Act;†

(*b*) the proceeds of taxes imposed under section 17 or levied under Act XX. of 1856 in the cantonment; and

(*c*) rents and profits accruing from property placed by the Government under the management of the cantonment authority.

(*2*) Notwithstanding anything in any enactment as to the purposes to which the proceeds of a tax are to be appropriated, the Cantonment Fund shall be applicable, subject to rules under this Act, to the maintenance of the police-force employed in the cantonment, and to the other purposes of this Act within the cantonment, and, with the general or special sanction of the Local Government, to like objects within or without British India, beyond the limits of the cantonment in cases in which, in the opinion of the Local Government, the application of the fund beyond those limits is for the benefit of the inhabitants of the cantonment, or of any military force ordinarily quartered therein, or of any detachment of any such force.

Custody of Cantonment Fund.

**22.** (*1*) Where, in or near a cantonment, there is a Government treasury or sub-treasury, or a bank to which the Government treasury business has been made over, the Cantonment Fund shall be kept in the treasury, sub-treasury, or bank.

(*2*) Where there is no such treasury, sub-treasury, or bank, the Cantonment Fund may be deposited with any banker or person acting as a banker, who has given such security for the safe custody and repayment on demand of the fund so deposited as the District Magistrate may in each case think sufficient

Vesting and management of Cantonment Fund.

**23.** The Cantonment Fund shall be vested in Her Majesty, and, subject to the provisions of this Act, and of the rules thereunder, and to the control of the Local Government, the management of the fund shall be entrusted to the Cantonment Authority.

Acquisition of immoveable property at cost of Cantonment Fund.

**24.** The Cantonment Fund shall be deemed to be "public revenues" within the meaning of the proviso to section 6 of the Land Acquisition Act, 1870;‡ and any property acquired at the cost of the Cantonment Fund shall vest in Her Majesty.

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* See now the Code of Criminal Procedure (Act V. of 1898).

† Here the figures, "1881," have been omitted, having been repealed by the Repealing and Amending Act (XII. of 1891).

‡ See now Act I. of 1894.

## CHAPTER V.

### SUPPLEMENTAL PROVISIONS.

Extension of enactments to cantonments.

**25.** The Governor-General in Council may, by notification in the Gazette of India, extend to all cantonments, or to any cantonment, or to any part of any cantonment, any enactment for the time being in force in any municipality in British India, and declare its extension to be subject to such restrictions and modifications, if any, as he thinks fit.

Matters respecting which rules may be made.

**26.** The Governor-General in Council may make rules* consistent with this Act to provide for all or any of the following matters, namely—

(*1*) the manner in which, and the authority to which, application for permission to occupy land belonging to the Government in a cantonment is to be made;

(*2*) the conditions to be annexed to every such permission given in pursuance of such an application;

(*3*) the preparation and maintenance of registers of immoveable property in cantonments;

(*4*) the constitution of Cantonment Committees, the functions to be discharged by them, the conduct of, and the control to be exercised over, their proceedings, and the division of duties among the members of such Committees;

(*5*) the functions to be discharged by the commanding officer of a cantonment where a Cantonment Committee has not been constituted, or has, in pursuance of an order of the Local Government, ceased to exist, or, for any reason, cannot be convened;

(*6*) the executive duties of the Cantonment Magistrate and his position in relation to the commanding officer of the cantonment;

(*7*) the purposes to which the Cantonment Fund may be applied;

(*8*) the authority on which money may be paid from the Cantonment Fund;

(*9*) the investment of any balance of that fund;

(*10*) the execution of contracts by, or on behalf of, the Cantonment Authority;

(*11*) the accounts to be kept by the Cantonment Authority, and the manner in which those accounts are to be audited and published;

(*12*) the definition and abatement of nuisances for which sufficient provision has not, in the opinion of the Governor-General in Council, been made under section 25;

(*13*) the requisitions which may be made on persons having the control of sewers, drains, latrines, or other things creating, or likely to create, nuisances and the mode of enforcing such requisitions;

(*14*) the prevention of the over-crowding of buildings and places in a cantonment;

(*15*) the construction and maintenance, to the satisfaction of the Cantonment Authority, of buildings and of boundary walls, hedges, and other fences;

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* For some rules made under this section, see Gazette of India, 1896, Pt. I., pp. 379 and 463.

1889. Act 13.

(*16*) the regulation of the practice of agriculture and irrigation in a cantonment, the keeping of lands therein in proper order, and the felling, lopping, and trimming of trees on such lands;

(*17*) the regulation of encamping grounds,* sarais, markets, and slaughter-houses, of traffic on roads, and of processions and public assemblies;

(*18*) the use and management of burial and burning-grounds;

(*19*) the supervision and the regulation of the use of public wells, tanks, rivers, streams, springs, or other sources, from which water is or may be made available for public use, and of the lands in the vicinity thereof;

(*20*) the parts of a cantonment in which persons practising any profession, or carrying on any trade, calling, or occupation, may be required to reside for the purpose of practising the profession, or carrying on the trade, calling, or occupation, and the conditions, if any, to be observed by such persons;

(*21*) the prevention of the spread of infectious or contagious disorders within a cantonment, and the appointment and regulation of hospitals or other places within or without a cantonment for the reception and treatment of persons suffering from any disease;†

(*22*) the segregation in, or the removal and exclusion from, a cantonment, or the destruction of animals suffering, or supposed to be suffering, from any infectious or contagious disease;

(*23*) the suppression of mendicancy, and of loitering or importuning for the purpose of prostitution, and the removal and exclusion from a cantonment of disorderly persons, of persons who have been convicted of any offence against Chapter XVII. of the Indian Penal Code or section 156 of the Army Act,‡ or have been ordered under the Code of Criminal Procedure, 1882,§ to execute a bond for their good behaviour, and of persons whom the commanding officer deems it expedient to exclude from the cantonment with or without assigning any reason for excluding them therefrom;

(*24*) the prevention of cruelty to animals and the care of animals while grazing;‖

(*25*) the prevention and extinction of fires;

(*26*) the registration of births and deaths;

(*27*) the appointment, by owners of buildings and lands in cantonments who are absent from cantonments, of persons residing within or near cantonments to act as their agents for all or any of the purposes of this Act or any enactment extended or rule made thereunder;

(*28*) the powers of inspection, entry, and search which may be exercised in carrying out any of those purposes, and the cases in which breaches of enactments extended or rules made under this Act are to be cognizable offences;

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* For special Act for the regulation of public sarais, see Act XXII. of 1867.

† For rules of this nature, see Gazette of India, 1897, Pt I. p. 941.

‡ Here the figures, "1881," have been omitted, having been repealed by the Repealing and Amending Act (XII. of 1891)

§ See now the new Code of Criminal Procedure (Act V. of 1898).

‖ For special Act for the prevention of cruelty to animals, see Act XI. of 1890.

(29) the mode in which summonses, notices, requisitions, and other documents are to be served on the persons to whom they are addressed; 1889. Act 13.

(30) the cases, authorities, and conditions in, to, and on which executive orders passed under this Act or any enactment extended or rule made thereunder may be appealed from; and

(31) generally the carrying-out of the purposes of this Act. . .

**27.** (1) The power to make rules under the last-foregoing section is subject to the condition of the rules being made after previous publication, and of their not taking effect until they have been published in the Gazette of India, and in such other manner as the Governor-General in Council prescribes.

Supplemental provisions respecting rules.

(2) A rule under the last-foregoing section may be general for all cantonments in British India, or for all cantonments not expressly excepted from its operation, or may be special for the whole or any part of any one or more than one cantonment, as the Governor-General in Council directs.

(3) A copy of the rules for the time being in force in a cantonment shall be kept open to inspection free of charge at all reasonable times in the office of the Cantonment Magistrate.

(4) In making any rule under clause (12) or any of the following clauses of the last foregoing section, the Governor-General in Council may direct that a breach of it shall be punished with fine which may extend to fifty rupees, or with imprisonment for a term which may extend to eight days, and, when the breach is a continuing breach, with fine which, in addition to such fine or imprisonment as aforesaid, may extend to five rupees for every day after the first during which the breach continues.

**28.** The Local Government may, by notification in the official Gazette, and subject to any conditions as to compensation or otherwise which it may see fit to impose, extend to any area beyond a cantonment, and in the vicinity thereof—

Extension of certain enactments and rules to places beyond cantonments.

(a) any enactment which, with or without restriction or modification, has been extended to the cantonment or any part thereof under section 25, or

(b) any rule in force in the cantonment or any part thereof under clause (12) or any of the following clauses of section 26, as well as any direction there in force under sub-section (4) of section 27;

and the enactment, rule, or direction specified in the notification, shall, so long as the notification remains uncancelled, apply to that area as if the area were included in the cantonment.†

**29.** A Judge or Magistrate shall not be deemed, within the meaning of section 555‡ of the Code of Criminal Procedure, 1882, to be a party to, or personally interested in, any prosecution for an offence against this Act, or against any enactment extended or rule made thereunder, because he is a member of the

Inapplicability of section 555, Act X., 1882, to trials of offences against this Act.

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* The proviso, which had been added after cl. (31) by the Cantonments Act Amendment Act (V of 1895), s 2, has been repealed by the Cantonments Act (XV. of 1897), and, therefore, omitted here.

† For instances of notifications issued under the power conferred by this section, see the Burma Laws List, Ed. 1897, p. 300, and N.-W. P. and Oudh List of Local Rules and Orders, Ed. 1894, pp. 141 and 142.

‡ Now s. 556 of the new Code of Criminal Procedure (Act V. of 1898).

1889. Act 13. Cantonment Committee, or, where there is no such committee, is the commanding officer of the cantonment, or because he has ordered or approved the prosecution.

**Cantonments in presidency-towns.**

**30.** Where a cantonment is situated within the limits of a presidency-town, the functions assigned to any authority by this Act or any enactment extended or rule made thereunder shall, subject to the provisions of any enactment for the time being in force, be discharged by such authority as the Local Government may appoint in this behalf.

**Protection of Cantonment Authority, Magistrate, and commanding, medical, or other officer.**

**31.** A suit or prosecution shall not be entertained in any Court against any Cantonment Authority, authority appointed under the last-foregoing section, Cantonment Magistrate, *or commanding, medical, or other officer** for anything in good faith done or purporting to be done, in pursuance of powers conferred, by or under this Act, on such authority, Magistrate, or officer, whether the thing done was or was not authorized by the powers so conferred.

**Registration.**

**32.** (*1*) Section 54, paragraphs two and three, and sections 59, 107, and 123 of the Transfer of Property Act, 1882,† with respect to the transfer of property by registered instrument, shall, on and from the commencement of this Act, extend to every cantonment in British India.

(*2*) Where a cantonment has not been constituted a sub-district or district for the purposes of the Indian Registration Act, 1877,‡ under section 9 of that Act, the Registrar of the district in which the cantonment is situated shall cause a copy of such entries in Indexes Nos. I. and II. as relate to immoveable property within the limits of the cantonment to be forwarded to the Cantonment Magistrate annually, or at such shorter intervals as the Local Government may prescribe.

**Limitation of the operation of this Act.**

**33.** The Governor-General in Council may, by notification in the Gazette of India, exclude, from the operation of the whole or any part of this Act, the whole or any part of any cantonment.

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* In s. 31, the italicized words have been substituted for the words, "or commanding officer," by the Cantonments Act Amendment Act (XV. of 1897), s. 3.

† Act IV. of 1882.

‡ Act III. of 1877.

## THE SCHEDULE.

ENACTMENTS REPEALED.

(*See section 2.*)

| Number and year. | Subject or title. | Extent of repeal. |
|---|---|---|
| 1 | 2 | 3 |
| *Acts of the Governor-General in Council.* | | |
| Act XVIII. of 1853 ... | Sale of spirits in cantonments. | The whole, so far as it has not been repealed. |
| Act IV. of 1854 ... | Sentences of Superintendents of Bazars. | The whole, so far as it has not been repealed. |
| Act XLV. of 1860 ... | Indian Penal Code ... | The words, "or before a Military Court of Request," in *Explanation I.* to section 193. |
| Act V. of 1869 ... | Indian Articles of War. | Part III., clause (*c*); and for the last twenty-seven words of Part I., clause (*f*), the following shall be substituted, namely, "and officers in charge of the police in cantonments are defined and controlled." |
| Act VII. of 1870 ... | Court Fees Act, 1870. | Section 19, clause (*iv.*); and in Schedule II., article 1, clause (*a*), the words, "or to any Cantonment Magistrate sitting as a Court of Civil Judicature under Act No. III. of 1859." |
| Act XV. of 1874 ... | Laws Local Extent Act, 1874. | So much of the Second Schedule as relates to Madras Regulation XIV. of 1832; so much of the Third Schedule as relates to sections 18, 19, 20, 45, 46, and 47 of Bombay Regulation XXII. of 1827; and so much of the Fourth and Fifth Schedules as relates to Bengal Regulation XX. of 1810. |
| Act XX. of 1875 ... | Central Provinces Laws Act, 1875. ... | So much as relates to Bengal Regulation XX. of 1810. |
| Act XVIII. of 1876 ... | Oudh Laws Act, 1876. | So much as relates to Bengal Regulation XX. of 1810. |
| Act III. of 1877 ... | Indian Registration Act, 1877. | The second paragraph of section 9, beginning with the word "whenever," and ending with the word "thereof." |

THE SCHEDULE—(*continued*).

ENACTMENTS REPEALED—(*continued*).

(*See section 2.*)

| Number and year. | Subject or title. | Extent of repeal. |
|---|---|---|
| 1 | 2 | 3 |
| Act XIV. of 1879 | Hackney Carriage Act, 1879. | Section 4, from and inclusive of the words, "and the Governor-General in Council may," down to and inclusive of the words, "in which British troops are cantoned." |
| Act III. of 1880 | Cantonments Act, 1880. | So much as has not been repealed. |
| Act XXII. of 1881* | Excise Act, 1881 | The proviso to section 53. |
| Act X. of 1882† | Code of Criminal Procedure, 1882. | Clause (*b*) of section 1. |
| Act XIV. of 1882 | Code of Civil Procedure. | Section 6, clause (*a*); the words, "an officer or," in section 468; and the whole of section 469. |
| * * * | * * * | * * * * ‡ |
| | *Regulation of the Bengal Code.* | |
| Regulation XX. of 1810. | Military Bazars | So much as has not been repealed. |
| | *Regulation of the Bombay Code.* | |
| Regulation XXII. of 1827. | Military Authority ... | So much as has not been repealed, except sections 40, 41, 42, and 43. |
| | *Acts of the Governor of Fort St. George in Council.* | |
| Act IV. of 1865 | ... Madras Cantonments. | The whole, so far as it has not been repealed. |
| Act I. of 1866 | Madras Cantonment. | So much as has not been repealed. |
| | *Act of the Governor of Bombay in Council.* | |
| Act III. of 1867 | Bombay Cantonment Act of 1867. | So much as has not been repealed. |

* This Act has now been entirely repealed by the Excise Act (XII. of 1896).

† Repealed by the new Code of Criminal Procedure (Act V. of 1898).

‡ Here, the reference to the Upper Burma Laws Act (XX. of 1886), repealed by the Burma Laws Act (XIII. of 1898), has been omitted.—See the Fifth Schedule of that Act.

## THE SCHEDULE—(*concluded*).

### ENACTMENTS REPEALED—(*concluded*).

(*See section 2.*)

| Number and year. | Subject or title. | Extent of repeal. |
|---|---|---|
| 1 | 2 | 3 |
| *Act of the Lieutenant-Governor of Bengal in Council.* | | |
| Act VII. of 1878 ... | Bengal Excise Act, 1878. | The proviso to section 81. |
| *Regulation under the Statute 33 Victoria, Chapter 3.* | | |
| Act III. of 1877 ... | Ajmere Laws Regulation, 1877. | Section 39, and so much as relates to Bengal Regulation XX. of 1810. |

### RULINGS UNDER THE CANTONMENTS ACT.

A SUB-CONDUCTOR in the Commissariat Department is not a "soldier" within the meaning of s. 14 of Act III. of 1880, and consequently the sale of spirituous liquor to the wife of such a person without the license required by that section is not an offence against that section.—EMPRESS *v.* DOSABHOY FRAMJI, I. L. R., 3 All 214. [Oldfield and Straigth, JJ. Aug. 26, 1880.]

ACT XXI. of 1879, s 8 (which corresponds with s. 8 of Act XI of 1872 now repealed), extends, to all British subjects, European or Native, in Native States in alliance with Her Majesty, the law relating to offences and criminal procedure for the time being in British India. The Code of Criminal Procedure (Act X. of 1882), with the amendments introduced by Act III of 1884, is thus by virtue of that section, applicable to such British subjects, Native or European. The High Court of Bombay having been vested, by the Notification of the Governor-General of India in Council, No 178 of 23rd September 1874, with original and appellate criminal jurisdiction over European British subjects being Christians, resident, amongst other places, at Secunderabad, outside the Presidency of Bombay, and within the territories of His Highness the Nizam of Hyderabad, the Cantonment Magistrate of Secunderabad, in his character of a District Magistrate, is subordinate to the High Court in criminal matters relating to Christian European British subjects in Hyderabad within the contemplation of s. 526 of the Code of Criminal Procedure (Act X. of 1882, as amended by Act II. of 1884, s 11); and the High Court possesses, by virtue of the appellate jurisdiction so vested in it, the power of transferring a criminal case pending in the Cantonment Magistrate's Court, either to itself, or to any Criminal Court of equal or superior jurisdiction. The High Court, by an order under s. 526 of the Criminal Procedure Code (Act X of 1882), transferred the present case of defamation from the Court of the Cantonment Magistrate at Secunderabad to the High Court for trial, on the ground that no machinery for a trial by jury existed at Secunderabad.—QUEEN-EMPRESS *v.* W. D. EDWARDS, I. L. R., 9 Bom. 333. [Sargent, C.J., and Bayley and Scott, JJ. June 20, 1885.]

"TARI" or "toddy" is "spirituous liquor" within the meaning of s 14 of Act III of 1880. The words "spirituous liquor," "wine" and "intoxicating drugs" in that section, must be taken in their popular and ordinary meaning. A Cantonment Magistrate, in his judicial capacity, has no authority to cancel a license. The power to cancel licenses belongs to the revenue-authorities.—QUEEN-EMPRESS *v.* RAMDHANI PASSI, I. L. R., 15 Cal 452 [Wilson and O'Kinealy, JJ. Feb. 28, 1888.]

THE additional fine referred to in Rule 2 of the Rules framed under s 26 of the Cantonments Act, XIII. of 1889, is not only to be imposed *after* the first conviction, but is to follow proof that failure is persisted in. The additional fine cannot be imposed as a threat in case of possible persistence which, being in the future, cannot be made matter of present proof. The continuing failure must be matter of later and separate inquiry and proof *In re Limbaji* (I. L. R., 22 Bom. 766) followed.—QUEEN-EMPRESS *v.* WILLIAM PLUMNER, I. L. R., 22 Bom. 841. [Jardine and Ranade, JJ. Feb. 4 1897.]

# ACT NO. I. OF 1871.*

## THE CATTLE-TRESPASS ACT.

RECEIVED G.-G.'S ASSENT ON 13TH JANUARY 1871.

*An Act to consolidate and amend the Law relating to Trespasses by Cattle.*

WHEREAS it is expedient to consolidate and amend the law relating to tres-
Preamble. passes by cattle; It is hereby enacted as follows :—

### CHAPTER I.

PRELIMINARY.

Title and extent.

**1.**† (*1*) This Act may be called "The Cattle Trespass Act, 1871;" and

(*2*) It extends to the whole of British India, except the Presidency-towns and such local areas as the Local Government, by notification‡ in the official Gazette, may, from time to time, exclude from its operation.

(*3*) The Local Government may at any time, by notification in the official Gazette, cancel or vary a notification under sub-section (*2*).

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* For the Statement of Objects and Reasons, see Gazette of India, 1870, Pt. V., p. 310, for Proceedings in Council, see *ibid*, Supplement, pp. 1150, 1200, 1290, and Supplement, 1871, p. 178.

Act I. of 1871 has been declared in force in—

(1) the Santhal Parganas, by Reg. III. of 1872, s. 3, as amended by Reg. III. of 1886.

(2) the Arakan Hill District, by Reg IX. of 1874, s 3

(3) Upper Burma generally (except the Shan States), by Act XX. of 1886, s. 6.

(4) British Baluchistan, by Reg. I. of 1890, s. 3:

(5) Angul and the Khondmals, by Reg. I. of 1894, s. 3

It has been declared, under the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts :—

The Districts of Hazáribágh, Lohárdaga (including, at this time, the present District of Palamau, which was separated in 1894), and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum —See Gazette of India, Oct. 22, 1881, Pt. I, p. 504.

The North-Western Provinces Tarai.—See Gazette of India, Sep. 23, 1876, Pt. I., p. 505.

As to transfer of functions of Local Government and District Magistrate to local authorities, see the Central Provinces Local Self-Government Act, I. of 1883, s. 9, cl (*f*); he North-Western Provinces and Oudh Local Boards Act, XIV. of 1883, s. 24, cl. (*f*); nd the Punjab District Boards Act, XX. of 1883, s. 20 (*2*), cl. (*n*).

Act XVIII of 1883 (*to amend the Cattle Trespass Act, 1871*) is repealed by Act I. of 1891 (*an Act to amend the Cattle Trespass Act, 1871, and to incorporate therein Act XVIII. of 1883*), provided that orders which have been made and notified under that Act (XVIII. of 1883) by the Local Government, and are in force immediately before the commencement of this Act (I. of 1891), shall be deemed to have been made under the Cattle Trespass Act, 1871, as amended by Act I. of 1891.—See Act I. of 1891, s. 10.

Any enactment or document referring to the Cattle Trespass Act, 1871, or to Act XVIII. of 1883 (*to amend the Cattle Trespass Act, 1871*), shall be construed to refer to the Cattle Trespass Act, 1871, as amended by Act I. of 1891.—See Act I. of 1891, s. 12.

† S. 1 has been substituted for the original by Act I. of 1891, s. 1

‡ For notification issued by the Government of the N.-W. P. & Oudh under the powers aforesaid, see the N.-W. P. & Oudh List of Local Rules and Orders, Ed. 1894, p. 41.

Repeal of Acts.

**2.** The Acts mentioned in the schedule hereto annexed are repealed.

References to repealed Acts.

References to any of the said Acts in Acts passed subsequently thereto shall be read as if made to this Act.

All pounds established, pound-keepers appointed, and villages determined, under Act No. III. of 1857* (*relating to trespasses by Cattle*), shall be deemed to be, respectively, established, appointed, and determined under this Act.

Interpretation clause.

**3.** In this Act—

'officer of police' includes also village watchman; and

'cattle' includes also elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats, and kids; "and

" 'local authority'† means any body of persons for the time being invested by law with the control and administration of any matters within a specified local area; and

" 'local fund' means any fund under the control or management of a local authority."‡

## CHAPTER II.

### POUNDS AND POUND-KEEPERS.

Establishment of pounds.

**4.** Pounds shall be established at such places as the Magistrate of the District, subject to the general control of the Local Government, from time to time, directs.§

The village by which every pound is to be used shall be determined by the Magistrate of the District

Control of pounds.
Rates of charge for feeding impounded cattle.

**5.** The pounds shall be under the control of the Magistrate of the District; and he shall fix, and may, from time to time, alter, the rates of charge for feeding and watering impounded cattle.

Appointment of pound-keepers.

**6.** The Magistrate of the District shall also appoint for each pound a pound-keeper:

*Ex-officio* pound keepers in Madras and Bombay.

Provided that, in the Presidency of Fort St. George, the heads of villages and, in the Presidency of Bombay, the police-patils or (where there are no police-patils) the heads of villages, shall be *ex-officio* the keepers of village-pounds.

Suspension or removal of pound-keepers.

Every pound-keeper appointed by the Magistrate of the District may be suspended or removed by such Magistrate.

Pound-keepers may hold other offices.

Any pound-keeper may hold simultaneously any other office under Government.

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* Repealed by this Act, s. 2 and sch.

† Compare the definition with that in s. 3 (*28*) of the General Clauses Act (X. of 1897), which is applied by s. 4 (*2*) thereof to all Acts passed after the 14th January 1887.

‡ The portion quoted in s. 3 have been added thereto by Act I. of 1891, s. 2.

§ For rules and forms as to cattle-pounds in Sind, see Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, pp. 69 and 73.

Pound-keepers to be 'public servants.'

Every pound-keeper shall be deemed a public servant within the meaning of the Indian Penal Code.

*Duties of Pound-keepers.*

To keep registers and furnish returns.

**7.** Every pound-keeper shall keep such registers, and furnish such returns, as the Local Government, from time to time, directs.*

To register seizures.

**8.** When cattle are brought to a pound, the pound-keeper shall enter in his register—

(*a*) the number and description of the animals,

(*b*) the day and hour on and at which they were so brought,

(*c*) the name and residence of the seizer, and

(*d*) the name and residence of the owner, if known,

and shall give the seizer or his agent a copy of the entry.

To take charge of and feed cattle.

**9.** The pound-keeper shall take charge of, feed, and water the cattle until they are disposed of as hereinafter directed.

## CHAPTER III.

### IMPOUNDING CATTLE.

Cattle damaging land.

**10.** The cultivator or occupier of any land,

or any person who has advanced cash for the cultivation of the crop or produce on any land,

or the vendee or mortgagee of such crop or produce, or any part thereof,

may seize, or cause to be seized, any cattle trespassing on such land, and doing damage thereto, or to any crop or produce thereon, and "send them, or cause them to be sent, within twenty-four hours,"† to the pound established for the village in which the land is situate.

Police to aid seizure.

All officers of police shall, when required, aid in preventing (*a*) resistance to such seizures and (*b*) rescues from persons making such seizures.

Cattle damaging public roads, canals, and embankments.

**11.**‡ Persons in charge of public roads, pleasure-grounds, plantations, canals, drainage-works, embankments, and the like, and officers of police, may seize, or cause to be seized, any cattle doing damage to such roads, grounds, plantations, canals, drainage-works, embankments, and the like, or the sides or slopes

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* For notification prescribing registers and returns in Burma, see Burma Gazette, 1893, Pt I., p. 36, and *ibid*, 1896, Pt I, pp 195 and 501.

† In s. 10, the words quoted have been substituted for the words "take them, or cause them to be taken, without unnecessary delay," by Act I. of 1891, s. 3.

‡ As to the application of this section to—

(*a*) forests—see Acts VII of 1878, s. 69 and XIX. of 1881, s. 68; and Regs. VI. of 1887, s. 66, and VII. of 1891, s. 66; and

(*b*) railways—see Act IX. of 1890, s 125 (*4*).

1871. Act 1.

of such roads, canals, drainage-works, or embankments, or found straying thereon, and shall "send them, or cause them to be sent, within twenty-four hours,"* to the nearest pound.

**12.** For every head of cattle impounded as aforesaid, the pound-keeper shall levy a fine† according to the following scale‡ :—

Fines for cattle impounded.

| | |
|---|---|
| Elephant ... ... ... ... ... | two rupees. |
| Camel or buffalo .. ... ... ... | eight annas. |
| Horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow, or heifer ... .. ... ... | four annas. |
| Calf, ass, or pig ... ... ... ... | two „ |
| Ram, ewe, sheep, lamb, goat, or kid ... ... | one anna. |

§ Provided that, when it appears to the Local Government from the report of a Magistrate of a District, or on the representation of a local authority, that, in any local area subject to the jurisdiction or control of such Magistrate or authority, cattle are habitually allowed to trespass on land, and damage crops or other produce thereon, the Local Government may, by notification in the official Gazette, direct that, for every head of cattle of any kind specified therein, which may be seized within such local area, and impounded as aforesaid, the pound-keeper shall levy such fine, not exceeding double the fine mentioned in the foregoing scale, as may be prescribed in the notification.‖

All fines so levied shall be sent to the Magistrate of the District through such officer as the Local Government, from time to time, directs.¶

List of fines and charges for feeding.

A list of fines and of the rates of charge for feeding and watering cattle shall be stuck up in a conspicuous place on or near to every pound.

The Local Government may, at any time, by notification in the official Gazette, cancel or vary a notification under the proviso to the first paragraph of this section.**

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* In s. 11, the words quoted have been substituted for the words 'take them without unnecessary delay" by Act I. of 1891, s. 4.

† 7 Bom. C. C 55

‡ For power to prescribe a different scale for cattle impounded under Forest Laws, 1878, see Act VII. of 1878, s 70; Act XIX of 1881, s 69; Reg. VI. of 1887, s. 67; and Reg. VII. of 1891. As to additional penalties in the case of cattle trespassing on a railway, see Act IX of 1890, s 125 (*1*) and (*2*).

§ To s 12 this proviso has been added by Act I. of 1891, s. 5 (*1*).

‖ For notifications under this power issued for various local areas by the—

(*a*) Government of Bombay, see Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, pp. 73 to 84;

(*b*) Chief Commissioner, Central Provinces, see Central Provinces List of Local Rules and Orders, Ed 1896, p. 18;

(*c*) Government of Madras, see Madras List of Local Rules and Orders, Vol. I., Ed. 1898, pp. 21 and 22;

(*d*) Government of the North-Western Provinces and Oudh, see the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 41.

¶ For notification issued under this clause for (*a*) Burma, see Burma Gazette, 1893, Pt. I., p. 37.

** To s. 12, this paragraph has been added by Act I. of 1891, s. 5 (*2*)

## CHAPTER IV.

### DELIVERY OR SALE OF CATTLE.

**Procedure when owner claims the cattle, and pays fines and charges.**

**13.** If the owner of the impounded cattle or his agent appear and claim the cattle, the pound-keeper shall deliver them to him on payment of the fines and charges incurred in respect of such cattle.

The owner or his agent, on taking back the cattle, shall sign a receipt for them in the register kept by the pound-keeper.

**Procedure if cattle be not claimed within a week.**

**14.** If cattle be not claimed within seven days from the date of their being impounded, the pound-keeper shall report the fact to the officer in charge of the nearest police-station, or to such other officer as the Magistrate of the District appoints in this behalf.

Such officer shall thereupon stick up in a conspicuous part of his office a notice stating—

(*a*) the number and description of the cattle,

(*b*) the place where they were seized,

(*c*) the place where they are impounded,

and shall cause proclamation of the same to be made by beat of drum in the village, and at the market-place nearest to the place of seizure.

If the cattle be not claimed within seven days from the date of the notice, they shall be sold by public auction by the said officer, or an officer of his establishment deputed for that purpose, at such place and time, and subject to such conditions, as the Magistrate of the District, by general or special order, from time to time, directs:

Provided that, if any such cattle are, in the opinion of the Magistrate of the District, not likely to fetch a fair price if sold as aforesaid, they may be disposed of in such manner as he thinks fit.

**Delivery to owner disputing legality of seizure, but making deposit.**

**15.** If the owner or his agent appear and refuse to pay the said fines and expenses, on the ground that the seizure was illegal, and that the owner is about to make a complaint under section 20, then, upon deposit of the fines and charges incurred in respect of the cattle, the cattle shall be delivered to him.

**Procedure when owner refuses or omits to pay the fines and expenses.**

**16.** If the owner or his agent appear and refuse or omit to pay or (in the case mentioned in section 15) to deposit the said fines and expenses, the cattle, or as many of them as may be necessary, shall be sold by public auction by such officer, at such place and time, and subject to such conditions, as are referred to in section 14.

**Deduction of fines and expenses.**

The fines leviable, and the expenses of feeding and watering, together with the expenses of sale, if any, shall be deducted from the proceeds of the sale.

**Delivery of unsold cattle and balance of proceeds.**

The remaining cattle and the balance of the purchase-money, if any, shall be delivered to the owner or his agent, together with an account showing—

(*a*) the number of cattle seized,

(*b*) the time during which they have been impounded,

(*c*) the amount of fines and charges incurred,

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(*d*) the number of cattle sold,

(*e*) the proceeds of sale, and

(*f*) the manner in which those proceeds have been disposed of.

The owner or his agent shall give a receipt for the cattle delivered to him, and for the balance of the purchase-money (if any) paid to him according to such account.

Receipt.

Disposal of fines, expenses, and surplus proceeds of sale.

**17.** The officer by whom the sale was made shall send to the Magistrate of the District the fines so deducted.

The charges for feeding and watering, deducted under section 16, shall be paid over to the pound-keeper, who shall also retain and appropriate all sums received by him on account of such charges under section 13.

The surplus unclaimed proceeds of the sale of cattle shall be sent to the Magistrate of the District, who shall hold them in deposit for three months, and, if no claim thereto be preferred and established within that period, shall, at its expiry, dispose of them as hereinafter provided.

Application of fines and unclaimed proceeds of sales.

**18.** Out of the sums received on account of fines and the unclaimed proceeds of the sale of cattle shall be paid—

(*a*) the salaries allowed to pound-keepers under the orders of the Local Government;

(*b*) the expenses incurred for the construction and maintenance of pounds, or for any other purpose connected with the execution of this Act;

and the surplus* (if any) shall be applied, under orders of the Local Government, to the construction and repair of roads and bridges, and to other purposes of public utility.

Officers and pound keepers not to purchase cattle at sales under Act.

**19.** No officer of police, or other officer or pound-keeper appointed under the provisions herein contained, shall, directly or indirectly, purchase any cattle at a sale under this Act.

Pound-keepers when not to release impounded cattle.

No pound-keeper shall release or deliver any impounded cattle otherwise than in accordance with the former part of this chapter, unless such release or delivery is ordered by a Magistrate or Civil Court.

## CHAPTER V.†

### COMPLAINTS OF ILLEGAL SEIZURE OR DETENTION.

Power to make complaints.

**20.** Any person whose cattle have been seized under this Act, or, having been so seized, have been detained in contravention of this Act, may, at any time within ten days from the date of the seizure, make a complaint‡ to the Magistrate of the District or any

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* As to the crediting of this surplus to Local Funds, see s. 31, *infra*.

† Ch. V. has been substituted for the original by Act I. of 1891, s. 6.

‡ The term "offence," as defined in s. 4 (*o*) of the Code of Criminal Procedure (Act V. of 1898), includes any act in respect of which a complaint may be made under this section.

Offences under this section may be tried in a summary way.—See Act V. of 1898, s. 260 (*1*) (*m*).

Magistrate authorized to receive and try charges without reference by the Magistrate of the District. 1871. Act I.

**21.** The complaint shall be made by the complainant in person, or by an agent personally acquainted with the circumstances. It may be either in writing or verbal. If it be verbal, the substance of it shall be taken down in writing by the Magistrate.

Procedure on complaint.

If the Magistrate, on examining the complainant or his agent, sees reason to believe the complaint to be well founded, he shall summon the person complained against, and make an inquiry into the case.

**22.** If the seizure or detention be adjudged illegal, the Magistrate shall award to the complainant, for the loss caused by the seizure or detention, reasonable compensation, not exceeding one hundred rupees, to be paid by the person who made the seizure or detained the cattle, together with all fines paid and expenses incurred by the complainant in procuring the release of the cattle;

Compensation for illegal seizure or detention.

and, if the cattle have not been released, the Magistrate shall, besides awarding such compensation, order their release, and direct that the fines and expenses leviable under this Act shall be paid by the person who made the seizure or detained the cattle.

Release of cattle.

**23.** The compensation, fines, and expenses mentioned in section 22 may be recovered as if they were fines imposed by the Magistrate.*

Recovery of compensation.

## CHAPTER VI.

### PENALTIES.

**24.** Whoever forcibly opposes the seizure of cattle liable to be seized under this Act,

Penalty for forcibly opposing the seizure of cattle or rescuing the same.

and whoever rescues the same after seizure, either from a pound, or from any person taking or about to take them to a pound, such person being near at hand, and acting under the powers conferred by this Act,

shall, on conviction before a Magistrate, be punished with imprisonment for a period not exceeding six months, or with fine not exceeding five hundred rupees, or with both.

**25.**† Any fine imposed "under the next following section, or "‡ for the offence of mischief, by causing cattle to trespass on any land, may be recovered by sale of all or any of the cattle by which the trespass was committed, whether they were seized in the act of trespassing or not, and whether they are the property of the person convicted of the offence, or were only in his charge when the trespass was committed.

Recovery of penalty for mischief committed by causing cattle to trespass.

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* See ss. 63 to 70 of the Indian Penal Code (Act XLV. of 1860) and s. 386 of the Code of Criminal Procedure (Act V. of 1898). Compare, also, s. 25 of the General Clauses Act (X. of 1897).

† As to the application of s. 25 in the case of cattle trespassing on a railway, see the Indian Railways Act (IX. of 1890), s. 125 (3).

‡ In s. 25, the words quoted have been inserted by Act I. of 1891, s. 7.

Penalty for damage caused to land or crops or public roads by pigs.

**26.** Any owner or keeper of pigs who, through neglect or otherwise, damages, or causes or permits to be damaged, any land, or any crop or produce of land, or any public road,* by allowing such pigs to trespass thereon, shall, on conviction before a Magistrate, be punished with fine not exceeding ten rupees.

† The Local Government, by notification in the official Gazette, may, from time to time, with respect to any local area specified in the notification, direct that the foregoing portion of this section shall be read as if it had reference to cattle generally, or to cattle of a kind‡ described in the notification, instead of to pigs only, or as if the words "fifty rupees" were substituted for the words "ten rupees," or as if there were both such reference and such substitution.

† The Local Government may at any time, by notification in the official Gazette, cancel or vary a notification under this section.

Penalty on pound-keeper failing to perform duties.

**27.** Any pound-keeper releasing or purchasing or delivering cattle contrary to the provisions of section 19, or omitting to provide any impounded cattle with sufficient food and water, or failing to perform any of the other duties imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished, on conviction before a Magistrate, with fine not exceeding fifty rupees.

Such fines may be recovered by deductions from the pound-keeper's salary.

Application of fines recovered under section 25, 26, or 27.

**28.** All fines recovered under section 25, section 26, or section 27, may be appropriated, in whole or in part as compensation for loss or damage proved to the satisfaction of the convicting Magistrate.

## CHAPTER VII.

### SUITS FOR COMPENSATION.

Saving of right to sue for compensation.

**29.** Nothing herein contained prohibits any person whose crops or other produce of land have been damaged by trespass of cattle from suing for compensation in any competent Court.

Set-off.

**30.** Any compensation paid to such person under this Act by order of the convicting Magistrate shall be set off and deducted from any sum claimed by, or awarded to, him as compensation in such suit.

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* "Public road" here includes a railway —See Act IX. of 1890, s. 125 (*4*).

† To s. 26, the last two paragraphs have been added by Act I. of 1891, s. 8.

‡ For notification—

(1) as to elephants and buffaloes issued by the Chief Commissioner, Assam, see Assam Rules Manual, Ed. 1893, p. 25;

(2) as to Bombay, see note (4) (*a*) on p. 6, *supra*. The notifications there referred to were also issued under the power conferred by this section;

(3) as to certain areas in the Central Provinces, see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 18;

(4) as to certain areas in the Presidency of Madras, see Madras List of Local Rules and Orders, Vol. I., Ed. 1898, p. 22;

(5) as to certain areas in the North-Western Provinces, see the North-Western Provinces List of Local Rules and Orders, Ed. 1894, p. 41;

(6) as to Bengal, see Calcutta Gazette, 1898, Pt. I., p. 890;

(7) as to Cantonment of Nasirabad (Ajmere-Merwara), see Gazette of India, 1898, Pt. II., p. 935.

## CHAPTER VIII.*

### SUPPLEMENTAL.

**Power for Local Government to transfer certain functions to local authority, and direct credit of surplus receipts to local fund.**

**31.** The Local Government may, from time to time, by notification in the official Gazette,—

(*a*)† transfer to any local authority,‡ within any part of the territories under its administration in which this Act is in operation, all or any of the functions of the Local Government or the Magistrate of the District under this Act, within the local area, subject to the jurisdiction of the local authority, or

(*b*)* direct that the whole or any part of the surplus accruing in any district under section 18 of this Act shall be placed to the credit of such local fund or funds§ as may be formed for any local area or local areas comprised in that district,

and may, from time to time, by notification in the official Gazette, cancel or vary any notification under this section.

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## SCHEDULE.

(*See section 2.*)

| Number and year. | Title of Act. |
|---|---|
| III. of 1857 ... ... | An Act relating to trespasses by cattle. |
| V. of 1860 .. ... | An Act to amend Act III. of 1857 (relating to trespasses by cattle). |
| XXII. of 1861 ... ... | An Act to amend Act III. of 1857 (relating to trespasses by cattle). |

* Ch. VIII. has been added by Act I. of 1891, s. 9.

† For notifications under this clause issued by the—

(*a*) Government of Bombay, see Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, pp. 85 & 86;

(*b*) Chief Commissioner of Burma, see Burma Gazette, 1896, Pt. I., pp. 19 and 500;

(*c*) Chief Commissioner, Central Provinces, see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 14;

(*d*) Government of Madras, see Madras List of Local Rules and Orders, Vol. I., Ed. 1889, pp. 22 & 23.

‡ For special enactments, see, as to the Central Provinces, the Central Provinces Local Self-Government Act (I. of 1883), s. 9, cl. (*f*), and s. 23 (*1*), cl. (*c*); as to the North-Western Provinces and Oudh, the North-Western Provinces and Oudh Local Boards Act (XIV. of 1883), s. 24, cl. (*f*), and s. 38, cl. (*c*); and as to the Punjab, the Punjab District Boards Act (XX. of 1883), s. 20, cl. (*n*).

§ For notifications issued under cl. (*b*) by the—

(*a*) Government of Bombay for certain local areas, see Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, pp. 86 and 87:

(*b*) Chief Commissioner of Burma, see Burma Gazette, 1894, Pt. I., p. 13, and *ibid*, 1896, Pt. I., p. 501.

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RULINGS UNDER THE CATTLE TRESPASS ACT.

THE repealing section of Act XVII. of 1862 does not affect the power of a Subordinate Magistrate under s. 13 of Act III. of 1857 (Cattle Trespass).—REG. v. MIR SAHEB KASSAMIA, 1 Bom. H. C. R. 100. [Westropp and Tucker, JJ. Nov 25, 1863.]

THE latter portion of s. 13 of Act III. of 1857 having been repealed by Act XVII. of 1862, *held* that the offences created by that section may be dealt with by the ordinary criminal tribunals, subject to the provisions of the Code of Criminal Procedure —REG. v MATHUR PURSHOTAM, 4 Bom. H. C R. 13. [Couch, C J, and Newton, J. Oct. 4, 1867 ]

IN the case of a conviction by a Subordinate Magistrate, under s. 18 of Act III. of 1857, of a person who, through neglect, permitted a public road to be damaged by allowing his pigs to trespass thereon, *held*, on a reference by the District Magistrate, that the conviction was not illegal, because the land damaged was a public road, as the right to use a public road is limited to the purposes for which the road is dedicated —REG. v. LINGANA BIN GINBANA, 4 Bom H. C. R. 14. [Couch, C.J., and Newton, J. Oct 9, 1867.]

BY virtue of s. 21 of the Criminal Procedure Code (Act XXV of 1861), a Subordinate Magistrate of the 1st class has jurisdiction to try an offence under s. 18 of Act III. of 1857 (Cattle Trespass Act), there being no provision in that Act as to the authorities by which offences committed under it are to be tried.—REG. v. GANGA KOM MAHASU, 5 Bom. H. C. R. 13. [Couch, C J., and Newton, J. Feb. 12, 1868 ]

IN a case of public nuisance under s. 290 of the Penal Code, it must be proved that injury, danger, or annoyance has been caused, either in regard to the enjoyment of property, or the exercise of a public right on the part of a portion of the community, or of any particular class of people. The fact that there is a special law (Act III. of 1857) to meet a particular offence (in this case cattle-trespass) does not prevent the punishment of the offenders under the Penal Code, if an offence, which could have been rightly punished under the Penal Code, was established.—ONOORAM v. LAMESOR; WEBSTER v. KEENA, 9 W. R. 70. [Phear and Hobhouse, JJ. May 23, 1868.]

IN a case of forcibly rescuing cattle under s. 13, Act III. of 1857 (Cattle Trespass), in which the accused did not summon any witnesses, it was held that, even if the accused wanted them summoned, the Magistrate, under s. 262 of the Code of Criminal Procedure, need not have summoned them, unless persuaded that they were likely to give material evidence, and that they would not attend voluntarily.—AKBAR TAGUDGEER v. PUNCHOO BISWAS, 10 W. R. 42. [Jackson and Hobhouse, JJ. Sep. 11, 1868.]

THE order contemplated by s. 62 of the Code of Criminal Procedure is a particular and specific order addressed to a particular person or particular persons to do or abstain from a particular act or particular acts. That section does not empower a Magistrate to pass a general order to persons not to allow their cattle or horses to run at large on the public roads, nor can such an order be passed under Act III of 1857 (Cattle Trespass), which applies only to injury done by cattle to crops, &c., and to the sides of public roads and embankments.—QUEEN v. AMBERUDDEEN, 12 W R. 36, 3 B. L. R., A. Cr., 45: s c, 6 B. L. R. 78n [Norman and Jackson, JJ July 26, 1869.]

CERTAIN persons were convicted under s. 13 Act III. of 1857 (Cattle Trespass), and sentenced to fifteen days' imprisonment and a fine, or in default to imprisonment for the term of seven days. No provision is made in the Act for awarding imprisonment in default of payment of fine, but the prisoners were liable under the section to six months' imprisonment and a fine of Rs. 500. The High Court refused to interfere with the sentence passed.—PRO., MAR. 9, 1870, 5 Mad. H. C. R. Ap. XXI.

A FINE levied by a pound-keeper is not a punishment imposed on conviction for an offence, and it is an error to hold that a person cannot be tried for an offence under Act XXVI. of 1850, because he has paid a fine under s 6 of Act III. of 1857 (Cattle Trespass) —REG v. DURGARAM MADHAVRAM, 7 Bom. H C R. 55. [Gibbs and Melvill, JJ. June 16 1870.]

TO render a person liable under s. 425 of the Penal Code for mischief in consequence of damage done by cattle-trespass, he must, in some way, have caused the cattle to enter the prosecutor's fields, knowing that, by so doing, he is likely to cause damage. Mere neglect to keep the cattle from straying is not sufficient —MAJOR FORBES v. GRISH CHUNDER BHUTTACHARJEE, 14 W. R. 31; 6 B. L. R., Ap., 3. [Couch, C.J., and Jackson, J. Aug. 12, 1870.]

THE illegal seizure and detention of cattle, to which s. 14 of Act III. of 1857 (Cattle Trespass) refers, is not an "offence" within the meaning of s 31 and Sch. II., art. 1, cl. (*b*), of the Court Fees Act (VII. of 1870). Complaints of such illegal seizure and de-

tention do not require a stamp. If such complaints be stamped, it is not competent for the Court to direct that the accused shall repay the amount of such stamp to the complainant.—REG. *v.* AVJI BIN NARU, 8 Bom. H. C. R. 22. [Bayley and Melvill, JJ. May 17, 1871.]

WHERE a prisoner was properly convicted on the evidence of illegally seizing cattle, but was sentenced under the old law (Act III. of 1857) when that Act had been repealed by Act I. of 1871, the High Court declined to interfere with the sentence, as the latter Act was in force at the time of the conviction and sentence, and no injustice had been done.—MOHESH NATH *v.* HURO MOHUN GHOSAL, 16 W. R. 12. [Kemp and Glover, JJ. June 16, 1871.]

WHERE a sub-inspector of police was charged with having purchased a pony which had been impounded, it was *held* that the Magistrate should have proceeded under s. 19, Act I. of 1871, taken with s. 169 of the Penal Code, and that the accused could not be convicted under s. 406 of the Penal Code of criminal breach of trust.—*In re* RAJKRISTO BISWAS, 16 W. R. 52; 8 B. L. R., Ap. 1. [Kemp, Offg. C. J., and Ainslie, J. Sep. 25, 1871.]

WHERE a Magistrate convicted, under s. 27 of Act I. of 1871, a person who was not himself a pound-keeper, but was merely entertained by the police-patil, who was *ex-officio* pound-keeper under s. 6 of the Act, the High Court annulled the conviction and sentence passed upon the accused.—REG *v.* VAKTAVALAD LAKHU, 9 Bom. H. C. R. 164. [Melvill and Kemball JJ. Feb. 8, 1872.]

S. 22 of Act I. of 1871 (Cattle Trespass) does not provide for a fine in addition to compensation.—PRO., Aug. 1, 1873, 7 Mad. H. C. R., Ap. xxiv.

WHERE there was a dispute as to the ownership of land on which the complainant's cattle were found, the complainant stating the land belonged to A, who gave him the right to graze his cattle there, and the party charged (who had seized and impounded the cattle), claiming the land as his own, it was held that the order of the Magistrate, referring the parties to the Civil Court, was illegal; and that he should have disposed of the case himself under the Cattle Trespass Act (I. of 1871), s. 22.—SHEIK TUNNOO *v.* KUREEM BUKSH, 23 W. R. 2 [Kemp and Birch, JJ. Nov. 23, 1874.]

THE illegal seizure of cattle, under s. 22 of the Cattle Trespass Act (I of 1871), is not a criminal offence. The law allows certain Magistrates to adjudicate compensation to a party injured by an illegal seizure. Court-fees paid by the complainant may form part of such compensation. It is not lawful to pass sentence of fine or of imprisonment in default of payment of the compensation awarded in a matter under s. 21 of the Cattle Trespass Act (I of 1871).—*In re* KETABDI MUNDUL, 2 C. L. R. 507. [Markby and Prinsep, JJ. May 9, 1878.]

A MAGISTRATE having, under s. 22 of the Cattle Trespass Act, 1871, adjudged a seizure of cattle to be illegal, directed the captor, under s. 31 of the Court Fees Act, 1870, to pay the complainant the cost of the stamp and process-fees incurred in prosecuting the complainant. *Held* that s. 31 of the Court Fees Act did not apply. *Held* also that, under s. 22 of the Cattle Trespass Act, such costs could be awarded to the complainant as compensation for the loss caused by the seizure and detention of the cattle.—SHEIKH HUSSAIN *v.* SANJIVI, I. L. R., 7 Mad. 345. [Muttusami Ayyar and Hutchins, JJ. Feb. 29, 1884.]

THE owner of an animal which strays on to another's land, and causes damage to the crop thereon, does not, unless he has wilfully driven it upon the land, commit the offence of mischief under s. 426 of the Penal Code.—QUEEN EMPRESS *v.* SHAIK RAJU, I. L. R. 9 Bom. 173. [West and Nanabhai Haridas, JJ. Nov. 27, 1884.]

THE illegal seizure of cattle under colour of the Cattle Trespass Act, 1871, not having been constituted an offence under that Act or otherwise, an award of compensation, under s. 250 of the Code of Criminal Procedure, to the accused on such complaint, is illegal.—PITCHI *v.* ANKAPPA, I. L. R., 9 Mad. 102. [Brandt, J. May 29, 1885.]

NO appeal lies from an order passed under s. 22 of the Cattle Trespass Act (I. of 1871), awarding compensation for illegal seizure of cattle.—QUEEN-EMPRESS *v.* RAYA LAKHMA, I. L. R., 10 Bom. 230. [Birdwood and Jardine JJ. Dec. 16, 1885.]

IN a case instituted upon complaint made under s. 20 of the Cattle Trespass Act, the Magistrate acquitted the accused, and being of opinion that the complaint was vexatious, directed the complainant to pay compensation to the accused as under s. 250 of the Code of Criminal Procedure. *Held* that the act complained of was not offence within the meaning of the Code of Criminal Procedure, and that the order awarding compensation was illegal.—KOTTALANADA *v.* MUTHAYA, I. L. R., 9 Mad. 374. [Muttusami Ayyar and Parker, JJ. April 16, 1886.]

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RULINGS UNDER THE CATTLE TRESPASS ACT—*continued*.

A COMPLAINT was made against certain persons under s. 20 of the Cattle Trespass Act of 1871, charging them with having illegally seized and detained the complainant's cattle. The Assistant Magistrate, who heard the complaint, found it to be false, and he ordered the complainant to pay Rs. 20 as compensation to the accused, and, in default to suffer simple imprisonment for 21 days. On application to the High Court, *held* that the order was illegal, and must be set aside. —IN THE MATTER OF KALA CHAND v. GUDADHUR BISWAS, I. L. R., 13 Cal. 304. [Prinsep and Beverley, JJ. Aug. 3, 1886.]

PROCEEDINGS under s. 22 of the Cattle Trespass Act are *quasi*-civil in their nature, a Magistrate being at liberty under that section to assess and enforce, in a summary manner, compensation for an injury for which a civil action might be brought. An order, therefore, for the payment of a sum as fine and compensation, passed against two persons under that section, which does not specify the proportionate amount payable by each, is good.—NEAZ v. MONSOOR, I. L. R., 14 Cal. 175. [Petheram, C.J., and Beverley, J. Dec. 20, 1886.]

No appeal lies against an order made under s. 22 of Act I. of 1871 —*In re* KHADAR KHAN, I. L. R., 11 Mad. 359. [Collins, C.J., and Muttusami Ayyar, J. Dec. 15, 1887.]

No appeal lies from an order under s. 22 of Act I. of 1871, awarding compensation for illegal seizure of cattle. *Queen-Empress* v. *Laksma* (I. L. R., 10 Bom. 230) followed.—DHIRU v. DINONATH DEB *alias* DINU, I. L. R., 15 Cal 712. [Wilson and Tottenham, JJ. May 18, 1888.]

A SUIT for compensation for wrongful seizure of cattle will lie in a Civil Court, the provisions of Act I. of 1871 being no bar to such a suit. *Nomas Mollah* v. *Lall Mohun Tagadgeer* (15 W. R. 279) approved of. *Aalem Kalia Dursi* (2 C. L. R. 344) dissented from.—SHUTTRUGHON DAS COOMAR v. HOKNA SHOWTAL, I. L. R., 16 Cal. 159. [Pigot and Beverley, JJ. Jan. 7, 1889.]

AN accused was found to have loosed the complainant's cattle at night from a cattle-pen, and to have driven them to the pound with the object of sharing with the pound-keeper the fees to be paid for their release. He was proceeded against under Act I of 1871 (The Cattle Trespass Act), and, under the provisions of s. 22 ordered to pay compensation to the complainant, and, in default, to undergo one month's rigorous imprisonment. *Held* that s. 22 was inapplicable to the facts of the case, and that the order must be set aside. On the facts it was not a case of "illegal seizure and detention" of cattle, but rather one of theft, as all the elements of that offence were present, and the accused should have been charged with and tried for that offence. *Held*, further, that the sentence of imprisonment in default of payment of the compensation was not warranted by law. Compensation may be levied as a fine, and the ordinary mode of levying fines is laid down in s. 386 of the Code of Criminal Procedure. The law nowhere provides that fines may be levied by means of imprisonment.—PARYAG RAI v. ARJU MIAN, I. L. R., 22 Cal. 139 [Petheram, C.J., and Beverley, J. Aug. 18, 1894.]

THE jurisdiction conferred by ss. 20 to 23 of the Cattle Trespass Act (I. of 1871) is a special jurisdiction, and as such, it is under s. 1 of the Criminal Procedure Code (Act X. of 1882) unaffected by its provisions; and, therefore, s. 192 does not authorize the transfer of a case to which ss. 20 to 23 of the Cattle Trespass Act apply. —SHAMA v. LECHHU SHEIKH, I. L. R., 23 Cal. 300. [Macpherson and Banerjee, JJ. Sept. 9. 1895.]

THE illegal seizure of cattle alluded to in ss. 20 to 23 of the Cattle Trespass Act (I. of 1871) is not an "offence" under s. 4 (*p*) of the Criminal Procedure Code, and cases connected therewith are accordingly not triable by the summary procedure described in Ch. XXII. of that Code. *Pitchi* v. *Ankappa* (I. L. R., 9 Mad. 102) and *Kottalanada* v *Muthaya* (I. L. R., 9 Mad. 374) followed.—NEDARAN THAKUR v JOONAB, I. L. R., 23 Cal. 248. [Ghose and Hill, JJ. Sept. 17, 1895.]

S. 192 of the Criminal Procedure Code (Act X of 1882) does not authorize a District Magistrate to transfer for trial to a Subordinate Magistrate cases which are not within the powers of that Magistrate to try, either under s. 28 of the Code, or under some special or local law. A District Magistrate cannot transfer to any Magistrate cases under s. 20 of the Cattle Trespass Act (I. of 1871) which are triable only by the two classes of Magistrates specified in that section. An order awarding compensation under s. 22 of the Act, passed by any other Magistrate, is illegal, and cannot be cured by the provisions of s. 529 or s. 537 of the Criminal Procedure Code.—RAGHU SINGH v. ABDUL WAHAB, I. L. R., 23 Cal. 442. [Ghose and Rampini, JJ. Feb. 11, 1896.]

A complaint of the wrongful seizure of cattle is not a complaint of an offence within

the meaning of the Code of Criminal Procedure. Consequently, on the dismissal of such a complaint, it is not competent to a Court to act under s. 560 of the Code, and award compensation to the persons against whom the complaint is made *Pitchi v. Ankappa* (I. L. R., 9 Mad 102), *Kottulanada v. Mutkaya* (I. L. R., 13 Cal 304), *Kala Chand v. Gudadhur Biswas* (I. L. R., 9 Mad. 374), and *Nedaram Thakur v Joonab* (I. L. R., 23 Cal. 248), referred to.—MEGHAI v. SHEOBHIK, I. L. R., 18 All. 353. [Banerji, J. May 5, 1896.]

S. 11 of the Cattle Trespass Act (I. of 1871) having been applied to forests by s. 69 of the Indian Forest Act (VII. of 1879), the seizure by a forest-officer of cattle found straying in a reserved forest is legal, even though no damage has actually been done. —QUEEN-EMPRESS v. BABAJI LAXMAN, I. L. R., 22 Bom. 933. [Parsons and Ranade, JJ. Sep. 9. 1897.]

# ACT NO. IV. OF 1871.

## THE CORONERS ACT, 1871.

RECEIVED G. G.'S ASSENT ON THE 27TH JANUARY 1871.

*An Act to consolidate and amend the Laws relating to Coroners.*

Preamble.

WHEREAS it is expedient to consolidate and amend the laws relating to Coroners in the Presidency-towns; It is hereby enacted as follows:—

### CHAPTER I.

PRELIMINARY.

Short title.

**1.** This Act may be called the Coroners Act, 1871.

[*Local extent.*] *Repealed by the Coroners Act (X. of 1881).*

[*Commencement.*] *Repealed by the Repealing Act (XVI. of 1874).*

**2.** [*Repeal of enactments.*] *Repealed by the Repealing Act (XII. of 1873).*

### CHAPTER II.

APPOINTMENT OF CORONERS.

Coroners of Calcutta and Bombay.

**3.*** Within the local limits of the ordinary original civil jurisdiction of each of the High Courts of Judicature at Fort William and Bombay, there shall be a Coroner. Such Coroners shall be called, respectively, the Coroner of Calcutta and the Coroner of Bombay.

Their appointment, suspension, and removal.

**4.** Every such officer shall be appointed and may be suspended or removed by the Local Government.†

Coroners to be 'public servants.'

**5.** Every Coroner shall be deemed a public servant within the meaning of the Indian Penal Code.

Power to hold other offices.

**6.** Any Coroner may hold simultaneously any other office under Government.

**7.** [*Oath to be taken by Coroner.*] *Repealed by the Oaths Act (X. of 1873).*

### CHAPTER III.

DUTIES AND POWERS OF CORONERS.

Jurisdiction to enquire into deaths.

**8.** When a Coroner "has reason to believe"‡ that the death of any person has been caused by accident, homicide, suicide, or suddenly by means unknown, or that any person, being a prisoner, has died in prison,

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* S. 3 has been substituted for the original by Act V. of 1889, s. 2.

† The second paragraph of s. 4 has been omitted, having been repealed by the Repealing and Amending Act (XII. of 1891).

‡ The words quoted have been substituted for the words, "is informed," by the Coroners Act (X. of 1881), s. 5.

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and that the body is lying within the place for which the Coroner is so appointed,

the Coroner shall enquire into the cause of death.

Every such enquiry shall be deemed a judicial proceeding within the meaning of section 193 of the Indian Penal Code.

Coroner to be sent for when prisoner dies.

**9.** Whenever a prisoner dies in a prison situate within the place for which a Coroner is so appointed, the Superintendent of the Prison shall send for the Coroner before the body is buried. Any Superintendent failing herein shall, on conviction before a Magistrate, be punished with fine not exceeding five hundred rupees.

Nothing in the former part of this section applies to cases in which the death has been caused by cholera or other epidemic disease.

Power to hold inquests on bodies within local limits, wherever cause of death occurred.

**10.** Whenever an inquest ought to be holden on any body lying dead within the local limits of the jurisdiction of any Coroner, he shall hold such inquest, whether or not the cause of death arose within his jurisdiction.

Power to order body to be disinterred.

**11.** A Coroner may order a body to be disinterred within a reasonable time after the death of the deceased person, either for the purpose of taking an original inquisition where none has been taken, or a further inquisition where the first was insufficient.

Summoning jury.

**12.** On receiving notice of any death mentioned in section 8, the Coroner shall summon five, seven, nine, eleven, thirteen, or fifteen respectable persons to appear before him at a time and place to be specified in the summons, for the purpose of enquiring when, how, and by what means, the deceased came by his death.

Inquest may be on Sunday.

Any inquest under this Act may be held on a Sunday.

Opening Court.

**13.** When the time arrives, the Coroner shall proceed to the place so specified, open the Court by proclamation, and call over the names of the jurors.

Jurors to be sworn.

**14.** When a sufficient jury is in attendance, he shall administer an oath to each juror to give a true verdict according to the evidence, and shall then proceed with the jury to view the body.

View of body.

**15.** The Coroner and the jury shall view and examine the body at the first sitting of the inquest, and the Coroner shall make such observations to the jury as the appearance of the body requires.

Proclamation for witnesses.

**16.** The Coroner shall then make proclamation for the attendance of witnesses, or, where the enquiry is conducted in secret, shall call in separately such as know anything concerning the death.

**17.** "It shall be the duty of all persons acquainted with the circumstances attending the death to appear before the inquest as witnesses; the Coroner shall enquire of such circumstances and the cause of death; and if, before or during the enquiry, he is informed that any person, whether within or without the local limits of his jurisdiction, can give evidence or produce any document material thereto, may issue a summons requiring him to attend and give evidence or produce such document on the inquest."*

Summoning witnesses.

"Any person disobeying such summons shall be deemed to have committed an offence under section 174, section 175, or section 176 of the Indian Penal Code, as the case may be."*

For the purpose of causing prisoners to be brought up to give evidence, the Coroner shall be deemed a Criminal Court within the meaning of Act No. XV. of 1869 (*to provide facilities for obtaining the evidence and appearance of prisoners, and for service of process upon them*).

**18.** The Coroner may direct the performance of a *post-mortem* examination, with or without an analysis of the contents of the stomach or intestines, by any medical witness summoned to attend the inquest; and every medical witness, other than the Chemical Examiner to Government, shall be entitled to such reasonable remuneration as the Coroner thinks fit.

*Post-mortem* examinations.

Fees to medical witnesses.

**19.** All evidence given under this Act shall be on oath, and the Coroner shall be bound to receive evidence on behalf of the party (if any) accused of causing the death of the deceased person.

Evidence to be on oath.

Evidence on behalf of accused.

Witnesses unacquainted with the English language shall be examined through the medium of an interpreter, who shall be sworn to interpret truly as well the oath as the questions put to, and the answers given by, the witnesses.

Interpreter.

After each witness has been examined, the Coroner shall enquire whether the jury wish any further questions to be put to the witness; and if the jury wish that any such questions should be put, the Coroner shall put them accordingly.

Questions suggested by jury.

**20.** The Coroner shall commit to writing the material parts of the evidence given to the jury, and shall read, or cause to be read, over such parts to the witness, and then procure his signature thereto.

Coroner to take down evidence in writing.

Any witness refusing so to sign shall be deemed to have committed an offence under section 180 of the Indian Penal Code.

Witnesses to sign depositions.

Every such deposition shall be subscribed by the Coroner.

Coroner to subscribe depositions.

"For the purposes of section 26 of the Indian Evidence Act, 1872,† a Coroner shall be deemed to be a Magistrate."‡

Coroner a Magistrate.

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* The first two clauses of s. 17 have been substituted for the original ones by the Coroner's Act (X. of 1881), s. 6.

† Act I. of 1872.

‡ To s. 20, the last clause quoted has been added by the Coroner's Act (X. of 1881), s. 7.

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Adjournment of inquest.

**21.** The Coroner may adjourn the inquest from time to time, and from place to place.

Jurors' recognizances.

Whenever the inquest is adjourned, the Coroner shall take the recognizances of the jurors to attend at the time and place appointed, and notify to the witnesses when and where the inquest will be proceeded with.

The amount of such recognizances shall in each case be fixed by the Coroner.

Coroner to sum up to jury.

**22.** When all the witnesses have been examined, the Coroner shall sum up the evidence to the jury, and the jury shall then consider of their verdict.

Coroner to draw up inquisition.

**23.** When the verdict is delivered, the Coroner shall draw up the inquisition according to the finding of the jury, or, when the jury is not unanimous, according to the opinion of the majority.

Contents of inquisition.

**24.** Every inquisition under this Act shall be signed by the Coroner with his name and style of office, and by the jurors, and shall set forth—

(1) where, when, and before whom, the inquisition is holden,

(2) who the deceased is,

(3) where his body lies,

(4) the names of the jurors, and that they present the inquisition upon oath,

(5) where, when, and by what means, the deceased came by his death, and,

(6) if his death was occasioned by the criminal act of another, who is guilty thereof.

If the name of the deceased be unknown, he may be described as a certain person to the jurors unknown.

Every such inquisition shall be in the form set forth in the second schedule hereto annexed, with such variation as the circumstances of each case require.

Procedure where verdict amounts to murder, culpable homicide, or killing by negligence.

**25.** When the verdict is that the death has been caused by culpable homicide amounting to murder, or by culpable homicide not amounting to murder, or by a rash or negligent act not amounting to culpable homicide, the Coroner shall bind by recognizance any person knowing or declaring anything material touching such murder, homicide, or act, to appear, at the next criminal sessions at which the trial is to be, then and there to prosecute or give evidence against the party charged.

Coroner to certify and deliver inquisition, depositions, and recognizances.

The Coroner shall certify and subscribe such recognizances, and shall, immediately after the inquest, deliver them, together with the inquisition and evidence, to the proper officer of the Court in which the trial is to be.

Warrant against person accused.

**26.** The Coroner shall also, where the verdict justifies him in so doing, issue his warrant for the apprehension of the person accused, and commit him to prison until he is thence

discharged by due course of law, or, if he be already in prison, issue a detainer to the officer in charge of the jail in which he is.

Power to accept bail.

**27.** In cases where the jury has found against any person a verdict of culpable homicide not amounting to murder, or of killing by a rash or negligent act not amounting to culpable homicide, the Coroner may, if he thinks fit, accept bail with sufficient sureties for the appearance of such person at the next criminal sessions; and thereupon such person, if in custody of any officer of the Coroner's Court, or in any jail under a warrant of commitment issued by the Coroner, shall be discharged therefrom.

Warrant for burial.

**28.** When the proceedings are closed, or before, if it be necessary to adjourn the inquest, the Coroner shall give his warrant for the burial of the body on which the inquest has been taken.

Inquisitions not to be quashed for want of form.

**29.** No inquisition found upon or by any inquest shall be quashed for any technical defect.

Amendment of inquisition.

In any case of technical defect, a Judge of the High Court may, if he thinks fit, order the inquisition to be amended, and the same shall forthwith be amended accordingly.

Cessation of jurisdiction as to treasure-trove, wrecks, &c.

**30.** It shall no longer be the duty of the Coroner to enquire whether any person dying by his own act was or was not *felo de se*, to enquire of treasure-trove or wrecks, to seize any fugitive's goods, to execute process, or to exercise as Coroner any jurisdiction not expressly conferred by this Act.

*Felo de se.* A *felo de se* shall not forfeit his goods.

Deodands. Deodands are hereby abolished.

## CHAPTER IV.

### CORONERS' JURIES.

Fine on juror neglecting to attend.

**31.** Whenever any person has been duly summoned to appear as a juror by a Coroner, and fails or neglects to attend at the time and place specified in the summons, the Coroner may cause him to be openly called in his Court three times to appear and serve as a juror; and, upon the non-appearance of such person, and proof that such summons has been served upon him, or left at his usual place of abode, may impose such fine upon the defaulter, not exceeding fifty rupees, as to the Coroner seems fit.

Certificate as to defaulting juror.

**32.** The Coroner shall make out and sign a certificate, containing the name and surname, the residence, and trade or calling, of every person so making default, together with the amount of the fine so imposed, and the cause of such fine,

and shall send such certificate to one of the Magistrates of the place of which he is the Coroner,

Service of copy of certificate.

and shall cause a copy of such certificate to be served upon the person so fined by having it left at his usual place of residence, or by sending the same through the post-office, addressed as aforesaid and registered.

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Levy of fine.

**38.** Thereupon such Magistrate shall cause the fine to be levied in the same manner as if it had been imposed by himself.

Jurors not to be twice summoned within the year.

**34.** Unless in case of necessity, no person who has appeared, or has been summoned to appear, as a juror on an inquest, and has not made default, shall, within one year after such appearance or summons, be summoned to appear as a juror under this Act.

Jurors on inquest on prisoner.

**35.** When an inquest is held on the body of a prisoner dying within a prison, no officer of the prison, and no prisoner confined therein, shall be a juror on such inquest.

## CHAPTER V.

### Rights and Liabilities of Coroners.

Coroner's salary.

**36.** Every Coroner shall be entitled to such salary for the performance of the duty of his office as is prescribed in that behalf by the Governor-General in Council.

Disbursements to be repaid.

**37.** All disbursements duly made by a Coroner for fees to medical witnesses, hire of rooms for the jury, and the like, shall be repaid to him by the Local Government.

Power to appoint deputy.

**38.** Every Coroner may, from time to time, with the previous sanction of the Local Government, appoint, by writing under his hand, a proper person to act for him as his deputy in the holding of inquests.*

All inquests taken and other acts done by any such deputy, under or by virtue of any such appointment, shall be deemed to be the acts of the Coroner appointing him :

Provided that no such deputy shall act for any such Coroner except during the illness of the said Coroner, or during his absence for any lawful and reasonable cause.

Revocation of appointment.

Every such appointment may at any time be cancelled and revoked by the Coroner by whom it was made.

Exemption from serving on juries.

**39.** No Coroner or Deputy Coroner shall be liable to serve as a juror.

Privilege from arrest.

**40.** Coroners and Deputy Coroners shall be privileged from arrest while engaged in the discharge of their official duty.

Penalty for failure to comply with Act.

**41.** Any Coroner or Deputy Coroner failing to comply with the provisions of this Act, or otherwise misconducting himself in the execution of his office, shall be liable to such fine as the Chief Justice of the High Court, upon summary examination and proof of the failure or misconduct, thinks fit to impose.

* Certain words referring to the oath to be taken by the Coroner's deputy, which were repealed by the Oaths Act (X. of 1873), have here been omitted.

**42.** No proceeding for anything done under this Act, or for any failure to comply with its provisions, shall be commenced or prosecuted* after tender of sufficient amends. **1871. Act 4.**

**Proceedings barred by tender.**

## FIRST SCHEDULE.—[*Repealed by Act XII. of 1873.*]

## SECOND SCHEDULE.

*Form of Inquisition.*

AN INQUISITION taken at on the day of 18 , before E F, Coroner of , on view of the body of A B, then and there lying dead, upon the oath of G H, I J, K L, and M N, then and there duly sworn, and charged to enquire when, how, and by what means the said A B came to his death.

We, the said jurors, find unanimously [*or* by a majority of ] that the death of the said A B was caused on or about the day of 18 , by [*here state cause of death as in the following examples*]:—

1. *Cases of homicide*]—a blow on the head with a stick inflicted on him by C D, under such circumstances that the Act of C D was justifiable [*or* accidental homicide].

—a stab on the heart with a knife inflicted on him by C D, under such circumstances that the act of C D was culpable homicide not amounting to murder [*or* culpable homicide amounting to murder, *or* a rash *or* negligent act not amounting to culpable homicide].

2. *Cases of accident*]—falling out of a boat into the river Hugli whereby he was drowned.

—a kick from a horse, which fractured his skull, and ruptured blood-vessels in his head.

3. *Cases of suicide*]—shooting himself through the head with a pistol.

—arsenic, which he voluntarily administered to himself.

4. *Cases of sudden death by means unknown*]—disease of the heart.

—apoplexy.

—sunstroke.

And so say the jurors upon their oath aforesaid.

Witness our hands. E F, Coroner of

G H, I J, K L, M N, O P (jurors).

### RULINGS UNDER THE CORONERS ACT.

THE Coroner of Calcutta has no power to commit to prison pending an inquest. In cases when he has authority to commit, a commitment to the officer deputed to receive prisoners by the statute in force is valid, and it is not necessary that the commitment be directed to the Sheriff.—*In re* WILLIAM TAYLOR, 2 Ind. Jur., N. S., 101. [Phear, J. Jan. 4, 1867]

WHERE the Magistrate of a Division held an inquiry, under s 135 of the Criminal Procedure Code, into the cause of the death of a person found dead under suspicious circumstances, and, without making a specific charge against any person, drew up a report embodying the result of his inquiry, and sent the report to the Magistrate of the District, and subsequently proceedings were

* Certain words referring to the limitation of suits, repealed by the Limitation Act (IX. of 1871), have here been omitted.

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taken against one of the witnesses, which ultimately resulted in an acquittal, *held* by the High Court that, there being nothing in the language of s. 135 requiring the Magistrate holding such an inquiry either to make a report or to come to a finding, the report actually sent could not be considered as part of a judicial proceeding, and that, therefore, the High Court has no power to send for it under s. 296 of the Criminal Procedure Code No analogy exists between a Coroner's inquest and an inquiry into the cause of death under the Criminal Procedure Code.—*In re* TROYLOKHANATH BISWAS AND RAM CHURN BISWAS, I. L. R., 3 Cal. 742; 3 C L. R. 59 [Markby and Prinsep, JJ. April 30, 1878.]

A PRESIDENCY MAGISTRATE is competent to hold a preliminary inquiry into the case of an accused person who has been committed to the High Court by the Coroner under s. 25 of Act IV. of 1871.—QUEEN-EMPRESS *v.* MAHOMED RAJUDIN, I. L. R., 16 Bom. 159. [Birdwood and Parsons, JJ. Dec. 18, 1890.]

# ACT NO. XXVII. OF 1871.*

## THE CRIMINAL TRIBES ACT, 1871.

RECEIVED THE G.-G.'S ASSENT ON THE 12TH OCTOBER 1871.

*An Act for the Registration of Criminal Tribes and Eunuchs.*

Preamble.

WHEREAS it is expedient to provide for the registration, surveillance, and control of certain criminal tribes and eunuchs; It is hereby enacted as follows :—

Short title.

**1.** This Act may be called the Criminal Tribes Act, 1871.

[*Commencement.*] *Repealed by Act XVI. of 1874, s. 1.*

Local extent.

This section and section 20 extend to the whole of British India; the rest of this Act extends only to the territories under the Governments of the Lieutenant-Governors of Bengal,† the North-Western Provinces, and the Punjab, respectively, and under the administration of the Chief Commissioner of Oudh :

Provided that any Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the local official Gazette, declare all or any of the provisions of this Act as amended by subsequent legislation to be in force in the whole or any part of the territories under its government.‡

Definition of tribe, gang, and class.

**1A.**§ In this Act the words 'tribe,' 'gang,' and 'class,' shall be deemed to include any portion or members of a tribe, gang, or class.

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## PART I.

### CRIMINAL TRIBES.

Local Government to report what tribes should be declared criminal.

**2.** If the Local Government has reason to believe that any tribe, gang, or class of persons, is addicted to the systematic commission of non-bailable offences, it may report the case to the Governor-General in Council, and may request his permission to declare such tribe, gang, or class to be a criminal tribe.

Report to contain certain particulars.

**3.** The report shall state the reasons why such tribe, gang, or class, is considered to be addicted to the systematic commission of non-bailable offences, and, as far as possible, the nature and the circumstances of the offences, in which the members of the tribe are supposed to have been concerned ; and shall describe the manner in which it is proposed that such tribe, gang, or class, shall earn its living when the provisions hereinafter contained have been applied to it

Occupation of wandering tribe to be stated ;

**4.** If such tribe, gang, or class, has no fixed place of residence, the report shall state whether such tribe, gang, or class, follows any lawful occupation, and whether such occupation

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* Under s. 3 of the Scheduled Districts Act (XIV. of 1874), this Act has been declared in force in the Districts of Hazáribágh, Lohárdaga, and Mánbhum, Pargana Dhálbhum, and the Kolhan.

† The word "Bengal" in s. 1 has been inserted by Act VII. of 1876, s. 1.

‡ This proviso has been added by the Criminal Tribes Act Amendment Act (II. of 1897), s. 2.

§ S. 1A has been inserted by the Criminal Tribes Act Amendment Act (II. of 1897), s. 3.

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is, in the opinion of the Local Government, the real occupation of such tribe, gang, or class, or a pretence for the purpose of facilitating the commission of crimes, and shall set forth the grounds on which such opinion is based; and

*also proposed residence and means of livelihood.*

the report shall also specify the place of residence in which such wandering tribe, gang, or class is to be settled under the provisions hereinafter contained, and the arrangements which are proposed to be made for enabling it to earn its living therein.

*Notification declaring tribe to be criminal.*

**5.** If, upon the consideration of any such report, the Governor-General in Council is satisfied that the tribe, gang, or class to which it relates, ought to be declared criminal, and that the means by which it is proposed that such tribe, gang, or class, shall earn its living, are adequate, he may authorize the Local Government to publish in the local Gazette a notification declaring that such tribe, gang, or class, is a criminal tribe, and thereupon the provisions of this Act shall become applicable to such tribe, gang, or class.

*Bar of jurisdiction of Courts in questions relating to notification.*

**6.** No Court of Justice shall question the validity of any such notification, on the ground that the provisions hereinbefore contained, or any of them, have not been complied with; or entertain in any form whatever the question whether they have been complied with, but every such notification shall be conclusive proof that the provisions of this Act are applicable to the tribe, gang, or class specified therein.

*Register of members of such tribes.*

**7.** When the notification mentioned in section 5 has been published, the Local Government may direct the Magistrate of any district in which such tribe, gang, or class, or any part thereof, is at the time resident, to make a register of the members of such tribe, gang, or class, or of any part thereof.

The declaration of the Local Government that any such tribe, gang, or class, or any part of it, is resident in any district, shall be conclusive proof of such residence.

*Procedure in making register.*

**8** Upon receiving such direction, the said Magistrate shall publish a notice in the place where the register is to be made, calling upon all the members of such tribe, gang, or class, or of such portion thereof as is directed to be registered, to appear, at a time and place therein specified, before such persons as he appoints, and to give those persons such information as may be necessary to enable them to make the register.

*Penalties for failing to appear, refusing, or giving false information.*

**9.** Any member of any such tribe, gang, or class, who, without lawful excuse, the burthen of proving which shall lie upon him,—

shall fail to appear according to such notice,

or who shall intentionally omit to furnish such information,

or who shall furnish, as true, information on the subject which he knows or has reason to believe to be false,

shall be deemed guilty of an offence under the first part of section 174 or 176 or 177 of the Indian Penal Code, respectively, as the case may be.

*Charge of register.*

*Reporting desirable alterations.*

**10.** The register, when made, shall be kept by the District Superintendent of Police, who shall, from time to time, report to the said Magistrate any alterations which ought to be made therein, either by way of addition or erasure.

**11.** No alteration shall be made in such register except by or by order of the said Magistrate, and he shall write his initials against every such alteration. Notice shall be given of any such intended alteration, and of the time when, and place where, it is to be made, to every person affected thereby

By whom alterations to be made.

Notice to persons affected.

**12.** Any person deeming himself aggrieved by any entry made, or proposed to be made, in such register, either when the register is first made or subsequently, may complain to the said Magistrate against such entry, and the Magistrate shall retain such person's name on the register, or enter it therein, or erase it therefrom, as he may see fit.

Complaints of entries in register.

Every order for the erasure of any such person's name shall state the grounds on which such person's name is erased.

The Commissioner shall have power to review any order of entry, retention, or erasure, passed by the said Magistrate on any such complaint, either on appeal by the person registered, or proposed to be registered, or otherwise.

**13.** Any tribe, gang, or class, which has been declared to be criminal, and which has no fixed place of residence, may be settled in a place of residence prescribed by the Local Government.

Settlement of tribe in place prescribed by Local Government.

**14** Any tribe, gang, or class, which has been declared to be criminal, or any part thereof, may, by order of the Local Government, be removed to any other place of residence.

Removal to other place.

**15.** No tribe, gang, or class, shall be settled or removed under the provisions of this Act until such arrangements as the Local Government shall, with the concurrence of the Governor-General in Council, consider suitable have been made for enabling such tribe, gang, or class, or such part thereof as is to be so settled or removed, to earn a living in the place in or to which it is to be settled or removed.

Arrangements to be made prior to settlement or removal.

**16.** When the removal of any persons has been ordered under this Act, the register of such persons' names shall be transferred to the District Superintendent of Police of the district to which such persons are removed, and the Magistrate of the said district, and the Commissioner of the division in which it is situated, shall thereupon be empowered to exercise respectively the powers provided in sections 11 and 12.

Transfer of register of persons ordered to be removed.

**17.** The Local Government may, with the sanction of the Governor-General in Council, place any tribe, gang, or class which has been declared to be criminal, or any part thereof, in a reformatory settlement

Power to place tribe in reformatory settlement.

**17A.*** (*1*) The Local Government may establish and maintain reformatory settlements for children, and may separate and remove from their parents, and place in such a reformatory settlement, the children of the registered members of any tribe, gang, or class which has been declared to be criminal.

Power to place children in reformatory settlements established for children, and to apprentice them.

(*2*) For every reformatory settlement for children established under subsection (*1*), a Superintendent shall be appointed by the Local Government.

* S. 17A has been added by the Criminal Tribes Act Amendment Act (II. of 1897), s. 4.

1871. Act 27.

(3) The Superintendent of a reformatory settlement for children shall be deemed to be the guardian, within the meaning of Act No. XIX. of 1850 (*concerning the binding of apprentices*), of every child detained in such settlement; and such Superintendent may, if he shall think fit, and subject to any rules which the Local Government may make in this behalf, apprentice such child under the provisions of the aforesaid Act.

*Explanation.*—The term "children" in this section includes all persons under the age of eighteen and above the age of four years.

**18.** The Local Government may, with the previous consent of the Governor-General in Council, make rules to prescribe—

Power to make rules.

(1) the form in which the register shall be made by the said Magistrate;

(2) the mode in which the said Magistrate shall publish the notice prescribed in section 8, and the means by which the persons whom it concerns, and the headmen, village-watchmen, and land-owners or occupiers of the village in which such persons reside, "or the agents of such land-owners or occupiers,"* shall be informed of its publication;

(3) the mode in which the notice prescribed in section 11 shall be given;

(4) the limits within which persons whose names are on the register shall reside;

(5) conditions as to holding passes under which such persons may be permitted to leave the said limits;

(6) conditions to be inserted in any such pass as to—

(*a*) the places where the holder of the pass may go or reside,

(*b*) the officers before whom, from time to time, he shall be bound to present himself;

(*c*) and the time during which he may absent himself;

(7) conditions as to answering at roll-call or otherwise, in order to satisfy the said Magistrate or persons authorized by him that the persons whose names are on the register are actually present at given times within the said limits;

(8) the inspection of the residences and villages of any such tribe, gang, or class, and the prevention or removal of contrivances for enabling the residents therein to conceal stolen property, or to leave their place of residence without leave,

(9) the terms upon which registered persons may be discharged from the operation of this Act;

(10) the mode in which criminal tribes shall be settled and removed,

(11) the control and supervision of reformatory settlements;

(12) the works on which, and the hours during which, persons placed in a reformatory settlement shall be employed, the rates at which they shall be paid, and the disposal, for the benefit of such persons, of the surplus proceeds of their labour after defraying the whole or such part of the expenses of their supervision and control as to the Local Government shall seem fit;

(13) the discipline to which persons endeavouring to escape from any such settlement, or otherwise offending against the rules for the time being in force, shall be submitted; the periodical visitation of such settlement, and the removal from it of such persons as it shall seem expedient to remove;

* In s. 18 (2), the words quoted have been inserted by Act VII. of 1876, s. 2.

(14) and generally to carry out the purposes of this Act.*

**Penalties for breach of rules.**

**19.**† (*1*) Any person registered under this Act violating a rule made under clause (*4*), clause (*5*), or clause (*6*) of section 18 shall be punishable with rigorous imprisonment for a term which may extend, on a first conviction, to one year, on a second conviction, to two years, and on any subsequent conviction, to three years, and shall also, whether on the first or any subsequent conviction, be liable to whipping.

(*2*) Any person being a member of a proclaimed tribe violating a rule made under any other clause of section 18 shall be punishable with rigorous imprisonment for a term which may extend to six months, or with fine, or with whipping, or with all or any two of those punishments; and, on any subsequent conviction for a breach of any such rule, with rigorous imprisonment for a term which may extend to one year, or with fine, or with whipping, or with all or any two of those punishments.

**Enhanced punishment for certain offences by members of criminal tribe after previous conviction.**

**19A.**‡ Whoever, being a member of any tribe, gang, or class which has been declared criminal, and having been convicted of any of the offences under the Indian Penal Code§ specified in the schedule to this Act, shall thereafter be convicted of the same or any other offence specified in the said schedule, then he shall, in the absence of special reasons to the contrary, to be mentioned in the judgment of the Court, be punished, on such second conviction, with rigorous imprisonment for a term of not less than seven years, and on a third conviction with transportation for life.

Nothing in this section shall affect the liability of such person to any further or other punishment to which he may be liable under the Indian Penal Code§ or any other law.

**Punishment for members of criminal tribe found under suspicious circumstances.**

**19B.**‡ Whoever, being a registered member of any tribe, gang, or class which has been declared criminal, is found in any place under such circumstances as to satisfy the Court that he was about to commit, or aid in the commission of, theft or robbery, or that he was waiting for an opportunity to commit theft or robbery, shall be punishable with rigorous imprisonment for a term which may extend to three years, and shall also be liable to fine.

**Arrest of registered person found beyond prescribed limits.**

**20.** Any person registered under the provisions of this Act, who is found in any part of British India, beyond the limits so prescribed for his residence, without such pass as may be required by the said rules, or in a place, or at a time, not permitted by the conditions of his pass,

or who escapes from a reformatory settlement,

may be arrested without warrant by any police-officer or village-watchman, and taken before a Magistrate, who, on proof of the facts, shall order him to be removed to the district in which he ought to have resided, or to the reformatory settlement from which he has escaped (as the case may be), there to be dealt with according to the rules under this Act for the time being in force.

The rules for the time being in force for the transmission of prisoners shall apply to all persons removed under this section: Provided that an order from the

* N.-W. Provinces Rules, *N.-W. Provinces Gazette*, 21st March 1874, p. 701. Panjab Rules, *Panjab Government Gazette*, 14th February 1873, p. 99.

† S. 19 has been substituted by s. 5 of the Criminal Tribes Act Amendment Act (II. of 1897) for the one originally enacted.

‡ Ss. 19A and 19B have been added by the Criminal Tribes Act Amendment Act (II. of 1897), s. 6.

§ Act XLV. of 1860.

1871. Act 27.

Local Government or from the Inspector-General of Prisons shall not be necessary for the removal of such persons.

Duties of village-headmen, village-watchmen, &c.

**21.** It shall be the duty of every village-headman and village-watchman in a village in which any persons belonging to a tribe, class, or gang which has been declared criminal, reside, and of every owner or occupier of land on which any such persons reside, "or of the agent of any such owner or occupier,"* to give the earliest information in his power at the nearest police-station of—

(*a*) the failure of any such person to appear and give information as directed in section 8,

(*b*) the departure of any such person from such village or from such land (as the case may be).

And it shall be the duty of every village-headman and village-watchman in a village, and of every owner or occupier of land, "or of the agent of such owner or occupier,"* to give the earliest information in his power at the nearest police-station of the arrival at such village or on such land (as the case may be) of any persons who may reasonably be suspected of belonging to any such tribe, class, or gang.

Penalty for breach of such duties.

**22.** Any village-headman, village-watchman, owner or occupier of land, "or the agent of such owner or occupier,"* who shall fail to comply with the requirements of section 21, shall be deemed to have committed an offence under the first part of section 176 of the Indian Penal Code.

**23.** [*Indemnity for past registrations and detentions.*] *Repealed by the Repealing Act* (*XII. of 1876*).

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## PART II.

### EUNUCHS.

Register of eunuchs and their property.

**24.** The Local Government shall cause the following registers to be made and kept up by such officer as, from time to time, it appoints in this behalf:—

(*a*) a register of the names and residences of all eunuchs residing in any town or place to which the Local Government specially extends this Part of this Act, who are reasonably suspected of kidnapping or castrating children, or of committing offences under section 377 of the Indian Penal Code, or of abetting the commission of any of the said offences; and

(*b*) a register of the property of such of the said eunuchs as, under the provisions hereinafter contained, are required to furnish information as to their property.

'Eunuch' defined.

The term 'eunuch' shall, for the purposes of this Act, be deemed to include all persons of the male sex who admit themselves, or on medical inspection clearly appear, to be impotent.

Complaints of entries in register.

**25.** Any person deeming himself aggrieved by any entry made or proposed to be made in such register, either when the register is first made or subsequently may complain to the said officer, who shall enter such person's name, or erase it, or retain it, as he sees fit.

Every order for erasure of such person's name shall state the grounds on which such person's name is erased.

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* In ss. 21 and 22, the words quoted have been inserted by Act VII. of 1876, s. 2.

The Commissioner shall have power to review any order passed by such officer on such complaint, either on appeal by the complainant or otherwise.

**26.** Any eunuch so registered, who appears, dressed or ornamented like a woman, in a public street or place, or in any other place, with the intention of being seen from a public street or place,

Penalty on registered eunuch appearing in female clothes;

or who dances or plays music, or takes part in any public exhibition, in a public street or place, or for hire in a private house,

or dancing in public, or for hire.

may be arrested without warrant, and shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**27.** Any eunuch so registered, who has in his charge, or keeps in the house in which he resides, or under his control, any boy who has not completed the age of sixteen years, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

Penalty on registered eunuch keeping boy under sixteen.

**28.** The Magistrate may direct that any such boy shall be returned to his parents or guardians, if they can be discovered. If they cannot be discovered, the Magistrate may make such arrangements as he thinks necessary for the maintenance and education of such boy, and may direct that the whole or any part of a fine inflicted under section 27 may be employed in defraying the cost of such arrangements.

Maintenance and education of boys whose parents cannot be found

The Local Government may direct out of what local or municipal fund so much of the cost of such arrangements as is not met by the fine imposed shall be defrayed.

Disabilities of registered eunuchs.

**29.** No eunuch so registered shall be capable—

(*a*) of being or acting as guardian to any minor,

(*b*) of making a gift,

(*c*) of making a will, or

(*d*) of adopting a son.

**30.** Any officer authorized by the Local Government in this behalf may, from time to time, require any eunuch so registered to furnish information as to all property, whether moveable or immoveable, of or to which he is possessed or entitled, or which is held in trust for him.

Power to require information as to registered eunuch's property.

Any such eunuch intentionally omitting to furnish such information, or furnishing, as true, information on the subject which he knows, or has reason to believe, to be false, shall be deemed to have committed an offence under section 176 or 177 of the Indian Penal Code, as the case may be.

Penalty for refusing such information.

**31.** The Local Government may, with the previous sanction of the Governor-General in Council, make rules for the making and keeping up and charge of registers made under this Part of the Act.*

Rules for making and keeping up registers of eunuchs.

* N.-W. Provinces Rules, N.-W. Provinces Gazette, 20th July 1872, p. 845; Panjab Rules, Panjab Government Gazette, 12th June 1873, p. 331.

1883. Act 21.

(3) "Dependant" means any of the following persons accompanying any emigrant, namely:—

(a) any woman who has not entered into an agreement to emigrate under this Act;*

(b) any child in whose name and on whose behalf any such agreement has not been entered into; and

(c) any aged or incapacitated relative or friend:

(4) "Magistrate" means, in the Presidency-towns, a Presidency Magistrate, and elsewhere a District Magistrate or a Sub-divisional Magistrate, and includes also any person appointed by the Local Government, by name or by virtue of his office, to perform in any local area the functions of a Magistrate under this Act:

(5) "Registering Officer" means any person appointed by the Local Government, by name or by virtue of his office, to perform, in any local area, the functions of a Registering Officer under this Act:

(6) "Recruiter" includes a head recruiter or other person who collects or receives emigrants recruited by other persons:

(7) "Vessel" includes anything made for the conveyance by water of human beings or property:

(8) "Emigrant-vessel" means a vessel the master of which is licensed under this Act† to carry emigrants therein: and

(9) "Master" means any person (except a pilot or harbour-master) having for the time being control or charge of a vessel.

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## CHAPTER II.

### PORTS FROM WHICH, AND COUNTRIES TO WHICH, EMIGRATION IS LAWFUL.

Ports from which emigration is lawful.

**7.** (1) Emigration shall not be lawful except from the ports of Calcutta, Madras, and Bombay, and from such other ports as the Governor-General in Council, from time to time, by notification in the Gazette of India, declares to be ports from which emigration is lawful.

(2) The Governor-General in Council may at any time, by a like notification, revoke any notification issued under this section.

(3) The Local Government may, from time to time, by notification in the official Gazette, fix, for the purposes of this Act, the limits of any port from which emigration is lawful.

Countries to which emigration is lawful.

**8.** (1) Emigration shall not be lawful except to the countries specified in the first schedule hereto annexed, and to such other countries as the Governor-General in Council, from time to time, by notification in the Gazette of India, declares to be countries to which emigration is lawful.

(2) Every notification under this section must contain a declaration that the Governor-General in Council has been duly certified that the Government of the country to which the notification refers has made such laws and other

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* See Ch. VI, *infra*. † See Ch. IX., *infra*.

provisions as the Governor-General in Council thinks sufficient for the protection of emigrants to that country during their residence therein.

Power for Governor-General in Council to prohibit emigration to any country.

**9.** (*1*) Whenever the Governor-General in Council has reason to believe that any of the grounds, hereinafter mentioned, for prohibiting emigration to any country to which emigration is lawful, exists, he may, by notification in the Gazette of India, declare that emigration to that country shall cease to be lawful from a day specified in the notification; and from that day emigration to that country shall accordingly cease to be lawful.

(*2*) The grounds referred to in sub-section (*1*) of this section are—

(*a*) that the plague or any other epidemic disease dangerous to human life has broken out in the country;

(*b*) that the mortality among emigrants in the country is excessive;

(*c*) that proper measures have not been taken for the protection of emigrants immediately on their arrival in the country or during their residence therein;

(*d*) that the agreements made with emigrants, as such, before their departure from India, are not duly enforced by the Government of the country; and

(*e*) that the Governor-General in Council, having, either directly or through the Secretary of State for India in Council, addressed the Government of the country with a view to obtain information regarding the condition or treatment of emigrants therein, has not, within a reasonable time, received the information asked for.

Power for Local Government to suspend emigration pending reference to Governor-General in Council.

**10.** (*1*) Whenever the Local Government has reason to believe that, in any country to which emigration is lawful, the plague or other epidemic disease dangerous to human life has broken out, and that emigrants, if allowed to emigrate to that country, would be exposed to serious risk of life on arrival there, it may, by notification in the official Gazette, declare that emigration to that country from any port in the territories administered by it shall cease to be lawful pending a reference to the Governor-General in Council.

(*2*) The Local Government shall at once report the publication of a notification under this section, with the reasons for it, to the Governor-General in Council, who shall thereupon publish a notification in the Gazette of India confirming or cancelling the notification published by the Local Government.

Revocation of prohibition.

**11.** Whenever the Governor-General in Council is satisfied that the ground on which a notification has been published by him under either of the two last-foregoing sections with respect to any country has ceased to exist, he may, by notification in the Gazette of India, declare that emigration to that country shall again be lawful from a day to be specified in the notification.

Power for Local Government to prohibit emigration to specified country from the whole or any specified part of its territories.

**12.** (*1*) The Local Government may, with the previous sanction of the Governor-General in Council, by notification in the official Gazette, prohibit, from a day specified in the notification, all natives of India or any specified class of natives, from emigrating from the whole or any specified part of the territories under its administration to any specified country.

1883. Act 21.

(2) The Local Government may, with the like sanction, in like manner, vary or cancel any notification published under this section.

Saving for acts done before publication of notification.

**13.** The publication of a notification under any of the four last foregoing sections shall not affect any act done, offence committed, or proceedings commenced before the publication.

## CHAPTER III.

### EMIGRATION AGENTS.

Appointment of Emigration Agents.

**14.** (1) The Government of every country to which emigration is lawful, may, from time to time, appoint a person to be Emigration Agent in any port from which emigration is lawful, and may suspend or remove any person so appointed.

(2) An appointment under this section shall not take effect until the Local Government, by notification in the official Gazette, has declared its approval of the appointment.

Remuneration of Agents.

**15.** The remuneration to be given to an Emigration Agent shall not depend on, or be regulated by, the number of emigrants sent by him, but shall be in the nature of a fixed salary:

Provided that the Governor-General in Council may, from time to time authorize the payment to specified Emigration Agents of special fees for occasional work.

## CHAPTER IV.

### PROTECTORS OF EMIGRANTS AND MEDICAL INSPECTORS.

Appointment of Protectors of Emigrants.

**16.** (1) The Local Government may, from time to time, appoint a proper person to be the Protector of Emigrants for any port within the territories administered by it from which emigration is lawful.

(2) The Governor-General in Council may, from time to time, define the local area to which the authority of any Protector of Emigrants so appointed shall extend.

(3) Every Protector of Emigrants may be suspended or removed by the Local Government which appointed him.

(4) Every Protector of Emigrants shall be a public servant within the meaning of the Indian Penal Code.

General duties of Protector.

**17.** Every Protector of Emigrants, in addition to the special duties assigned to him by this Act or the rules made under this Act, shall—

(a) protect and aid with his advice all emigrants:

(b) cause, so far as he can, all the provisions of this Act and of the rules made under this Act, to be complied with;

(*c*) inspect, on arrival, all vessels bringing return-emigrants to the port for which he is Protector;

(*d*) enquire into the treatment received by the return-emigrants, both during the period of their service in the country to which they emigrated, and also during the return-voyage, and report thereon to the Local Government; and

(*e*) aid and advise the return-emigrants so far as he reasonably can.

**18.** (*1*) The Local Government may, from time to time, appoint a Medical Inspector of Emigrants at each port from which emigration is lawful, and may suspend or remove him.

Appointment of Medical Inspector.

(*2*) Every Medical Inspector of Emigrants shall be a public servant within the meaning of the Indian Penal Code.

**19.** Every Emigration Agent, and all persons in charge of, or employed in any depôt established under this Act,* or in charge of, or employed in, any emigrant-vessel, shall give the Protector of Emigrants and the Medical Inspector of Emigrants every facility for making such inspections, examinations, and surveys as are required by this Act or by the rules made under this Act, or as those officers may deem necessary or proper, and shall afford them all such information as they may reasonably require.

Protector and Medical Inspector to have facilities for inspection.

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## CHAPTER V.

### RECRUITERS.

**20.** (*1*) The Protector of Emigrants at each of the ports from which emigration is lawful shall, on the application of the Emigration Agent for any country to which emigration is lawful, grant licenses to so many fit persons as to the Protector seems necessary to be recruiters of emigrants within the local area to which the authority of the Protector extends.

Protector of Emigrants to license recruiters.

(*2*) A person shall not, unless he holds a license granted under this chapter,—

(*a*) enter into, or attempt to enter into, any agreement with any person purporting to bind him to emigrate, or

(*b*) in consideration of any hire or reward, induce, or attempt to induce, any person to leave any place for the purpose of emigrating, or

(*c*) act or be employed in any other respect as a recruiter of emigrants.

(*3*) Every recruiter shall produce his license when called upon to do so by any Magistrate or officer in charge of a police-station.

**21.** Every license granted under this chapter shall specify the particular country for which, and the local area within which, the holder is licensed to recruit, and may be in the form set forth in the second schedule hereto annexed.

Form of license.

**22.** (*1*) A license granted under this chapter shall not be in force for a longer period than one year from the day on which it comes into force.

Duration of license.

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* See Ch. VII., *infra*.

1883. Act 21.

(2) The Protector of Emigrants may, on the ground of misconduct, cancel any license granted by him under this chapter before the expiration of the period for which it is in force.

Countersignature of license.

**23.** (1) A recruiter shall not, in any place beyond the limits of a port from which emigration is lawful, enter, or attempt to enter, into any agreement with any person purporting to bind him to emigrate, or induce or assist, or attempt to induce or assist, any person to leave any place for the purpose of emigrating, or act, or be employed in any other respect, as a recruiter of emigrants, unless his license bears the countersignature of the District Magistrate.

(2) If a District Magistrate has satisfied himself, after such enquiry as he thinks necesrsay, that the licensee is, by character, or from any other cause, unfitted to be a recruiter under this Act, he may refuse to countersign a recruiter's license.

(3) If a District Magistrate has satisfied himself, after such enquiry as aforesaid, that sufficient and proper accommodation has not been provided in a suitable place, or is not available, for such intending emigrants or emigrants as may be collected by the recruiter pending their registration or removal to the depôt,* at the port of embarkation, he may refuse to countersign a recruiter's license, or to decide whether he will countersign his license until after the expiration of such time as may in his opinion be reasonable.

(4) Before a Magistrate refuses to countersign, or defers his countersignature of, a recruiter's license, he shall record in writing his reasons for so doing.

Power for Magistrate to cancel countersignature in certain cases.

**24.** If any Magistrate, having countersigned a recruiter's license, afterwards finds reason to think that the licensee is, by character, or from any other cause, unfitted to be a recruiter under this Act, or that the accommodation provided for intending emigrants or emigrants collected by him has become unsuitable, or has ceased to be available, he may require the licensee to produce his license, and may cancel the countersignature on it, or may impound the license, and send it for cancellation to the Protector of Emigrants who granted it.

Notice to Protector of Emigrants of countersignature, refusal to countersign, or cancellation of countersignature.

**25.** When a Magistrate countersigns, or refuses to countersign, a recruiter's license, or cancels the countersignature on it, he shall at once report the countersignature, or the refusal or cancellation, and the grounds of the refusal or cancellation, to the Protector of Emigrants who granted the license.

Recruiter to be supplied with statement of terms of agreement he is authorized to offer.

**26.** (1) The Emigration Agent, on whose application any recruiter is licensed, shall supply the recruiter with a written or printed statement, signed by the Agent, and countersigned by the Protector of Emigrants, of the terms of agreement which the recruiter is authorized to offer on behalf of the Agent to intending emigrants.

(2) The statement shall be both in English and in the vernacular language or languages of the local area within which the recruiter is licensed to recruit.

(3) The recruiter shall give a true copy of the statement to every person whom he invites to emigrate, and shall produce the statement for the information of any Magistrate or officer in charge of a police-station, when called upon to do so by the Magistrate or officer.

* See Ch. VII, *infra*.

**27.** (*1*) Every recruiter shall provide sufficient and proper accommodation in a suitable place for such intending emigrant or emigrants as may be collected by him, pending their registration or removal to the port of embarkation.

Accommodation to be provided by recruiters.

(*2*) The place where the accommodation is provided shall have a board fixed in some conspicuous position specifying the purpose for which the place is used.

(*3*) Every District Magistrate, and any Subordinate Magistrate or officer of police, authorized in this behalf by a rule made under this Act, shall have, for the supervision and regulation of the places where accommodation is provided under this section, the same powers as are by this Act* conferred on a Protector of Emigrants in respect of depôts at the port of embarkation.

(*4*) All recruiters or other persons in charge of these places shall afford every Magistrate and any officer of police authorized as aforesaid in this behalf every facility for visiting and inspecting them.

## CHAPTER VI.

### REGISTRATION OF EMIGRANTS AND EXECUTION OF AGREEMENTS TO EMIGRATE.

**28.** The Local Government may, from time to time, appoint any person, by name or by virtue of his office, to perform in a specified local area but subject to the control of the District Magistrate or such other officer as the Local Government appoints, by name or by virtue of his office, in this behalf, the functions of a Registering Officer† under this Act.

Power for Local Government to appoint Registering Officers.

Execution of agreements.

**29.** Every agreement to emigrate entered into by any person must—

(*a*) if executed within the limits of any port from which emigration is lawful, be executed in the presence of the Protector;

(*b*) if executed elsewhere, be executed in the presence of a Registering Officer.

**30.** Every recruiter who desires to engage any person to emigrate shall appear before a Registering Officer or the Protector of Emigrants (as the case may be) with that person, and with any persons intending to accompany that person as his dependents.

Appearance of intending emigrants before Registering Officer.

**31.** (*1*) The Registering Officer or Protector shall thereupon examine the person, apart from the recruiter, with reference to his intended agreement, and, if it appears that he is competent and willing to enter into the agreement and understands its nature, that he has not been induced to enter into it by any coercion, undue influence, fraud, misrepresentation, or mistake, and‡ that its terms are in conformity with law, and are such as, according to the statement furnished to the recruiter under section 26, he was authorized to offer, shall, subject to the provisions of section 33, register in a book to be kept for the purpose, in such form as the Governor-

Examination and registration of emigrant.

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* See Ch. VII, *infra*, p. 75.

† For notification appointing Registering Officers in Madras, see Madras List of Local Rules and Orders, Vol I., Ed. 1898, p. 207.

‡ The word "and" has been inserted by the Indian Emigration Act (1883) Amendment Act (XVIII. of 1890).

1883. Act 21. General in Council, from time to time, by rules made under this Act, prescribes, the name, sex, name of the father, caste, occupation, and age of the intending emigrant, and the name of the village or place of which he is a resident, and such other particulars (if any) concerning him and his dependents (if any) as the Governor-General in Council, from time to time, by rules made under this Act, prescribes.

Power to refuse registration in case of married women.

**32.** (*1*) Notwithstanding anything contained in the last foregoing section, the Registering Officer or Protector may refuse to register any married woman under that section if he finds that her husband does not consent to her emigrating.

(*2*) The Registering Officer or Protector may also, in the case of any woman whom he believes to be married, refuse to decide whether he will register her until after the expiration of such time, not exceeding ten days, as he thinks fit.

Examination of dependent.

**33.** (*1*) When any person appears before a Registering Officer or Protector under section 30 as a dependent of an intending emigrant, the Registering Officer or Protector shall, if the person is able to give intelligent answers to questions, examine him, apart from the recruiter, as to his dependence on the intending emigrant whom he is about to accompany, and as to his willingness to emigrate.

(*2*) Where the Registering Officer or Protector sees reason to doubt the existence of the dependence or willingness, he may, if he thinks fit, refuse to register the intending emigrant unless the name of the dependent is omitted from the register.

Record of reasons for refusal to register.

**34.** Whenever the Registering Officer or Protector refuses to register any intending emigrant, he shall record his reasons for the refusal.

Execution and attestation of agreement.

**35.** (*1*) When the particulars concerning any intending emigrant and his dependents (if any) have been registered, the Registering Officer or Protector shall cause an agreement to be prepared in duplicate,* and shall call on the recruiter and the intending emigrant to execute the agreement in duplicate in his presence, and, if they execute it, shall attest the execution with his signature.

(*2*) An agreement to emigrate shall not be of any effect until the particulars concerning the intending emigrant and his dependents (if any) have been registered, and the agreement has been executed and attested under this Act.

(*3*) When the particulars concerning any intending emigrant and his dependents (if any) have been registered, and any agreement has been executed and attested under this Act, the intending emigrant shall be deemed to be registered under this Act as an emigrant.

(*4*) Any number of intending emigrants appearing with the same recruiter before the Registering Officer or Protector at the same time, and desiring to emigrate on the same terms to the same country, may, with the permission of the Registering Officer or Protector (as the case may be), execute one instrument of agreement under this section, instead of each of such intending emigrants executing a separate instrument.†

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* The words "in duplicate" have been substituted for the words "in triplicate" by the Indian Emigration Act (1883) Amendment Act XVIII. of 1890, s. 2 (*1*).

† Sub-s. 4 has been added by Act XVIII of 1890.

Contents of agreement.

**36.** Every agreement to emigrate shall contain a copy of the particulars registered concerning the intending emigrant and his dependents (if any) under section 31, and on the reverse such particulars concerning the nature, duration, and term of service and the remuneration of the emigrant, and such other matters (if any) as the Governor-General in Council, from time to time, by rules made under this Act, prescribes.

Record of registrations and agreements.

**37.*** When the agreement has been executed and attested—

(*a*) one of the copies thereof shall be delivered to the emigrant, and the other shall be retained by the Protector or sent by the Registering Officer to him, and

(*b*) a certified copy of the particulars registered under section 31 concerning the emigrant or emigrants by whom the agreement was executed, and concerning his or their dependents (if any), shall be delivered to the recruiter for transmission to the Emigration Agent.

Fee for preparation of agreement.

**38.** For the preparation of every agreement under this chapter, the recruiter or Emigration Agent shall pay such fee as the Governor-General in Council, from time to time, by notification in the *Gazette of India* prescribes:†

Provided that the Governor-General in Council may at any time, by like notification, declare that the fee payable under this section shall be consolidated, either generally or in any specified local area, with the fee payable under section 73.

Power to make agreement if over 16.

**39.** Notwithstanding anything to the contrary in the Indian Contract Act, 1872, it shall be lawful for any person of the age of sixteen years or upwards to enter, in manner in this Act provided, into an agreement to emigrate to any place to which emigration is lawful.

Power to make agreement on behalf of child or ward.

**40.** Any person entering into an agreement to emigrate, and being the parent or guardian of a child under the age of sixteen years and above the age of ten years, may, in the name of and on behalf of the child, enter into an agreement in manner in this Act provided, binding the child to emigrate with him.

## CHAPTER VII.

### EMIGRATION DEPOTS.

Depôts to be established at ports of embarkation.

**41.** Every Emigration Agent shall establish at the port for which he is appointed a suitable depôt for the reception and lodging of emigrants before embarkation for the country for which he is Emigration Agent, and shall provide all necessary food and clothing for all emigrants during their stay at the depôt.

Licensing of depôts.

**42.** (*1*) A depôt established under the last foregoing section shall not be used for the reception and lodging of emigrants until it has been inspected and approved by the Protector

* S. 37 has been substituted for the original section by the Indian Emigration Act (1883) Amendment Act (XVIII. of 1890), s. 3.

† See notifications No. 121-E., dated the 1st April 1886, Gazette of India, 1886, Pt. I., p. 277; and No. 7-E., dated 29th March 1888, Gazette of India, 1888, Pt. I., p. 147.

1922. Act 21.

of Emigrants and the Medical Inspector of Emigrants, and a license for its use has been granted by the Protector.

(2) A license under this section shall not be granted for a longer period than one year from the day on which it comes into force.

(3) The Protector of Emigrants may at any time cancel a license under this section—

(a) if he considers that the depôt for which it was granted is unhealthy, or has in any respect become unsuitable for the purpose for which it was established, or

(b) if the Emigration Agent fails, after reasonable notice, to comply with any of the requirements of this Act or of the rules made under this Act.

Inspection by Protector and Medical Inspector.

**43.** The Protector of Emigrants and the Medical Inspector shall, from time to time, and at least once in every week during which any emigrants may be kept in any depôt at the port for which they are Protector and Medical Inspector, respectively, inspect the emigrants in that depôt, and examine the state of the depôt, and the manner in which the emigrants therein are lodged, fed, clothed, and otherwise provided for and attended to.

Report by Medical Inspector.

**44.** The Medical Inspector shall report to the Protector of Emigrants any circumstance that may come to his knowledge showing that any depôt is not suitable for its purpose, or that the emigrants lodged therein are treated with any oppression or neglect.

Treatment of emigrant suffering from disease.

**45.** (1) The Medical Inspector may, if he thinks fit, direct that any emigrant suffering from any disease likely to be dangerous to his neighbours shall be isolated or excluded from the depôt.

(2) The Medical Inspector may, if he thinks fit, order the removal of any emigrant so suffering to a proper hospital for treatment at the expense of the Emigration Agent; and the expense (if any) incurred by the Protector of Emigrants in respect of the removal of the emigrant and his treatment in the hospital shall be recoverable from the Emigration Agent by the Protector of Emigrants, with interest thereon at the rate of six per centum per annum from the date on which the expense was incurred.

## CHAPTER VIII.

### Conveyance of Emigrants to Depots and Procedure on Arrival.

Emigrant not to be removed before registration.

**46.** A recruiter shall not remove or attempt to remove any intending emigrant to a depôt, or induce or attempt to induce him to go to a depôt, or to leave the local limits of the jurisdiction of the Magistrate by whom the recruiter's license has been countersigned, or aid him in going to a depôt, or in leaving any such local limits, until the intending emigrant has been registered under this Act as an emigrant.

Conveyance of emigrant to depôt.

**47.** (1) Every emigrant must, after he has been registered under this Act, be conveyed with all convenient despatch, by or under the orders of the recruiter or Emigration Agent to the depôt established at the port of embarkation by the Emigration Agent, on whose application the recruiter has been licensed.

(*a*) When an emigrant has been registered at a place beyond the limits of the port of embarkation, he must, while proceeding to the depôt, be accompanied throughout the journey, either by the recruiter himself, or by a competent person appointed by him with the approval of a Magistrate.

(*3*) The Magistrate shall give to the person so appointed a certificate signed by him, stating that he has been appointed for the journey to the depôt.

(*4*) The recruiter or the person so appointed shall, throughout the journey, provide the emigrant with proper and sufficient food and lodging.

Report of arrival at depôt.

**48.** (*1*) The arrival at a depôt of each emigrant must immediately be reported by the person in charge of the depôt to the Emigration Agent, and by the Agent to the Protector of Emigrants.

Examination by Medical Inspector.

**49.** (*1*) The copy of the "particulars registered under section 31"* received by the recruiter from the Registering Officer or Protector must, as soon as conveniently may be after the arrival of the emigrant at the depôt, be shown by the Emigration Agent to the Medical Inspector of Emigrants.

(*2*) The Medical Inspector shall examine each emigrant entered in the "said copy"† to ascertain whether he is fit, having regard to his age and state of health, to undertake the journey to the country to which he has agreed to emigrate.

(*3*) The Medical Inspector, if satisfied of his fitness, shall give a certificate to that effect to the Emigration Agent. If not so satisfied, he shall give a certificate to that effect to the Protector of Emigrants.

Power for Protector to order payment of expenses of return of emigrant in certain cases.

**50.** (*1*) In any of the following cases, namely—

(*a*) if the Medical Inspector of Emigrants finds that an emigrant is, or has become, unfit to undertake the journey to the country to which he has agreed to emigrate, and if the Protector of Emigrants considers that the emigrant has not dishonestly represented himself as fit to undertake the journey, or

(*b*) if the Protector finds that any such irregularity has occurred in the recruitment or treatment by the recruiter of any emigrant as makes it just to rescind the agreement to emigrate, or

(*c*) if the Emigration Agent refuses to fulfil the agreement entered into with the emigrant,

the Protector may order the Emigration Agent to pay to the emigrant such sum as the Protector deems reasonable as compensation, and, when the emigrant has been registered at a place beyond the limits of the port of embarkation, such reasonable sum as is necessary to enable him to return to the place at which he was registered, and may take any steps which he thinks necessary for the conveyance of the emigrant to that place.

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* The words quoted have been substituted for the word "agreement" by the Indian Emigration Act (1883) Amendment Act (XVIII. of 1890), s. 4.

† The words quoted have been substituted for the word "copy" by Act XVIII. of 1890, s. 4.

1883. Act 21.

(2) Any emigrant who has been registered at any place beyond the limits of the port of embarkation, and who from his state of health is, in the opinion of the Medical Inspector of Emigrants, unfit to undertake at once the return-journey to the place at which he was registered, shall be entitled to be fed, lodged, clothed, and attended to at the depôt at the expense of the Emigration Agent until he is reported by the Medical Inspector fit to undertake the return-journey.

Payment of expenses of dependents and relatives.

**51.** (1) When any order is made under the last foregoing section with reference to any emigrant who was registered at any place beyond the limits of the port of embarkation, any emigrant who has been registered as his dependent,

or any emigrant who, not being a dependent, is the father, mother, wife, husband, son, daughter, brother, sister, guardian, or ward of the emigrant, shall be entitled—

(a) to be conveyed at the expense of the Emigration Agent with the emigrant to the place at which he was registered; and

(b) if the emigrant is unable to travel, to be lodged, fed, and clothed in the depôt at the expense of the Emigration Agent until the emigrant is able to travel.

(2) The Protector of Emigrants may include any expenses incurred under this section in an order made under the last foregoing section with respect to the emigrant.

Compensation to emigrant for ill-treatment on journey.

**52.** If it appears that during the journey to the depôt any emigrant has suffered any ill-treatment, or that, in the case of any emigrant who has been registered at a place beyond the limits of the port of embarkation, the provisions of section 47 have not been complied with, the Protector of Emigrants may order the Emigration Agent to pay—

(a) to the emigrant a reasonable sum by way of compensation, and

(b) if any expenses have been incurred by or under the orders of the Protector on behalf of the emigrant by reason of the neglect to comply with the provisions of section 47, to the Protector the expenses so incurred.

Power for Protector to pay and recover expenses incurred on behalf of emigrant.

**53.** (1) On failure of the Emigration Agent for twenty-four hours to comply with an order of the Protector for the payment of any sum to an emigrant under any of the last three foregoing sections, the Protector may pay the same to the emigrant.

(2) Every sum paid by the Protector to an emigrant under sub-section (1), and, on failure of the Emigration Agent for twenty-four hours to comply with an order for payment thereof under the last foregoing section, every sum which the Protector may have ordered the Emigration Agent to pay to him under that section, shall be recoverable from the Emigration Agent with interest thereon at the rate of six per centum per annum from the date of payment.

(3) Further proof shall not be required by any Court in any such case than that the Protector gave the Emigration Agent an order to pay the sum, and that the Emigration Agent for twenty-four hours failed to comply with the order.

## CHAPTER IX.



### EMIGRANT-VESSELS.

Master of emigrant-vessel to be licensed.

**54.** It shall not be lawful to receive any emigrant on board any vessel unless a license to carry emigrants in the vessel has been obtained from the Local Government.

Application for license.

**55.** (*1*) When the master or owner of any vessel desires to obtain a license to carry emigrants in his vessel, he shall apply in writing through the Protector of Emigrants to the Local Government for the license.

(*2*) The application must state the number of emigrants which, according to the rules as to space contained in this chapter, the applicant deems the vessel capable of carrying, and the tonnage and such other particulars respecting the vessel as the Governor-General in Council, from time to time, by rules made under this Act, prescribes.

Survey and licensing of vessel.

**56.** (*1*) The Protector of Emigrants shall cause the vessel to be surveyed by a competent person at the cost of the master or owner, with a view to ascertain her seaworthiness, and the extent and nature of her accommodation for emigrants, and to ascertain that she is properly ventilated, and is supplied with all the tackle, apparel, and furniture requisite for her intended voyage:

Provided that, if the vessel is a steamship having a certificate of survey, granted by the Board of Trade or any British Colonial Government, or under the Indian Steamships Act, 1884,† and in force and applicable to her intended voyage, the survey under this sub-section with a view to ascertain her seaworthiness shall not extend to her hull or machinery unless the Protector of Emigrants has reason to believe that, since the grant of the certificate, her hull or machinery has sustained injury or damage, or has otherwise become inefficient.*

(*2*) If the Local Government is of opinion that the vessel is in all respects suitable for the carrying of emigrants under this Act, and is properly manned and officered, it shall give to the master of the vessel a license to carry emigrants therein, specifying the number of emigrants which may be received on board.

Accommodation required on board emigrant-vessel.

**57.** (*1*) A license shall not be granted under the last foregoing section unless—

(*a*) there is provided for the emigrants, either between decks or, subject to the approval of the Protector of Emigrants and the Medical Inspector, in cabins on the upper deck, a space devoted to the exclusive use of the emigrants having in every part a height of not less than six feet;

(*b*) a separate place is fitted up for a hospital: and

(*c*) such arrangements are made for the separation of women (married or single) and children from the other emigrants as the Governor-General in Council, from time to time, by rules made under this Act, prescribes.

(*2*) The cabins on the upper deck provided under clause (*a*) of this section must be firmly secured and entirely covered in.

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* This proviso has been added by the Indian Emigration Act (1883) Amendment Act (XVIII. of 1890), s. 5.

1883. Act 21.

Rules as to space on board emigrant-vessel.

**58.** Every emigrant-vessel must contain within the space referred to in clause (*a*) of the last foregoing section at least twelve superficial feet and seventy two cubic feet of space for each emigrant:

Provided that two emigrants under the age of ten years shall, for the purposes of this section, count as one only.

Provisions, clothing, fuel, and water.

**59.** There must be on board every emigrant vessel, at the time of departure of the vessel from the port at which they embark, provisions, clothing, fuel, and water for the emigrants (over and above the supply for the master, officers, and crew, and of the cabin and other passengers, if any) in such quantity and of such description and quality as the Governor-General in Council, from time to time, by rules made under this Act, prescribes.

Surgeons, attendants, medicines, and stores.

**60.** Every emigrant-vessel must, at the time of departure of the vessel from the port at which the emigrants embark, have on board, and must carry with her, a properly qualified surgeon, and also such compounders, interpreters, and attendants subordinate to the surgeon, and such medicines and other stores, in such quantity and of such quality as the Governor-General in Council, from time to time, by rules made under this Act, prescribes.

Duty of Protector and Medical Inspector with respect to enforcement of foregoing sections.

**61.** The Protector of Emigrants and the Medical Inspector of Emigrants shall see personally that all the provisions of the last two foregoing sections are complied with.

Bond to be executed by master of emigrant-vessel.

**62.** (*1*) Every master licensed under this Act shall, on the requisition of the Protector of Emigrants, and before any emigrant embarks on board his vessel, execute to the Protector, in duplicate, a bond, in such form as the Local Government from time to time prescribes, binding himself and the owner of the vessel in a penal sum of ten thousand rupees, to perform the duties imposed by this Act or any rule made under this Act on a master and owner respectively.

(*2*) The Protector of Emigrants shall forward one copy of the bond to such officer as may be appointed in this behalf by the Government of the country to which the emigrants are to be conveyed, or, in the case of a foreign colony, to the British Consular Agent, and the other copy to the Local Government.

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## CHAPTER X.

### EMBARKATION AND DEPARTURE.

Time of embarkation after arrival.

**63.** An emigrant shall not embark, except with the permission of the Protector of Emigrants, until seven days have elapsed from the date of his arrival at the depôt.

Time at which emigrant-vessels may leave India.

**64.** (*1*) An emigrant-vessel shall not sail from any port in British India—

(*a*) to any country west of the Cape of Good Hope, except at such seasons as the Governor-General in Council, from time to time, by rules made under this Act, prescribes, as seasons during which it shall be

lawful for emigrant-vessels generally, or of a class to which the vessel belongs, to sail to that country;

(*b*) to any country during any season which the Governor-General in Council, from time to time, by notification in the Gazette of India, declares to be a season during which the sailing of emigrant-vessels to that country is prohibited.

**Procedure if emigrant refuses to embark.**

**65.** If any emigrant without sufficient cause refuses or neglects to embark when called on by the Emigration Agent to do so, it shall not be lawful to compel the emigrant to embark; but nothing in this section shall affect the civil or criminal liabilities which an emigrant incurs by reason or in respect of any such refusal or neglect.

**List of, and passes for, emigrants.**

**66.** (*1*) When any emigrants are about to embark on board any vessel, the Emigration Agent shall supply the master of the vessel with four copies of a list, specifying, as accurately as may be, the names, ages, and occupations of the emigrants, and the names of their respective fathers.

(*2*) The master shall not receive any emigrant on board unless he is provided with a pass, signed by the Emigration Agent, and countersigned by the Protector, stating the name and age of the emigrant, the name of his father, and the country to which he has agreed to emigrate, and certifying that he is in a fit state of health to undertake the voyage to that country.

(*3*) Every emigrant shall, on embarkation, deliver the pass to the master.

(*4*) The master shall compare the emigrants who embark and the passes delivered by them with the list supplied by the Emigration Agent; and if the list appears to be correct, and to correspond with the passes delivered and with the emigrants embarked, the master shall sign the four copies of the list.

(*5*) The master shall not permit any emigrant to remain on board who has not delivered up his pass to the master, or is not mentioned in the list.

**Disposal of the two copies of list to be given by master to Protector.**

**67.** (*1*) When the copies of the list have been signed, the master shall give two of the copies to the Protector of Emigrants who shall sign them if he believes them to be correct.

(*2*) The Protector shall send one of the copies so signed by him by the vessel which carries the emigrants to such officer as may be appointed in this behalf by the Government of the country to which the emigrants have agreed to emigrate, or, in the case of a foreign colony, to the British Consular Agent, and shall file the other copy in his own office.

**Disposal of the two copies of list to be given by master to Emigration Agent.**

**68.** (*1*) The master shall give to the Emigration Agent the two remaining copies of the list.

(*2*) The Emigration Agent shall thereupon sign the copies, and shall return one of them to the master.

(*3*) The master shall, on the arrival of the vessel at the country to which the emigrants have agreed to emigrate, and before their disembarkation, deliver the copy so returned to him to such officer as may be appointed in this behalf by the Government of the country, or, in the case of a foreign colony, to the British Consular Agent.

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**69.** (*1*) The Medical Inspector shall be present at the embarkation of all emigrants, and shall examine each emigrant to ascertain if he is in a fit state of health to undertake the voyage to the country to which he has agreed to emigrate; and if he finds that he is not fit to undertake the voyage, he shall inform the Protector accordingly.

Examination of emigrants by Medical Inspector.

(*2*) The Protector may thereupon refuse to permit the emigrant to embark; and any emigrant, registered as a dependent of an emigrant whom the Protector has refused to permit to embark, or any emigrant who, not being a dependent, is the father, mother, wife, husband, son, daughter, brother, sister, guardian, or ward of the emigrant, may, notwithstanding anything in this Act, refuse to embark.

(*3*) The provisions of sections 50, 51, and 53, shall apply to emigrants who, under this section, are not permitted to embark, and to any emigrants who, under this section, refuse to embark, and to the recovery of expenses incurred under this Act in respect of them.

**70.** [*Emigration Agent to deliver agreements to emigrate to master.*] *Repealed by the Indian Emigration Act Amendment Act* (*XVIII. of 1890 s. 6*).

**71.** Before any emigrant-vessel clears out of any port, the master of the vessel shall obtain from the Protector of Emigrants at the port, and from the Emigration Agent for the country to which the emigrants are to be conveyed, certificates signed by the Protector and Emigration Agent, respectively, to the effect that the Protector and Agent have, in respect of all the emigrants embarking at that port in the vessel, done all that is required by the foregoing provisions of this Act, or by the rules made under this Act, to be done on the part of the Protector and Agent respectively, and that all the directions for the security, well-being, and protection of emigrants which are contained in this Act, or in the rules made under this Act, have, in the case of that vessel, been complied with.

Certificates from Protector of Emigrants and Emigration Agent.

**72.** The master of every emigrant-vessel shall keep on board the vessel, during the whole voyage, two copies of this Act, and of all rules made under this Act, and two copies of a translation of this Act, and of those rules, in such language or languages as the Local Government directs, and shall, on request made at any reasonable time, produce one of those copies to any emigrant for his perusal.

Copies of Act and rules to be kept on board.

**73.** For each emigrant who embarks on board an emigrant-vessel, the Emigration Agent shall pay to the Protector of Emigrants a fee of such amount as the Governor-General in Council, from time to time, by notification in the Gazette of India, prescribes:*

Fee for each embarked emigrant.

Provided as follows:—

(*a*) the fee payable under this section shall not be more than is, in the opinion of the Governor-General in Council, sufficient to raise the total income from fees under this Act to an amount which will cover the cost of any establishment or supervision which the Governor-General in Council thinks necessary to provide for the control of emigration:

* See Notifications No. 121-E., dated the 1st April 1886, Gazette of India, 1886, Pt. I., p. 277; and No. 7-E., dated 29th March 1888, Gazette of India, 1888, Pt. I., p. 147.

(*b*) if it appears to the Governor-General in Council expedient to provide, in the case of any country, any special establishment or expenditure for the protection of Indian emigrants to that country, the Governor-General in Council may increase the fee payable in the case of emigrants to that country to an amount sufficient, in his opinion, to cover the cost of the special establishment or expenditure.

**74.** It shall be the duty of every master licensed under this Act to see that all the provisions of this Act, and the rules made under this Act, are observed on board his vessel during the voyage from British India to the country to which the emigrants are to be conveyed.

**Duty of master to see to observance of Act and rules on board his vessel.**

**75.** The master shall return his pass to each emigrant before he disembarks in the country to which he has agreed to emigrate.

**Return of pass to emigrant.**

*Special Provisions as to Vessels sailing from Calcutta.*

**76.** The master of every vessel carrying emigrants from the port of Calcutta shall proceed on his voyage and depart with his vessel from Garden Reach within twenty-four hours after the embarkation of such of the emigrants as have first embarked.

**Emigrant-vessel sailing from Calcutta to depart within 24 hours of embarkation.**

**77.** Every sailing-vessel leaving the port of Calcutta with emigrants shall proceed from Garden Reach to sea under tow of a steamer declared to be competent by such officer as the Local Government appoints in this behalf.

**Emigrant-vessel sailing from Calcutta to be towed to sea.**

**78.** (*1*) When an emigrant-vessel leaves the Port of Calcutta, if, during her passage down the river, and while between Garden Reach and Diamond Harbour, the disease of measles, scarlet-fever, or small-pox, appears on board, the master shall, if so required by the surgeon in charge of the emigrants, send to the hospital at Diamond Harbour all emigrants suffering from the disease, with any emigrants registered as their dependents, and any emigrant who, not being a dependent, is the father, mother, wife, husband, son, daughter, brother, sister, guardian, or ward of any such emigrant, and who wishes to accompany him or her and shall at once inform the Protector of Emigrants at Calcutta of the number and names of the emigrants so sent to hospital.

**Power of surgeon of emigrant-vessel leaving Calcutta to require sick emigrants to be sent to hospital.**

(*2*) The provisions of sections 50, 51, and 53, shall, so far as may be, apply to emigrants landed under this section, and to the recovery of expenses incurred in respect of them.

**79.** (*1*) In the event of cholera in an epidemic form appearing among the emigrants on board any such vessel carrying emigrants from the port of Calcutta, the surgeon in charge of the emigrants may require the master to land all the emigrants on board the vessel at Diamond Harbour.

**Power of surgeon of emigrant-vessel leaving Calcutta to require all emigrants to be landed when cholera appears.**

(*2*) The master shall at once comply with the request of the surgeon, and shall immediately give notice of his having done so to the Protector of Emigrants at Calcutta, who shall take such action thereon as the Governor-General in Council, from time to time, by rules made under this Act, prescribes.

1883.
Act 21.

## CHAPTER XI.

### RULES.

Power for Governor-General in Council to make rules.

**80.** (*1*) The Governor-General in Council may, from time to time, make rules* consistent with this Act—

(*a*) to provide for the supervision and regulation of places of accommodation provided under this Act, and to define the classes of Magistrates and the officers of police to be authorized to visit and inspect those places;

(*b*) to prescribe the form of the register required under this Act, and the particulars to be entered therein, and to regulate the control to be exercised over Registering Officers by the District Magistrate or officer (if any) appointed in this behalf under this Act;

(*c*) to prescribe the forms of the agreements to be made under this Act, and the particulars to be contained therein, and the language or languages in which agreements must be expressed;

(*d*) to prescribe the conditions on which licenses for the establishment of depôts under this Act may be given, to provide for the supervision and regulation of the depôts, and for the medical care of the emigrants during their residence there, and the measures to be taken on the outbreak of any epidemic or infectious disease there;

(*e*) to prescribe the forms to be supplied by Emigration Agents and recruiters for the purposes of this Act;

(*f*) to prescribe the particulars which the owner or master of a vessel applying for a license to carry emigrants in his vessel must state;

(*g*) to regulate the proportion of women to be ordinarily carried in any emigrant-vessel with male emigrants, and to prescribe the arrangements to be made for the separation of women (married or single) and children from the other emigrants on board an emigrant-vessel;

(*h*) to prescribe the description, quantity, and quality of provisions, fuel, and water to be taken by emigrant-vessels, the daily allowance of food and water to be issued, and the nature and amount of clothing to be supplied to each emigrant during the voyage;

(*i*) to fix the number of the compounders, interpreters, and attendants subordinate to the surgeon to be carried for the care of the sick or weakly on board each emigrant-vessel;

(*j*) to prescribe the nature, quantity, and quality of medicines and other stores to be carried on board emigrant-vessels;

(*k*) to provide for the ventilation and cleanliness of every emigrant-vessel during a voyage, and for its being furnished with a sufficient number of life-buoys, boats, water-buckets, and other appliances to be used in case of shipwreck or fire;

(*l*) to prescribe the seasons at which alone emigrant-vessels or specified classes of emigrant-vessels may sail from any port in British India to any country west of the Cape of Good Hope to which emigration is for the time being lawful;

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* For rules issued under this section, see Notification No. 94-E., dated the 18th March 1886, Gazette of India, 1886, Pt. I., p. 161. These rules have been amended and added to from time to time, but the amendments and additions are too numerous to be given here.

(*m*) to provide for the disposal of emigrants who may be landed under section 79;

(*n*) to provide for the medical care of the emigrants on the voyage, and to provide for the measures to be taken on the outbreak of any epidemic or infectious disease on a voyage;

(*o*) to provide for a journal being kept by the surgeon of every emigrant-vessel, recording the health of the emigrants, and his treatment of the sick, with full explanation of the causes of every death; and to define the duties and powers of the surgeon in respect of the emigrants committed to his care:

(*p*) to define and regulate the powers and duties of the several officers appointed by the Government under this Act; and

(*q*) generally to provide for the security, well-being, and protection of emigrants:

Provided that the Local Government may, in special cases, notwithstanding anything contained in rules made under clause (*g*) of this section, permit an emigrant-vessel to sail, though it does not carry the proportion of women required to be carried in ordinary cases.

(*2*) The power to make rules conferred by this section may be exercised at any time after the passing of this Act, but any rule made under this section shall not take effect until the Act comes into force.

Publication of drafts and rules.

**81.** (*1*) The Governor-General in Council shall, before making rules under the last foregoing section, publish a draft of the proposed rules in such manner as may, in his opinion, be sufficient for the information of persons likely to be affected thereby.

(*2*) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(*3*) The Governor-General in Council shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(*4*) Every rule made under the last foregoing section shall be published in the Gazette of India; and the publication in the Gazette of India of a rule purporting to be made under that section shall be conclusive evidence that it has been duly made.

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## CHAPTER XII.

### OFFENCES.

Unlawful recruiting.

**82.** (*1*) Whoever, except in conformity with the provisions of this Act or of the rules made under this Act—

(*a*) makes, or attempts to make, any agreement with any native of India, purporting to bind him to emigrate, or

(*b*) in consideration of any hire or reward, induces, or attempts to induce, any native of India to leave any place for the purpose of emigrating, or otherwise acts or is employed as a recruiter of emigrants, or

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(*c*) in consideration of any hire or reward, receives into or detains in any place, or, being a recruiter, in any place other than a place in which accommodation has been provided in accordance with this Act or the rules made under this Act, any person with a view to his being registered as an emigrant, or after his registration as an emigrant and before his departure for the depôt at the port of embarkation,

shall be punished with fine which may extend to five hundred rupees.

(*d*) if any person, other than a recruiter licensed under this Act, commits an offence under this section, any police-officer may arrest him without warrant.

Recruiters removing unregistered emigrants to depôt.

**88.** Whoever, being a recruiter licensed under this Act—

(*a*) removes, or attempts to remove, any intending emigrant to a depôt before he has been registered under this Act as an emigrant, or induces, or attempts to induce, him to leave the local limits of the jurisdiction of the Magistrate by whom the recruiter's license has been countersigned before he has been so registered, or aids, or attempts to aid, him in leaving any such local limits or going to any depôt before he has been so registered, or

(*b*) fails to give a true copy of the statement with which he is provided under section 26 to any person whom he invites to emigrate, or

(*c*) fails to provide any emigrant whom he has engaged, and who has been registered at a place beyond the limits of the port of embarkation, with suitable lodging and food, or otherwise ill-treats any emigrant on his journey to the depôt,

shall be punished with fine which may extend to five hundred rupees.

Fraudulently inducing native to emigrate.

**84.** (*1*) Whoever, by means of intoxication, coercion, or fraud, causes or induces, or attempts to cause or induce, any native of India to emigrate, or to enter into any agreement to emigrate, or to leave any place with a view to emigrating, shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

False representation of Government authority.

**85.** Whoever, without lawful authority, issues any written order to the police to assist himself or any other person to procure emigrants, or falsely represents that any emigrants are required by the Government, or are to be engaged on behalf of the Government, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Receiving emigrants on board vessel in contravention of Act.

**86.** If any master of a vessel—

(*a*) knowingly receives on board his vessel any emigrant who has not complied with the provisions of this Act or the rules made under this Act, so far as they are binding on him, or

(*b*) not being licensed under this Act, knowingly receives any emigrant on board his vessel, or

(*c*) being licensed under this Act, knowingly receives on board his vessel any emigrant in excess of the number specified in his license,

he shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees for each emigrant so received, or with both; and the vessel, her tackle, apparel, and furniture may be declared by the Court before which the master is tried to be forfeited to Her Majesty.

**Fraudulent acts on part of master.**

**87.** If any master licensed under this Act fraudulently does, or suffers to be done, any act or thing whereby the license becomes inapplicable to the altered state of the vessel or other matter to which the license relates, he shall be punished with fine which may extend to five thousand rupees;

and he may also be sued on any bond which he may have executed under section 62.

**Clearance without compliance with Act.**

**88.** If any master of an emigrant-vessel clears, or attempts to clear, his vessel outwards when any of the provisions of section 57, 59, or 60, have not been complied with in respect of the vessel, he shall be punished with fine which may extend to four thousand rupees.

**Failure of master to comply with provisions as to lists and passes.**

**89.** If any master receives on board his vessel any emigrants, and fails to comply with the requirements of sections 66, 67, and 68 in respect of those emigrants, he shall be punished with fine which may extend to two hundred rupees for each emigrant so received on board.

**Master taking on board, after clearance, emigrants not entered in list.**

**90.** If any master, having cleared his vessel, takes on board any emigrant not entered in the list mentioned in section 66, or not furnished with a pass required by that section, he shall be punished with fine which may extend to two hundred rupees for each emigrant so taken.

**Master landing emigrant at other than specified country.**

**91.** If any master lands any emigrant in any country other than the country for which he has been shipped by the Emigration Agent, he shall be punished for every emigrant so landed with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to one month, or with both, unless the landing has been caused by stress of weather or unavoidable accident, or has taken place under the provisions of section 78 or 79.

**Failure to comply with provisions as to leaving Calcutta.**

**92.** If any master of a sailing-vessel leaving the port of Calcutta with emigrants on board—

(*a*) does not leave Garden Reach with his vessel within the time prescribed in section 76, or

(*b*) without reasonable excuse, causes or allows his vessel to go below Garden Reach without being in tow of such a steamer as is referred to in section 77,

he shall be punished with fine which may extend to one thousand rupees.

**Emigrant deserting or refusing to proceed to depôt.**

**93.** (*1*) If any emigrant deserts before arrival at depôt, or refuses without reasonable cause to proceed to the depôt, he shall be punished with fine which may extend to twenty rupees, or to the cost incurred in entering into an agreement with, registering, and conveying him to the depôt, whichever is greater, and, in default of payment of the fine, with imprisonment which may extend to one month.

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(*c*) Any fine levied under this section may, in the discretion of the convicting Magistrate, be paid to the Emigration Agent or recruiter by whom the cost was incurred.

Emigrant deserting from depôt, or failing to embark.

**94.** (*1*) If any emigrant—

(*a*) deserts from the depôt, or,

(*b*) without reasonable cause, refuses or neglects to embark when called upon to do so by the Emigration Agent,

he shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or to double the amount of the cost incurred in entering into an agreement with, registering, and conveying him to the depôt, and maintaining him therein, or with both.

(*2*) Any fine levied under this section may, in the discretion of the convicting Magistrate, be paid to the Emigration Agent or recruiter by whom the cost was incurred.

Causing or permitting embarkation of emigrant in contravention of section 63.

**95.** If any person causes, or if any master knowingly permits, any emigrant to embark contrary to the provisions of section 63, he shall be punished with fine which may extend to two hundred rupees for each emigrant so embarked.

Institution of prosecutions.

**96.** Prosecutions under sections 86 to 95 (both inclusive) shall not be instituted except as follows, namely:—

(*a*) prosecutions under sections 86 to 92 (both inclusive), by the Emigration Agent, or by the Protector of Emigrants, or by an officer appointed for the purpose by the Local Government;

(*b*) prosecutions under section 93, by or with the sanction of a Magistrate or Registering Officer or of the Protector of Emigrants at the port of embarkation;

(*c*) prosecutions under section 94, by the Emigration Agent with the sanction of the Protector;

(*d*) Prosecutions under section 95, by the Protector of Emigrants, or by an officer appointed for the purpose by the Local Government.

Defence to charges of desertion.

**97.** The following shall be good defences to charges under sections 93 and 94, respectively, namely:—

(*a*) to a charge under section 93, that the accused person or other emigrants accompanying him has or have been ill-treated, deceived, or defrauded by the recruiter or any person under his control;

(*b*) to a charge under section 94, that the emigrant has suffered any ill-treatment or neglect in the depôt or on the journey thither.

Power for Customs officers to search and detain for purposes of Act.

**98.** All the powers for the time being conferred by law* on officers of sea-customs with regard to the searching and detention of vessels, or otherwise for the prevention of smuggling on board thereof, may be exercised by those officers for the prevention of offences against this Act.

* See Ch. XVII. of the Sea Customs Act (VIII. of 1878).

## CHAPTER XIII.

### SUPPLEMENTAL.

Power for Local Government to appoint Magistrates for purposes of Act.

**99.** The Local Government may, from time to time, appoint any person, by name or by virtue of his office, to perform, within a specified local area, the functions of a Magistrate under this Act.

Suits against Emigration Agent for breach of duty.

**100.** (*1*) Whenever an Emigration Agent is chargeable with a breach of any duty to an emigrant arising from any agreement with the emigrant, or imposed by this Act or the rules made under this Act, the Protector of Emigrants may, if he thinks fit, institute a suit on behalf of the emigrant against the Emigration Agent for the recovery of compensation for the breach.

(*2*) In awarding compensation under this section, all sums ordered to be paid under section 50 or section 52 shall be taken into consideration.

Power for Governor-General in Council to determine probable lengths of voyages for purposes of Act.

**101.** (*1*) The Governor-General in Council may, from time to time, by notification in the Gazette of India, determine what shall be held to be, for the purposes of this Act, the probable length of the voyages by sailing-vessels and vessels using steam-power, respectively, from any port from which, to any country to which, emigration is for the time being lawful.

(*2*) Until otherwise determined under this section, the probable length of the voyage by sailing-vessels, from the ports mentioned in the third schedule hereto annexed, to the countries mentioned in that schedule, shall be deemed to be the lengths stated in that schedule.

Provision supplementary to section 6 (*1*) of this Act.

**102.*** (*1*) On and from such a date as the Governor-General in Council may, by notification in the Gazette of India, fix in this behalf with respect to any protected Native State adjoining the Straits Settlements, or with respect to any *country* for labour in which natives of India are recruited exclusively through the agency of the Government of the Straits Settlements, a native of India who departs by sea out of British India under an agreement to labour for hire in any such *State or country* shall not, so long as the notification continues to apply to the *State or country*, be deemed to emigrate within the meaning of this Act.

(*2*) The Governor-General in Council may, by notification in the Gazette of India, declare that, from a date to be specified, a notification under sub-section (*1*) shall no longer apply to a Native State or *country* therein mentioned.†

Application of Act to emigration from British ports to French and Dutch colonies.

**103.** The provisions of this Act shall apply to emigration from British Indian ports—

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* S. 102 as here printed has been substituted for s. 102 as originally enacted, and as amended by the Straits Settlements Emigration Act (XXI. of 1884).—See the Indian Emigration Act (1883) Amendment Act (XVIII. of 1890), s. 7.

In s. 102 as substituted the italicized word *country* has been substituted for the words, "British colony or possession;" and the italicized words, *State or country*, have been substituted for the words, "State, colony, or possession," by the Indian Emigration Amendment Act (VII. of 1897), s. 2.

† Every notification made under s 102 of the said Act, as amended by the Straits Settlement Emigration Act (XXI. of 1884), shall be deemed to have been made under sub-section (*1*) of section 102 of the said Act as amended by the last foregoing section of this Act.—See the Indian Emigration Act (1883) Amendment Act (XVIII. of 1890), s. 8.

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(*a*) to the French colonies, under the terms of the Convention executed at Paris on the first day of July 1861, and ratified at the same place on the 30th day of July 1861, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and His Majesty the Emperor of the French; and

(*b*) to the Netherlands colony of Dutch Guiana, under the terms of the Convention executed at the Hague on the 8th day of September 1870, and ratified at the same place on the 17th day of February 1872, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and His Majesty the King of the Netherlands:

Provided that, in any case in which there is any conflict between the provisions of this Act and those contained in either of those Conventions, the latter shall prevail.

Application of Act to proceedings in British India connected with emigration from French ports in India to French colonies.

**104.** The provisions of this Act shall, so far as they relate to proceedings which are to be conducted in British India, apply in the case of natives of India who depart by sea from a French port in India under an agreement to labour for hire in a French colony, under the Convention between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and His Majesty the Emperor of the French referred to in the last foregoing section, as if such natives were emigrants within the meaning of this Act:

Provided that in any case in which there is any conflict between the provisions of this Act and those contained in that Convention, the latter shall prevail.

Prohibition of departure by land of a native of India under an agreement to labour for hire in some country beyond the sea.

**105.** (*1*) The departure by land out of British India of a native of India "under, or with a view to entering into, an agreement" * to labour for hire in some country beyond the sea other than the Island of Ceylon or the Straits Settlements is prohibited:

Provided that nothing in this section applies to the departure by land—

(*a*) of a domestic servant when accompanying his employer;

(*b*) of a native of India for the purpose of departing by sea from a French port in India, under an agreement to labour for hire in a French colony in accordance with the Convention referred to in "section 103, clause (*a*), and section 104." †

(*2*) Whoever induces, or attempts to induce, any native of India to depart by land out of British India in contravention of this section shall be deemed to have committed an offence under section 82.

Power to declare whole or part of Act and rules inapplicable to natives of India engaged for Her Majesty's Government to labour for hire in any country beyond the sea.

**106.** ‡ The Governor-General in Council may, from time to time, by notification in the Gazette of India, declare that all or any of the provisions of this Act or the rules thereunder shall not apply, or shall apply subject to such conditions, modifications, or restrictions as to the Governor-General in Council may seem expedient, in the case of natives of India departing out of British India under

* The words quoted have been substituted by the Indian Emigration Act (1883) Amendment Act (I. of 1896), s. 1.

† The words, figures, and letter quoted have been substituted for the word and figures "section 102"—See the Indian Emigration Act (1883) Amendment Act (XVIII of 1890), s. 9.

‡ S. 106 has been added by the Indian Emigration Act (1883) Amendment Act (I. of 1896), s. 2.

an agreement made with, or on behalf of, Her Majesty's Government to labour or hire in any country beyond the sea: 1883. Act 21.

Provided that no notification under this section shall be issued unless the Governor-General in Council is first satisfied that the fair treatment of natives of India so departing out of British India has, by rules or otherwise, duly been secured.

## SCHEDULE I.

(*See section 8.*)

COUNTRIES TO WHICH EMIGRATION IS LAWFUL.

I.—The British Colonies of Mauritius, Jamaica, British Guiana, Trinidad, St. Lucia, Grenada, St. Vincent, Natal, St. Kitts, Nevis, and Fiji.

II.—The French Colonies of Martinique, Guadeloupe and its dependencies, and Guiana.

III.—The Netherlands Colony of Dutch Guiana.

IV.—The Danish Colony of St. Croix.

## SCHEDULE II.

(*See section 21.*)

FORM OF RECRUITER'S LICENSE.

OFFICE of the Protector of Emigrants at the port of .

*A. B.*, described in the descriptive roll annexed, is hereby licensed under the Indian Emigration Act, 1883, to be a recruiter of emigrants for [*here state the country for which the recruiter is licensed to recruit*] in [*here specify the local area within which the recruiter is licensed to recruit*]

This license will be in force until the of , unless previously cancelled.

(*Signed*) *C. D.*,
*Protector of Emigrants.*

*Dated the day of* .

*Descriptive Roll.*

| Name. | Father's Name. | Age. Years. | Age. Months. | Caste. | Colour. | Height. Feet. | Height. Inches. | Distinguishing Marks. | Name of village, local sub-division (tahsil, taluq, &c.), and district to which he belongs. |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |

## SCHEDULE III.

(*See section 101.*)

PROBABLE LENGTHS OF VOYAGES * UNDER THIS ACT.

| | |
|---|---|
| FROM CALCUTTA— | |
| To Mauritius ... ... ... | From the month of April to the month of October, both inclusive, ten weeks; and from the month of November to the month of March, both inclusive, eight weeks. |
| To Jamaica, British Guiana, Trinidad, St. Lucia, Grenada, St. Vincent, St. Kitts, Nevis, St Croix, French Guiana, Martinique, Guadeloupe and its dependencies, and Dutch Guiana. | Twenty weeks. |
| To Natal ... ... ... | Twelve weeks. |
| To Fiji ... ... ... | Eighteen weeks. |
| FROM MADRAS— | |
| To Mauritius ... ... ... | From the month of April to the month of October, both inclusive, seven weeks; and from the month of November to the month of March, both inclusive, six weeks. |
| To Jamaica, British Guiana, Trinidad, St. Lucia, Grenada, St. Vincent, St. Kitts, Nevis, St Croix, French Guiana, Martinique, Guadeloupe and its dependencies, and Dutch Guiana. | Nineteen weeks. |
| To Natal ... ... ... | Ten weeks. |
| To Fiji ... ... ... | Seventeen weeks. |
| FROM BOMBAY— | |
| To Mauritius .. .. .. | From the month of April to the month of September, both inclusive, five weeks; and from the month of October to the month of March, both inclusive, six weeks. |
| To Jamaica, British Guiana, Trinidad, St. Lucia, Grenada, St. Vincent, St Kitts, Nevis, St Croix, French Guiana, Martinique, Guadeloupe and its dependencies, and Dutch Guiana. | Nineteen weeks. |
| To Natal ... ... ... | Ten weeks. |
| To Fiji ... ... ... | Seventeen weeks. |

* By sailing-vessels.

# ACT NO. III. OF 1897.*

## THE EPIDEMIC DISEASES ACT.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*Received the assent of the Governor-General on the 4th February 1897.*

*An Act to provide for the better prevention of the spread of Dangerous Epidemic Disease.*

WHEREAS it is expedient to provide for the better prevention of the spread of dangerous epidemic diseases; It is hereby enacted as follows:—

Short title, extent, and commencement.

**1.** (*1*) This Act may be called the "Epidemic Diseases Act, 1897."

(*2*) It extends to the whole of British India (inclusive of . . . . † British Baluchistan, the Santal Parganas, and the Pargana of Spiti); and

(*3*) It shall come into force at once.

Power to take special measures and prescribe regulations as to dangerous epidemic disease.

**2.** (*1*) When at any time the Governor-General in Council is satisfied that India or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease, the Governor-General in Council, if he thinks that the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take, or require or empower any person to take, such measures, and, by public notice, prescribe such temporary regulations to be observed by the public or by any person or class of persons as he shall deem necessary to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation, if any) shall be defrayed.

(*2*) In particular and without prejudice to the generality of the foregoing provisions, the Governor-General in Council may take measures and prescribe regulations for—

(*a*) the inspection of any ship or vessel leaving ‡ or arriving at, any port in British India, and such detention thereof, or of any person intending to sail therein, or arriving thereby, as may be necessary; and

(*b*) the inspection of persons travelling by railway or otherwise, and the segregation in hospital, temporary accommodation, or otherwise, of persons suspected by the inspecting officer of being infected with any such disease.

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* For Statement of Objects and Reasons, see Gazette of India, 1897, Pt V., p 21; for Report of the Select Committee, see *ibid*, p. 23; and for Proceedings in Council, see *ibid*, Pt. VI., pp. 18 and 24

[A] The Act was declared in force in Upper Burma (except the Shan States) by the Burma Laws Act (XIII. of 1898).

[A] † In s. 1 (*2*) the words, "Upper Burma," repealed by the Burma Laws Act (XIII. of 1898), Sch V, have here been omitted.

‡ For special provision as to inspection of passengers sailing for ports in the Red Sea, see s. 30 of the Native Passenger Ships Act (X. of 1887).

1897.
Act 3.

(3) The Governor-General in Council may, by general or special order, direct that all or any of the powers conferred by this Act may also be exercised by any Local Government with respect to the territories administered by it.*

Penalty.

**3.** Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under section 188 of the Indian Penal Code.

Protection to persons acting under Act.

**4.** No suit or other legal proceeding shall lie against any person for anything done or in good faith intended to be done under this Act.

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*For notification delegating powers under the Act to Local Governments, see Gazette of India, 1897, Pt. I., p. 102.

# ACT NO. XI. OF 1856.

## THE EUROPEAN DESERTERS ACT, 1856.*

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*Received the assent of the Governor-General on the 11th April 1856.*

*An Act for the Better Prevention of Desertion by European Soldiers from the Land Forces of Her Majesty† in India.*

WHEREAS it is expedient to make better provision for apprehending and detaining European deserters from the Land Forces in the service of Her Majesty† in India, and for punishing persons who aid and encourage such deserters; It is enacted as follows:—

Preamble.

**Penalty on master in certain cases if a deserter be concealed on board his ship.**

1. If it shall appear that any officer or soldier, being a deserter from the said Forces, has been concealed on board any merchant-vessel and that the master or person in charge of such vessel for the time being, through ignorance of the fact of such concealment might have known of the same, but for some neglect of his duty as such master or person, or for the want of proper discipline on board his vessel, such master or person shall be liable to a fine not exceeding five hundred rupees:

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* This short title has been given by the Indian Short Titles Act (XIV. of 1897).

Act XI of 1856 has been declared to be in force in—

the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act (XV of 1874), s. 3,

the Santhál Parganas, by the Santhál Parganas Settlement Regulation (III. of 1872), s. 3 as amended by the Santhál Parganas Laws Regulation (III of 1886).

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely:—

| | | |
|---|---|---|
| Sindh | See Gazette of India | 1880 Pt I., p. 672 |
| Aden | Ditto | 1879, Pt I. p. 434 |
| West Jalpáiguri | Ditto | 1881 Pt. I., p 74. |
| The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum | Ditto | 1881, Pt. I., p. 504. |
| The Scheduled portion of the Mirzápur District | Ditto | 1879. Pt. I., p. 383. |
| Jaunsar Báwar | Ditto | 1879. Pt. I., p. 382. |
| The Districts of Hazára Peshawar, Kohát Bannu, Dera Ismail Khán, and Dera Gházi Khán | Ditto | 1886. Pt. I., p. 48. |
| The Scheduled Districts of the Central Provinces | Ditto | 1879. Pt. I., p. 771. |
| The District of Sylhet | Ditto | 1879. Pt. I., p. 631. |
| The rest of Assam (except the North Lushai Hills) | Ditto | 1897, Pt I., p 299. |

It has been declared, by notification under s (b) of the last-mentioned Act, not to be in force in the Scheduled District of Lahaul—See Gazette of India 1886, Pt I., p 301.

It has been extended, by notification under s 5 of the same Act, to the Scheduled Districts of Kumáon and Garhwál—See Gazette of India, 1876, Pt I., p. 606

† The words in the title and preamble, "and of the East India Company" have been repealed by the Repealing Act (XIV. of 1870).

Proviso.

Provided always that no conviction for such offence as is hereinbefore described shall be lawful unless the same shall be stated in the charge which the party is called upon to answer; and in such charge it shall be lawful to state in the alternative that the party has either knowingly harboured or concealed a deserter on board his vessel, or has, by neglect of duty, or by reason of the want of proper discipline on board the vessel, allowed such deserter to be so concealed.

Charge may be in the alternative.

Jurisdiction.

**2.** Any person, whether a European British subject or not, who shall be guilty of an offence punishable under this Act, shall be punishable for the same by any Justice of the Peace for any of the Presidency-towns of Calcutta, Madras, and Bombay,* Magistrate,† or person lawfully exercising the powers of a Magistrate in any port within the territories of the East India Company within whose jurisdiction the offence may have been committed, or such person may have been apprehended or found, whether the offence shall have been committed within the local limits of the jurisdiction of such officer or not; and any person hereby made punishable by a Justice of the Peace shall be punishable on summary conviction.

Conviction to be quashed on merits only. Form of conviction, &c.

**3.** No conviction, order, or judgment of any Justice of the Peace, shall be quashed for error of form or procedure, but only on the merits; and it shall not be necessary to state on the face of the conviction, order, or judgment, the evidence on which it proceeds: but the depositions taken, or a copy of them, shall be returned with the conviction, order, or judgment, in obedience to any writ of *certiorari*: and, if no jurisdiction appears on the face of the conviction, order, or judgment, but the depositions taken supply that defect, the conviction, order, or judgment, shall be aided by what so appears in such depositions.

Saving of proceedings under other Acts.

**4.** Nothing in this Act contained shall prevent any Justice of the Peace, Magistrate, or other officer, having authority in that behalf, from committing for trial any person who shall be charged with an offence punishable under‡ any other Act hereafter to be in force, notwithstanding that such offence may be also punishable under this Act:

Proviso.

Provided that no proceedings shall have been had against such person in respect of the same offence under this Act.

Commanding Officer or Magistrate may issue warrants for apprehension of deserters.

**5.** Whenever, on information given on oath or solemn affirmation, where by law a solemn affirmation may be used instead of an oath, to the commanding officer of any fort, garrison, station, regiment, or detachment, at any port or place within the territories of the East India Company, in which no person lawfully exercising magisterial powers can be found, which oath or affirmation the several persons abovenamed shall severally under this Act have power to administer;

or whenever, on such information as aforesaid given to any Justice of the Peace, Magistrate,† or person lawfully exercising the powers of a Magistrate, having jurisdiction within such port or place,

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* Certain words which were repealed by the Repealing Act (XVI of 1874), have here been omitted.

† The words "Joint Magistrate," which were repealed by the Repealing Act (XII. of 1873), have here been omitted in ss 2, 5, 6, and 7.

‡ Certain words, which were repealed by the Repealing Act (XII. of 1873), have here been omitted.

there shall appear reason to suspect that any European officer or soldier belonging to the said Forces, who may have deserted or be absent without leave, is on board any ship, vessel, or boat, or is concealed on shore at any such port or place within the territories of the East India Company, it shall be lawful for such commanding officer or Justice of the Peace, Magistrate,* or person lawfully exercising the powers of a Magistrate* as aforesaid, to issue a warrant, authorizing the person or persons to whom such warrant may be addressed to enter into and search, at any time of the day or night, any such ship, vessel, or boat, or any house or place on shore, and to apprehend any such officer or soldier, and to detain him in custody in order to his being dealt with according to law.

Warrant to whom to be addressed, and by whom to be executed.

**6.** The warrant to be issued under the preceding section may be addressed to any European officer or soldier of the said Forces, or to all constables, peace-officers, and other persons who may be bound to execute the warrant of any Justice of the Peace, Magistrate,* or person lawfully exercising the powers of a Magistrate, and acting in the execution of this Act; and all such persons shall be bound to execute, perform, and obey such warrant.†

Persons apprehended how to be dealt with, &c.

**7.** Every person who shall be apprehended under any warrant under the fifth section of this Act shall be brought without delay before a Justice of the Peace, Magistrate,* or person lawfully exercising the powers of a Magistrate, in or near the place wherein such person shall have been arrested, who shall examine such person, and, if he shall be satisfied, either by the confession of such person or the testimony of one or more witness or witnesses, or by his own knowledge, that such person is a deserter from the said Forces, shall cause him to be delivered, together with any depositions and papers relative to the case, to the commanding officer of the regiment, corps, or detachment to which he shall belong, if the same shall be in or near the place of such arrest, or otherwise to him to the commanding officer of the nearest military station, in order that he may be dealt with according to law.

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* The words "Joint Magistrate," which were repealed by the Repealing Act (XII. of 1873), have here been omitted in ss. 2, 5, 6, and 7.

† Now a police-officer may without orders from a Magistrate, and without a warrant, arrest any person reasonably suspected of being a deserter from Her Majesty's army.—See the new Code of Criminal Procedure (Act V of 1898), s. 54, cl. (6).

# ACT NO. IX. OF 1874.*

## THE EUROPEAN VAGRANCY ACT, 1874.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*Received the assent of the Governor-General on the 7th April 1874.*

*An Act to consolidate and amend the law relating to European Vagrancy.*

Preamble.

WHEREAS it is expedient to consolidate and amend the laws relating to persons of European extraction who wander in a destitute condition throughout India; It is hereby enacted as follows:—

### PART I.

PRELIMINARY.

Short title.

**1.** This Act may be called "The European Vagrancy Act, 1874;"

Local extent.

It extends to the whole of British India and to the dominions of Princes and States in India in alliance with Her Majesty;

Commencement.

And it shall come into force at once: Provided that sections 4 to 16 (both inclusive), 19, 20, 24, and 29,† shall not come into force in Coorg, or in the Andaman and Nicobar Islands, or in any of the dominions of the Princes and States in India in alliance with Her Majesty not situate within the limits of any Presidency, Lieutenant-Governorship, or Chief Commissionership in British India, until such day or respective

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* For the Statement of Objects and Reasons, see Gazette of India, 1873, Pt. V., p. 399; for Proceedings in Council, see *ibid*, 1874, Extra Supplement, August 23rd, pp. 10 and 14; *ibid*, 1874, Supplement, pp. 323 and 412.

This Act has been declared in force in—

Upper Burma generally (except the Shan States), see the First Part of the Second Schedule to the Upper Burma Laws Act (XX. of 1886); Angul and the Khondmals by the Angul District Regulation (I. of 1894), s. 3;

British Baluchistan by the British Baluchistan Laws Regulation (I. of 1890);

the Arakan Hill District by the Arakan Hill District Laws Regulation (IX. of 1874), s. 3.

It has been declared in force in the Santhal Parganas by the Santhal Parganas Settlement Regulation (III. of 1872) as amended by the Santhal Parganas Laws Regulation (III. of 1886).

It has been declared, by notification under s. 3 (*a*) of the Scheduled District Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely:—

the Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum, see Gazette of India, 1881, Pt. I., p. 504. The Lohardaga District at this time included the Palamau District.

It has been extended, by notification under s. 5 of the same Act, to the Scheduled District of the North-Western Provinces Tarai, see Gazette of India, 1876, Pt. I., p. 505.

† These sections have been extended to the Native States within the limits of—

(1) The Madras Presidency
(2) The Lower Provinces of Bengal } see Gazette of India, 1870, Pt. I., p. 723;
(3) The Central India Agency, see Gazette of India, 1891, Pt. I., p. 552;
(4) The Punjab, see Gazette of India, 1872, Pt. I., p. 188; and
(5) they have also been extended to the Hyderabad State, see Gazette of India, 1890 Pt. I., p. 527.

1874. Act 9.

days as the Governor-General in Council from time to time, by notification in the Gazette of India, appoints in this behalf.

Repeal of Acts.

**2.** Acts No. XXI. of 1869 *(to provide against European Vagrancy)* and No. XXVIII. of 1871 *(to amend the European Vagrancy Act, 1869)* are hereby repealed.

But all appointments and orders made, work-houses provided, certificates given, powers conferred, rules prescribed, and exemptions granted under the former Act, shall be deemed to have been respectively made, provided, given, conferred, prescribed, and granted under this Act.

Interpretation-clause.

**3.** In this Act—

"Person of European extraction."

"Person of European extraction" includes—

(*a*) persons born in Europe, America, the West Indies, Australia, Tasmania, New Zealand, Natal, or the Cape Colony;

(*b*) the sons and grandsons of such persons:

but does not include persons commonly called Eurasians or East Indians:

"Vagrant."

"Vagrant" means a person of European extraction found asking for alms, or wandering about without any employment or visible means of subsistence:

"Master of a ship."

"Master of a ship" includes any person in charge of a decked vessel:

"Magistrate."

And in Parts III. and V. of this Act, "Magistrate" means, within the limits of the towns of Calcutta, Madras, and Bombay, a Magistrate of Police,* and, outside those limits, a person exercising powers under the Code of Criminal Procedure† not less than those of a Magistrate of the second class.

## PART II.

### PROCEDURE.

Power to require apparent vagrant to go before Magistrate.

**4.** Any police-officer may, within the limits of the towns of Calcutta, Madras, and Bombay, require any person who is apparently a vagrant to accompany him or any other police-officer to, and to appear before, the nearest Magistrate of Police,* and may, without those limits, require any such person to accompany him or any other police-officer to, and to appear before, the nearest Justice of the Peace exercising the powers of a Magistrate of the first class under the Code of Criminal Procedure.†

Summary inquiry into vagrant's circumstances.

**5.** The Magistrate of Police* or Justice shall in such case, or in any other case where a person apparently a vagrant comes before him, make a summary inquiry into the circumstances and character of the apparent vagrant; and, if he is satisfied that such person is a vagrant, he shall record in his office a declaration to that effect.

Declaration of vagrancy.

Order to go to work-house.

If he is further of opinion that the vagrant is not likely to obtain employment at once, or if he has reason to believe that a declaration of vagrancy has on any former occasion been

* Read now "Presidency Magistrate," see Act V. of 1898, s. 3.

† See now the Code of Criminal Procedure (Act V. of 1898).

recorded in respect of such vagrant, he shall require the vagrant to go to a Government work-house, and shall draw up an order to that effect.

The vagrant shall then be placed in charge of the police for the purpose of being forwarded to the work-house, and the said order shall be a sufficient authority to the police for retaining him in their charge while he is on his way to the work-house, and to the Governor of the work-house for receiving and detaining such vagrant.

Forwarding vagrant to place of employment.

**6.** Where the officer making the inquiry mentioned in section 5 is of opinion that the vagrant is likely to obtain employment in any place subject to the Local Government, or (when the vagrant is in any part of the dominions mentioned in section 1) in any place subject to any adjacent Local Government, such officer may, in his discretion, forward the vagrant to such place in charge of the police, and draw up an order to that effect.

Such order shall be a sufficient authority to the police for retaining the vagrant in their charge while he is on his way to such place of employment.

Assistance to obtain employment.

**7.** Upon his arrival at the place of employment, the vagrant shall be taken before the nearest Magistrate of Police* or Justice of the Peace exercising powers as aforesaid, to whom the order for transmission shall be delivered.

Such officer shall thereupon, to the best of his ability, assist the vagrant in seeking employment, and may, in the meantime, if he think fit, keep the vagrant in the charge of the police.

Should the vagrant fail to obtain suitable employment within a reasonable time not exceeding fifteen days from such arrival, such officer shall forward him to a Government work-house in the manner provided by section 5.

Subsistence-allowance.

**8.** Every person while in charge of the police, whether before inquiry as to his vagrancy, or, while he is on his way, under section 5, to the work-house, or under section 6, to a place of employment, shall be entitled to an allowance for his subsistence at the rate of eight annas per diem.

The Magistrate of Police* or Justice before whom any vagrant is taken under section 7 may, if he think fit, order the vagrant to receive a similar allowance while he is seeking employment.

The Local Government shall cause such allowance to be paid out of such funds at its disposal, and in such manner, as it may, from time to time, direct.

Power to give certificates.

**9.** Any Magistrate of Police* or Justice of the Peace exercising powers as aforesaid may, on being satisfied that any person of European extraction is not likely to become a vagrant, give such person a certificate under his hand, stating that for a certain time (mentioning it) not exceeding six months from the date of the certificate, and within certain limits (mentioning them), nothing in sections 4, 5, 6, and 7, shall apply to the holder of such certificate; and thereupon, so long as the certificate remains in force, nothing in sections 4, 5, 6, and 7, shall apply to such person within such limits as aforesaid.

Form of certificate.

Every such certificate shall be in the form set forth in the first schedule to this Act annexed, or as near thereto as circumstances will admit.

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* Read now "Presidency Magistrate," see the Code of Criminal Procedure (Act V. of 1898), s. 3.

1874. Act 9.

Power to invest certain officials with jurisdiction of Justices under sections 5, 7, 8, and 9.

**10.** The Local Government may, from time to time, by notification in the official Gazette,* invest any Justice of the Peace, District Superintendent of Police, or Assistant District Superintendent of Police, with the jurisdiction and powers conferred by this Part on a Justice of the Peace exercising powers as aforesaid.

## PART III.

### GOVERNMENT WORK-HOUSES.

Provision of Government work-houses.

**11.**† The Local Government, with the previous sanction of the Governor General in Council, may provide work-houses with their necessary furniture and establishment, at such places as it may think proper, for the temporary reception of vagrants;

or may, by writing under the hand of a Secretary to such Government, certify any building, or part of a building, not provided as a work-house under the former part of this section, to be fit for a work-house for the purposes of this Act. Every such certificate shall be published in the local official Gazette, and thereupon such building or part of a building shall, until the Local Government otherwise orders, be deemed a Government work-house under this Act.

Scale of diet.

The Local Government shall allow the same scale of diet for the support of vagrants received in such work-houses as is for the time being allowed for Europeans confined in the local prisons or penitentiaries.

Superintendence of work-houses.

**12.**‡ Every such work-house shall be under the immediate charge of a Governor, who shall be appointed, and may be suspended or removed, by the Local Government.

Every such Governor shall, if the Local Government think fit, be subject to the orders of a Committee of Management appointed from time to time by such Government, or, in the absence of a Committee, to the orders of such officer as the Local Government from time to time appoints in this behalf.

Search of vagrants.

**13.** Every such Governor may order that any vagrant admitted to the work-house under his charge shall be searched, and that the vagrant's bundles, packages, and other effects shall be inspected, and may direct that any money then found with or on the

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* For instance of such notification, see Madras List of Local Rules and Orders, Vol I., Ed. 1898, p. 26.

† For notifications issued under the powers conferred by this section in—

| | |
|---|---|
| Bombay . . . | see Bombay List of Local Rules and Orders, Vol. I., Ed. 1896 p. 109; |
| Burma . . . | see Burma Laws List, Ed. 1897, p. 49; |
| N.-W. P. and Oudh . | see N.-W. P and Oudh List of Local Rules and Orders, Ed. 1894, p. 43; |
| Central Provinces . | see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 19. |

‡ For notifications issued under the powers conferred by this section in—

| | |
|---|---|
| Bombay . . . | see Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, p. 109; |
| Burma . . . | see Burma Laws List, Ed. 1897, p. 49; |
| Madras . . . | see Madras List of Local Rules and Orders, Vol. I., Ed. 1898, p. 27. |
| Central Provinces . | see Central Provinces List of Local Rules and Orders, Ed 1896, p. 19. |

vagrant, shall be applied (subject to the orders of the Local Government) towards the expense of carrying this Act into execution, and may order that all or any of the said effects shall be sold, and that the produce of the sale be applied as aforesaid, but subject to the like orders.

**14.** Vagrants admitted to work-houses under this Act shall be subject to such rules of management and discipline as may, from time to time, be prescribed by the Local Government with the previous sanction of the Governor-General in Council.*

Discipline.

The Local Government may authorize† any Governor of a work-house to punish (under or not under the supervision and direction of a Committee of Management, as the Local Government thinks fit) any vagrant who knowingly disobeys or neglects any such rule with any one of the following punishments (namely):—

(*a*) solitary confinement within the work-house for any time not exceeding seven days;

(*b*) solitary confinement within the work-house for any time not exceeding three days upon a diet reduced to such extent as the Local Government may prescribe;‡

(*c*) hard labour for any time not exceeding seven days;

(*d*) reduction of diet to such extent as the Local Government may prescribe‡ for any time not exceeding five days:

or, in lieu of any such punishment, any such vagrant may, on conviction before a Magistrate of such disobedience or neglect, be punishable with rigorous imprisonment in jail for a term which may extend to three months.

**15.** The Governor and the Committee of Management (if any) of every such work-house shall use his and their best endeavours to obtain outside the work-house suitable employment for the vagrants admitted thereto.

Refusal to accept employment.

When such employment is obtained, any such vagrant refusing or neglecting to avail himself thereof shall, on conviction before a Magistrate, be punishable with rigorous imprisonment for a term which may extend to one month.

## PART IV.

### REMOVAL FROM INDIA.

**16.** If, after the lapse of a reasonable time, no suitable employment is obtainable for any such vagrant, the Local Government may either (when he has entered into such

Removal of vagrants.

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* For notifications prescribing such rules in—
Bombay . . . see Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, p. 110;
Madras . . . see Madras List of Local Rules and Orders, Vol. I., Ed. 1898, p. 27;
N.-W. P. and Oudh. see North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 43.

† For notifications conferring such authority in—
Burma . . . see Burma Rules Manual, Ed. 1897, p. 36;
Madras . . . see Madras List of Local Rules and Orders, Vol. I., Ed. 1898, p. 27.

‡ For instance of such notification, see Burma Rules Manual, Ed. 1897, p. 36.

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agreement as hereinafter mentioned) cause him to be removed from British India in manner hereinafter provided, the cost of such removal being paid by Government;

Cost of removal.

or it may cause sections 23 and 30 to be read to him, and may then release him.

**17.** Any vagrant or other person of European extraction may enter into an agreement* in writing with the Secretary of State for India in Council binding himself—

Agreements with vagrants.

(*a*) to proceed to such port in British India as shall be mentioned in the agreement;

(*b*) there to embark on board such ship, and at such time, as is directed by an officer appointed in this behalf by the Local Government of the territories in which such port is situate for the purpose of being removed from India at the expense of the said Secretary of State in Council;

(*c*) to remain on board such ship until she has arrived at her port of destination; and

(*d*) not to return to India until five years have elapsed from the date of such embarkation.

Every such agreement† shall be in the form set forth in the second schedule to this Act annexed, or as near thereto as circumstances admit.

Form of agreement.

**18.** The Local Government of the territories in which the said port is situate may enter into such contracts for conveyance or otherwise, and perform such other acts as may be necessary to carry out such agreement on the part of the said Secretary of State in Council.

Power to perform agreement.

## PART V.

### PENALTIES.

**19.** Any person refusing or failing to accompany a police-officer to, or to appear before, a Magistrate of Police‡ or Justice of the Peace, for the purpose of preliminary inquiry, when required so to do under section 4, may be arrested without warrant, and shall be punishable, whether he be or not a European British subject, on conviction before a Magistrate, with imprisonment for a term which may extend to one month, or with fine, or with both.

Refusal to go before Magistrate.

And any person, who, when required under section 4 to accompany a police-officer to, or to appear before, a Magistrate of Police‡ or Justice of the Peace, commits an offence punishable under section 353 of the Indian Penal Code, may, whether he be or be not a European British subject, be tried by a Magistrate for such offence.

Assaulting police.

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* For notification requiring that the Commissioner of Police and Justices of the Peace do obtain Government sanction before concluding an agreement with any vagrant, see Madras List of Local Rules and Orders, Vol. I., Ed. 1898, p 27.

† The words "may be on unstamped paper and" were repealed by the Indian Stamp Act (I. of 1879). That Act exempts these agreements from stamp-duty, see Sch. II., No. 2, cl. (*f*). Act I. of 1879 has been repealed and superseded by Act II. of 1899. For exemptions of agreements under the European Vagrancy Act, see art. 5 (headed Agreement), Sch. I., Act II. of 1899.

‡ Read now "Presidency Magistrate," see the Code of Criminal Procedure (Act V. of 1898), s. 3.

**20.** Any vagrant who escapes from the police while committed to their charge under the orders specified in sections 5 and 6,

Escaping from police.

Quitting work-house without leave.

or who leaves a work-house, under this Act, without permission from the Governor,

or who, having, with such permission, left a work-house for a limited time or a specified purpose, fails to return on the expiration of such time, or when such purpose has been accomplished or proves to be impracticable,

Failing to return to work-house.

shall, for every such offence, be punishable, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years.

**21.** Any person entering into an agreement under section 17, and failing to proceed in pursuance thereof to the port therein mentioned,

Failing to proceed to port of embarkation.

Refusing to go on board ship.

or refusing to embark when directed so to do under the same section,

Escaping from ship.

or escaping from the ship in which he has so embarked before she has reached her port of destination,

shall, for every such offence, be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to six months.

**22.** Any person returning to India within five years of the date of his embarkation pursuant to any agreement entered into under section 17, unless specially permitted so to do by the Secretary of State for India, shall, for every such offence, be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years.

Returning to India.

Begging.

**23.** Any person of European extraction found asking for alms when he has sufficient means of subsistence,

or asking for alms in a threatening or insolent manner,

or continuing to ask for alms of any person after he has been required to desist,

shall be punishable, whether he be or be not a European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term not exceeding one month for the first offence, two months for the second, and three months for any subsequent offence.

**24.** Every person imprisoned under section 19, 20, 21, 22, or 23, shall, at the end of his term of imprisonment, be placed before the nearest Magistrate of Police* or Justice of the Peace exercising powers as aforesaid, who shall, if he think fit, forthwith deal with him in the manner prescribed by sections 5 and 6.

Procedure on release of imprisonment.

The order of transmission shall certify the fact of the previous conviction.

**25.** Every master of a ship landing or allowing to land, in any part of British India, any person of European extraction who has been convicted, in any other part of Her Majesty's dominions of felony, or of an offence which, if

Penalty on ship-master bringing European convicts to India.

* Read now "Presidency Magistrate," see the Code of Criminal Procedure (Act V. of 1898), s 3.

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committed in England, would be felony, shall, on conviction before a Magistrate, be liable, for every such person so landed or allowed to land, to pay a fine not exceeding five hundred rupees and not less than one hundred rupees, and, in default of payment, to imprisonment for any term not exceeding two months,

unless the defendant satisfy the Magistrate by evidence (which the defendant is hereby declared competent to give) that he had made due enquiry as to the person so landed or allowed to land, and that he had no reason to believe that such person had been convicted as aforesaid.

Power to exempt certain ship-masters.

The Governor-General in Council may from time to time, by notification in the Gazette of India, exempt* from the operation of the former part of this section the masters of any class of ships, on such terms as to the Governor-General in Council seem fit, and either in respect of all or of any of the persons on board such ships.

The Governor-General in Council may, in like manner, revoke any exemption made under this section.

Recovery of fines.

**26.** All fines imposed under this Act may be recovered if for offences committed outside the local limits of the towns of Calcutta, Madras, and Bombay, in the manner prescribed by the Code of Criminal Procedure,† and "in the manner provided by the law for the time being in force for the recovery of fines imposed by Criminal Courts.‡"

Payment of fines.

All fines recovered under this Act shall be paid to the credit of the Government of India, or as the Governor-General in Council from time to time directs.

Prosecutions.

**27.** All prosecutions under this Act may be instituted and conducted by such officer as the Local Government from time to time appoints in this behalf.§

Limits of jurisdiction.

**28.** In imposing penalties under this Part and Part III. of this Act, no person shall exceed the limits of jurisdiction prescribed for him by the Code of Criminal Procedure† in the case of offenders not being European British subjects.

Validity of proceedings where Magistrate is not the nearest.

**29.** No proceeding under this Act shall be deemed invalid by reason only that the Magistrate of Police‖ or Justice before whom a person, apparently a vagrant, was required to appear, or before whom a person was placed under section 24, was not the nearest.

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* For notification issued under the powers conferred by s. 25 of Act XXI. of 1869, which is kept in force by s. 2 of this Act, see Gazette of India, 1870, Pt I., p. 723.

† See now Act V. of 1898

‡ The words quoted have been substituted for the words "if for offences committed within those limits in the manner prescribed by any Act regulating the police of such towns in force for the time being" by the Repealing and Amending Act (XII. of 1891).

§ For notifications issued under the powers conferred by this section in—

(1) Bombay . . . see Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, p. 116;
(2) Burma . . . see Burma Rules Manual, Ed. 1897, p. 36;
(3) Madras . . . see Madras List of Local Rules and Orders, Vol. I., Ed. 1898, p. 27;
(4) Central Provinces. . see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 19.

‖ Read now "Presidency Magistrate," see the Code of Criminal Procedure, 1898 (Act V. of 1898), s. 3 (2).

PART VI.

MISCELLANEOUS.

**30.** Any European British subject who, upon the summary enquiry mentioned in section 5, has been determined to be a vagrant, or who has been convicted under section 22 or section 23, shall, so long as he remains in India, be subject, beyond the limits of the said towns, to the provisions of the Code of Criminal Procedure* (other than those contained in Chapter XXXVIII.† of the same Code) applicable to a European not being a British subject.

**Deprivation of privileges of European British subjects under Criminal Procedure Code.**

If from any cause he is committed or held to bail by a Justice of the Peace to take his trial before a High Court, he shall not be at liberty to object to the jurisdiction of such Justice of the Peace or High Court on the ground of anything contained in the former part of this section:

Save as aforesaid, nothing herein contained shall be deemed to confer jurisdiction over European British subjects on Magistrates, who, if this Act had not been passed, would have had no such jurisdiction.

**31.** Whenever any person of European extraction lands in India, or, being a non commissioned officer or soldier in Her Majesty's Army, leaves that Army in India under an engagement to serve any other person, or any Company, Association or body of persons in any capacity,

**Liability of importers of Europeans or employers of soldiers becoming vagrants.**

and whenever a sailor of European extraction, not being a British subject, is discharged from his ship in any British Indian port,

and becomes chargeable to the State as a vagrant within one year after his arrival in India or leaving the Army, or discharge from his ship, as the case may be, then the person or Company, Association, or body, to serve whom he has so landed in India or left the Army, or, in the case of a sailor, the person who is, at the date of the discharge, the owner or agent of the ship from which the sailor has been so discharged, shall be liable to pay to the Government the cost of his removal under this Act and all other charges incurred by the State in consequence of his becoming a vagrant.

Such costs and charges shall be recoverable by suit as if an express agreement to repay them had been entered into with the Secretary of State for India in Council, by the person, Company, Association, body, owner, or agent chargeable.

**Recovery of charges.**

**32.** When any person of European extraction lands in India, being or having been during his passage to India, or from one Indian port to another, in charge of, or in attendance upon, any animal, and becomes chargeable to the State as a vagrant, within one year after his arrival in India, then

**Liability of consignee in case of Europeans who arrive in charge of animals, and become vagrants.**

the consignee of such animal,

or the agents in India for the sale of such animal,

or, if such consignee or agents cannot be found,

the agent to whom the ship in which such animal arrived in India was consigned,

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* See now Act V. of 1898.

† See now Chapter VIII. of the Code of Criminal Procedure (Act V. of 1898).

1874. Act 9.

shall be liable to pay to the Government the cost of such person's removal under this Act, and all other charges incurred by the State in consequence of his becoming a vagrant.

Any such consignee or agent shall be entitled to charge the consignor or principal for any payment to the Government under this section.

For the purposes of this section 'consignee' includes any person who undertakes to dispose of such animal for the benefit of the consignor, and

'Consignee' defined.

'agent' includes any person who undertakes the agency of such ship, though it may not have been consigned to him.

'Agent' defined.

**33.** In any proceeding under this Part, a certified copy of the declaration recorded under section 5 shall be *prima-facie* evidence that the European British subject named therein has been, upon the summary enquiry mentioned in that section, determined to be, and that he was at the date of the declaration, a vagrant.

Evidence of declaration under section 5.

**34.** The powers and duties conferred and imposed by sections 16 and 18 on a Local Government may be exercised and performed by such class of officers as the Local Government,* from time to time, by notification in the official Gazette, appoints in this behalf.

Exercise of powers conferred on Local Government.

**35.** The powers and duties conferred and imposed by this Act on Magistrates, Justices of the Peace exercising the powers of a Magistrate of the first class, and police-officers respectively, may, in places beyond the limits of British India, be exercised and performed by such persons respectively as the Governor-General in Council from time to time, by notification in the Gazette of India, appoints in this behalf.

Exercise in Native States of powers conferred on Magistrates, Justices, and Police.

**36.** The Governor-General in Council may, from time to time, make rules,† consistent with this Act, for the guidance of officers in matters connected with its enforcement.

Power to make rules for guidance of officers.

All such rules shall be published in the Gazette of India, and shall thereupon have the force of law.

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## THE FIRST SCHEDULE.

(*See section 9.*)

WHEREAS *E F*, of , a person of European extraction, and holder of this certificate, has appeared before me, and satisfied me that he is not likely to become a vagrant within the meaning of the European Vagrancy Act, 1874, THESE ARE TO CERTIFY that, for the space of months from the date hereof, and within the Province [*or* District] of , nothing in sections 4, 5, 6, and 7 of the same Act

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* For notifications making such direction in—

(*1*) Bombay . . . see Bombay List of Local Rules and Orders, Vol. I. Ed. 1896, p. 116;

(*2*) Madras . . . see Madras List of Local Rules and Orders, Vol. I. Ed 1898, p. 27;

(*3*) N.-W. P. and Oudh . see North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 43;

(*4*) Central Provinces . see Central Provinces List of Local Rules and Orders. Ed. 1896, p. 10.

† For rules made under the powers conferred by s. 36 of Act XXI. of 1869, which are kept in force by s. 2 of this Act, see Gazette of India, 1870, Pt. I., p. 721, and for subsidiary rules for Burma, see Burma Rules Manual, Ed. 1897, p. 37.

shall be deemed to apply to him, unless he is found asking for alms, IN WHICH CASE this certificate shall be void.

(Signed) G. H.,

Dated this day of 18 .

*Magistrate of Police* for the Town of* or *Justice of the Peace for exercising the powers of a Magistrate of the class.*

## THE SECOND SCHEDULE.

(*See section 17.*)

ARTICLES OF AGREEMENT made this day of 18 , BETWEEN the Secretary of State for India in Council of the one part, and *C D*, of, &c. [*the vagrant*], of the other part: Each of the parties hereto (so far as relates to the acts on his own part to be performed) hereby agrees with the other of them as follows:—

1. The said *C D* shall proceed forthwith to the port of [*the port of embarkation*].

2. The said *C D* shall there embark on board such ship and at such time as an officer appointed in this behalf by the Local Government shall direct.

3. The said *C D* shall remain on board such ship until she shall have arrived at her port of destination.

4. The said *C D* shall not return to India until five years shall have elapsed from the date of such embarkation, unless specially permitted so to return by the said Secretary of State.

5. The said Secretary of State in Council shall defray the cost of the transit of the said *C D* to the said port, and of his lodging and subsistence during such transit and during his detention (if any) at the same port, and shall contract with the owner of the said ship or his agent, for the passage of the said *C D* on board the said ship, and for his subsistence during the voyage for which he shall embark as aforesaid.

In witness whereof *A B* (by order of the Governor General of India in Council [*or* the Governor of in Council, *or* the Lieutenant-Governor of , *or* the Chief Commissioner of ], on behalf of the said Secretary of State in Council), and the said *C D* have hereunto set their hands the day and year first above written.

* Read now "Presidency Magistrate," see the Code of Criminal Procedure (Act V. of 1898), s. 3.

# ACT NO. XII. OF 1896.

## THE EXCISE ACT, 1896.

CONTENTS.


CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Title, local extent, and commencement.
2. Repeal.
3. Definitions.
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# ACT NO. XII. OF 1896.

## THE EXCISE ACT, 1896.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 19TH MARCH 1896.

*An Act to amend the law relating to the excise-revenue in force in Northern India, Burma, and Coorg.*

WHEREAS it is expedient to amend the law in force in Northern India, Burma, and Coorg relating to the production, sale, possession, and import of spirit, fermented liquors, and intoxicating drugs, and the collection of the revenue derived therefrom; It is hereby enacted as follows:—

### CHAPTER I.

### PRELIMINARY.

Title, local extent, and commencement.

**1.** (*1*) This Act may be called "The Excise Act, 1896."

(*2*) It extends to the territories administered respectively by the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh, the Lieutenant-Governor of the Punjab, and the Chief Commissioners of the Central Provinces, Burma (inclusive of Upper Burma), Coorg, and Ajmere and Merwara; and

(*3*) It shall come into force at once.

Repeal.

**2** (*1*) The enactments mentioned in the schedule are repealed to the extent specified in the fourth column thereof.

(*2*) But all rules made, powers conferred, and licenses and farms granted under any of the enactments so repealed and in force at the commencement of this Act, shall be deemed to have been respectively made, conferred, and granted under this Act.

Definitions.

**3.** (*1*) In this Act—

(*a*) "Chief Revenue Authority" means,—

in the territories administered by the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh,—the Board of Revenue;

in the territories respectively administered by the Lieutenant-Governor of the Punjab and the Chief Commissioner of Burma,—the Financial Commissioner; and

in the territories respectively administered by the Chief Commissioners of the Central Provinces, Coorg, and Ajmere and Merwara,—the Chief Commissioner:

(*b*) "Collector" includes any revenue-officer in independent charge of a district, and any officer appointed by the Local Government to discharge, throughout any specified local area, the functions of a Collector under this Act:

1896. Act 12.

(*c*) "Commissioner of Revenue" means any officer appointed by the Local Government to discharge, throughout any specified local area, the functions of a Commissioner of Revenue under this Act:

(*d*) "Magistrate" means any Magistrate exercising powers not less than those of a Magistrate of the second class, or any Magistrate of the third class specially authorized in this behalf by the Magistrate of the District:

(*e*) "import" includes removal into one Province of British India from another:

(*f*) "place" includes also house, boat, and raft:

(*g*) "tari" means the sap of any kind of palm tree:

(*h*) "fermented liquor" means malt liquor, wine, pachwai, and fermented tari, and, in any provision of this Act, shall, if the Local Government, subject to the control of the Governor-General in Council, so directs, include any other fermented liquor, and also tari, though it may not have perceptibly begun to ferment:

(*i*) "spirit" means any liquor containing alcohol obtained by distillation:

(*j*) the expression "intoxicating drugs" means ganja, bhang, charas, and every preparation and admixture of the same:

(*k*) "hemp" means any variety of the hemp plant from which intoxicating drugs can be produced:

(*l*) "tola" means a weight of one hundred and eighty grains Troy:

(*m*) "ser" means a weight of eighty tolas:

(*n*) the articles next hereinafter mentioned shall be deemed to be sold retail within the meaning of this Act when sold in quantities not exceeding those next hereinafter specified in respect of them, that is to say, –

foreign spirit or foreign fermented liquor, two imperial gallons or twelve reputed quart bottles;

country spirit, one ser; and, in Burma, one reputed quart bottle;

country fermented liquor, four sers: and, in Burma, four reputed quart bottles:

bhang, or any preparation or admixture thereof, one ser;

ganja or charas, or any preparation or admixture thereof, five tolas.

If sold in larger quantities, they shall be deemed to be sold wholesale.

(*o*) In any case in which doubt arises, the Local Government may decide what, for the purposes of this Act, shall be deemed to be "country spirit," "country fermented liquor," "foreign spirit," and "foreign fermented liquor;" and such decision shall be binding on the Courts.

Saving of Acts XVI. of 1863 and XIII. of 1889.

**4.** Nothing herein contained shall affect Act XVI of 1863 (*to make special provision for the levy of the Excise-duty payable on spirits used exclusively in Arts and Manufactures or in Chemistry*) or the Cantonments Act, 1889.

## CHAPTER II.

### PRODUCTION OF SPIRIT AND FERMENTED LIQUOR.

Manufacture of spirit and liquor without license prohibited.

**5.** No person shall construct, work, or possess a distillery, still, or brewery, or manufacture fermented liquor, in any district except under a license granted by the Collector, or by a person authorized by the Collector to grant such license, and in accordance with the conditions (if any) contained therein.

Power to establish distilleries for country spirit.

**6.** The Collector may, with the previous sanction of the Chief Revenue Authority, from time to time—

(*a*) establish at any place within his district a distillery in which country spirit may be made, and discontinue any distillery so established; and

(*b*) fix limits within his district within which no such spirit, unless made in the said distillery, shall be introduced without a pass from him.

Duty on spirit.

**7.** No spirit shall be removed from any distillery licensed under section 5, or established under section 6, until—

(*a*) such duty as the Local Government may from time to time fix in respect of such spirit has been paid, or

(*b*) a bond for such duty has been executed, or

(*c*) duty in respect of the materials used in making such spirit has been levied at such rates, and in such manner, as the Local Government, with the previous sanction of the Governor-General in Council, may, from time to time, direct.

*Explanation.*—Duty may be fixed or made payable under this section at different rates according to the places to which any spirit is to be removed for consumption.

Duty on fermented liquor.

**8.** No fermented liquor shall be removed from a brewery licensed under section 5 until -

(*a*) duty has been paid thereon at the rate for the time being leviable under the Indian Tariff Act, 1894,* on like liquor imported by sea into any part of British India except Aden and Perim, or at such lower rate as the Local Government, having regard to the circumstances of the brewery, or of the local area in which the brewery is situate, may, from time to time, prescribe, or

(*b*) a bond for such duty has been executed.

Power for Chief Revenue Authority to make rules as to distilleries and breweries licensed under section 5.

**9.** The Chief Revenue Authority may, from time to time, make rules as to—

(*a*) the granting of licenses for distilleries, stills, and breweries under section 5;

(*b*) the notices to be given by the proprietor of a licensed distillery or licensed brewery when he commences and discontinues work;

(*c*) the size and description of the stills in such distillery;

* Act VIII. of 1894.

(*d*) the storing and passing-out of the spirit made in such distillery, or of the fermented liquor made in such brewery, and the contents of the passes;

(*e*) the inspection and examination of such distillery or brewery, and the warehouses connected therewith, and of the spirit or fermented liquor made and stored therein;

(*f*) the furnishing of statements of the spirit and the stills, coppers, casks, and other utensils in such distillery, or of the fermented liquor and the mash-tuns, underbacks, wort-receivers, coppers, heating tanks, coolers, and collecting, fermenting, and other vessels in such brewery.

Power for Chief Revenue Authority to make rules for distilleries established under section 6.

**10.** The Chief Revenue Authority may, from time to time, make rules as to—

(*a*) the management of distilleries established under section 6, and, in particular, the conditions on which any materials to be used in making spirit may be brought into such distillery;

(*b*) the conditions on which spirit may be made in such distilleries; and

(*c*) the storing and passing-out of the spirit so made, and the contents of the passes.

Sanction to rules under sections 9 and 10.

**11.** Except in the territories respectively administered by the Chief Commissioners of the Central Provinces, Coorg, and Ajmere and Merwara, the sanction of the Local Government is required to validate rules under sections 9 and 10.

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## CHAPTER III.

### Cultivation and Control of Intoxicating Drugs.

Prohibition, restriction, and regulation of cultivation of hemp and production of intoxicating drugs.

**12.** (*1*) In Burma, the cultivation of hemp and the preparation of intoxicating drugs are prohibited, except under, and in accordance with, a license granted by such officer as the Local Government may from time to time appoint in this behalf.

(*2*) In the other territories to which this Act extends, the Local Government, with the previous sanction of the Governor-General in Council, may, from time to time, by notification in the official Gazette, in respect of the whole or any part of the territories administered by it,—

(*a*) prohibit, absolutely or except under, and subject to the conditions of, a license granted by such officer as the Local Government may from time to time appoint in this behalf, the cultivation of the hemp plant and the production or preparation of intoxicating drugs from the hemp plant so cultivated, and place the cultivation of the hemp plant and the production or preparation and storage of such intoxicating drugs as aforesaid under such supervision as may be deemed necessary to secure payment of the duty (if any) imposed under this Act;

(*b*) restrict and regulate, in such manner as may by rule be prescribed, the collection by any person of the spontaneous growth of the hemp

plant and the preparation of intoxicating drugs from the spontaneous growth so collected ; and

(*c*) prohibit, absolutely or otherwise than by certain specified routes and under specified conditions, the import and transport of intoxicating drugs ;

and may, in like manner, cancel or vary any such notification.

**Duty on cultivation of hemp and intoxicating drugs.**

**13.** The Local Government, with the previous sanction of the Governor-General in Council, may, from time to time, by notification in the official Gazette, in respect of the whole or any part of the territories administered by it,—

(*a*) impose such duty, not exceeding two hundred rupees per acre, as it may think fit, on the cultivation of hemp ; or,

(*b*) impose such duty, not exceeding twenty rupees per ser, as it may think fit, on intoxicating drugs produced or prepared in, or imported into, or exported from, or transported from place to place within, any of the territories to which this Act extends, or any part thereof ;

and may, in like manner, alter or abolish any duty imposed under this section.

**Establishment and licensing of bonded and other warehouses and levy of duty on intoxicating drugs on issue therefrom.**

**14.** The Local Government, with the previous sanction of the Governor-General in Council, may, from time to time,—

(*a*) establish or license bonded or other warehouses for the storage of intoxicating drugs, and

(*b*) direct that, subject to such conditions (if any) as it may, from time to time, impose, the levy of the duty (if any) payable under section 13 on intoxicating drugs in transit to or from, or stored in, such warehouses, shall be postponed until such time as may, by rule, be fixed in this behalf.

**Payment of warehouse-dues.**

**15.** (*1*) If intoxicating drugs be lodged in a warehouse established under the last-foregoing section, the owner shall pay monthly, on receiving a bill or written demand for the same from the Collector or other officer deputed by the Collector in this behalf, warehouse-dues at such rates as the Chief Revenue Authority may fix.

(*2*) If any bill for warehouse-dues presented under this section is not discharged within ten days from the date of presentation, the Collector may, in discharge of such demand (any transfer or assignment of the drugs notwithstanding), cause to be sold, in such manner as he may think fit, such sufficient portion of the drugs as he may select.

(*3*) Out of the proceeds of such sale, the Collector shall satisfy, first, the duty payable in respect of the drugs sold, and, next, the demand in respect of which the drugs were sold, and shall then pay the surplus (if any) to the owner of the drugs on his application :

Provided that, if the drugs fail to produce a sum sufficient to satisfy the said duty and demand, the same shall not be sold, but shall be destroyed by, or by order of, the Collector :

Provided also that the application for such surplus (if any) as aforesaid be made within one year from the date of the sale of the drugs, or that sufficient cause be shown for not making it within such period.

1896. Act 12.

Period during which intoxicating drugs may remain warehoused.

**16.** Any intoxicating drugs warehoused under this Act may be left in the warehouse in which they are deposited, or in any warehouse to which they may in manner hereinafter provided be removed, till the expiry of two years from the date on which they were so deposited. The owner of any drugs remaining in a warehouse on the expiry of such period shall forthwith clear the same :

Provided that, when the license for a warehouse licensed under this Act is cancelled, and the Collector gives notice of such cancellation to the owner of any drugs deposited in such warehouse, such owner shall, within seven days from the date on which such notice is given, remove such drugs to another warehouse, or clear them.

Power to remove intoxicating drugs from one warehouse to another.

**17.** Any owner of intoxicating drugs warehoused under this Act may at any time within two years from the date on which the drugs were so warehoused, with the permission of the Collector, and on such conditions and after giving such security (if any) as the Collector may direct, remove the drugs from one warehouse to another, whether established or licensed by the same or another Local Government, and whether under this Act or under any other enactment for the time being in force.

Possession of intoxicating drugs.

**18.** (*1*) In Burma no person shall have in his possession any intoxicating drugs except under, and in accordance with the terms of, a general exemption granted by the Local Government, or a license granted by such officer as the Local Government may, from time to time, appoint in this behalf.

(*2*) In the other territories to which this Act extends, no person shall have in his possession any larger quantity of any intoxicating drugs than that specified in section 3, sub-section (*1*), clause (*n*), in respect of such drugs, unless he is permitted to collect, cultivate, manufacture, or sell the same, or holds a pass therefor from the Collector or some other officer empowered by the Local Government to grant such passes.

Power for Local Government to make rules.

**19.** The Local Government, with the previous sanction of the Governor-General in Council, may, from time to time, by notification in the official Gazette, make rules consistent with this Act—

(*a*) to regulate the time, place, and manner of payment of the duties (if any) imposed under section 13,

(*b*) to carry into effect the provisions of section 12, section 14, and section 18, or any of them, and,

(*c*) generally, to carry into effect the provisions of this chapter.

Power for Collector or other authorized officer to grant licenses and passes for the possession or transport of intoxicating drugs, and for Chief Revenue Authority to make rules.

**20.** The Collector or any other officer empowered by the Local Government in this behalf may, from time to time, grant licenses or passes to persons desirous of possessing or transporting intoxicating drugs, and the Chief Revenue Authority, with the previous sanction of the Local Government, may make rules to regulate the grant of such licenses or passes.

## CHAPTER IV.

### SALE OF SPIRIT, FERMENTED LIQUOR, AND INTOXICATING DRUGS.

Spirit, fermented liquor, and intoxicating drugs not to be sold without license.

**21.** No spirit, fermented liquor, or intoxicating drug, shall be sold, except under, and in accordance with the terms of, a license granted under the provisions hereinafter contained:

Provided as follows—

(*a*) nothing in this section applies to the sale of any foreign spirit or foreign fermented liquor legally procured by any person for his private use, and sold by him or by auction on his behalf, or on behalf of his representatives in interest upon his quitting a station or after his decease;

(*b*) any officer empowered in this behalf by the Chief Revenue Authority may grant to travelling merchants, subject to such rules and restrictions as such authority may from time to time prescribe, a general license authorizing them to sell foreign spirit and foreign fermented liquor wholesale in any district which they may visit in the course of their travels, without taking out a fresh license for that district;

(*c*) any person making or producing country spirit or country fermented liquor, in accordance with the provisions of this Act, may, subject to any rules from time to time made by the Local Government in this behalf, sell such spirit or liquor to any person licensed under this Act as a retail vendor of such spirit or liquor;

(*d*) any person authorized to cultivate the hemp plant may sell any intoxicating drug prepared from his plants to any person to whom he is permitted by the conditions of his license to sell the same, or to any person authorized to purchase the same by the order in writing of the Collector.

Licenses how granted and cancelled.

**22.** (*1*) Subject to the rules made by the Chief Revenue Authority under the powers conferred by this Act, the Collector may grant licenses for the sale of foreign spirit and foreign fermented liquor, wholesale or retail, and for the retail sale of country spirit or country fermented liquor, and (except in Burma) of intoxicating drugs, within his district or any part thereof, or at any place therein.

(*2*) Licenses for the sale of country spirit and country fermented liquor and intoxicating drugs wholesale, and licenses for the sale, in Burma, of intoxicating drugs retail, shall be granted only by such officer as the Local Government from time to time appoints in this behalf.

(*3*) Any license granted under this section may be cancelled by the Collector for any cause specified therein.

Further power to cancel licenses.

**23.** (*1*) Whenever the Collector considers that the license of a vendor of country spirit, country fermented liquor, or intoxicating drugs, should be cancelled for any cause other than those specified in such license, he shall remit a sum equal to the amount of the license-fee for fifteen days, and shall either give fifteen days' previous notice of his intention to cancel the license, or shall, in addition to remitting such sum as aforesaid, make such compensation for default of notice as the Commissioner of Revenue or the Chief Revenue Authority directs.

1896. Act 12.

(2) On the expiration of such notice or the payment of such additional compensation, the Collector may cancel the said license.

Surrender of retail license.

**24.** (1) Any retail vendor licensed under this Act may surrender his license on the expiration of one month's previous notice given by him to the Collector of his intention to surrender the same, and on payment of such sum, not exceeding the amount of the license-fee for six months, as the Collector may fix in this behalf.

(2) If the Collector is satisfied that there is sufficient reason for surrendering a license, he may remit the sum so fixed.

Power for Collector to farm fees, and for farmer to grant licenses.

**25.** (1) The Collector, with the sanction of the Chief Revenue Authority, may let in farm—

(a) the fees leviable in any district or part of a district on licenses for the retail sale of any description of country spirit or country fermented liquor or (except in Burma) of intoxicating drugs;

(b) the right to manufacture, in any district or part of a district in which no distillery is established under section 6, country spirit or country fermented liquor.

(2) When the fees so leviable, or the right to manufacture such spirit or liquor, or both, are or is let in farm, the farmer may, subject to such reservations or restrictions as the Collector, with the sanction of the Chief Revenue Authority, may from time to time make or impose, grant licenses for the retail sale, or for the manufacture, or for both, as the case may be, of such articles within the local limits of his farm, and shall file in the Collector's office a list of all the licenses granted by him in such form, and on such day or days in each year, as the Chief Revenue Authority may, from time to time, prescribe in this behalf.

Farm may be cancelled.

**26.** The Collector, with the sanction of the Chief Revenue Authority, may cancel any farm granted under this Act.

Compensation to farmers in certain cases.

**27.** If any such farm be cancelled for any cause other than a breach on the part of the farmer of the conditions of the farm, or if any reservation or restriction with respect to the grant of licenses be made or imposed within the term of the farm, the farmer shall be entitled to receive, for any loss which he sustains thereby, such compensation as the Chief Revenue Authority may determine.

Recovery of arrears by farmers.

**28.** Every farmer under this Act may use the same means and processes for the recovery of any arrear of fees due to him from any retail vendor as may be lawfully used by the local landholders for the recovery of arrears of rent due to them from their tenants.

Power for Chief Revenue Authority to regulate supply of tárí to licensed vendors.

**29.** The Chief Revenue Authority may, from time to time, make rules to regulate the mode in which tárí shall be supplied to licensed vendors of the same.

## CHAPTER V.

### POSSESSION AND IMPORT OF SPIRIT AND FERMENTED LIQUOR.

**Possession of spirit, &c.**

**30.** (*1*) No person shall have in his possession any quantity of any spirit or fermented liquor larger than that specified in section 3, sub-section (*1*), clause (*n*), in respect of such spirit or liquor, unless he is permitted to manufacture or sell the same, or he holds a pass therefor from the Collector or from some other officer empowered by the Local Government to grant such passes:

(*2*) Nothing in this section extends to—

(*a*) any foreign spirit or foreign fermented liquor in the possession of any common carrier or warehouseman as such, or purchased by any person for his private use, and not for sale, or

(*b*) tárí intended to be used for the manufacture of gur or molasses.

**Spirit and fermented liquor from foreign territory subject to duty.**

**31.** (*1*) A person shall not bring into any territory to which this Act extends any spirit manufactured at any place in India beyond the limits of British India until he has obtained a pass therefor from such officer as the Local Government from time to time appoints in this behalf, and has paid in respect thereof,—

(*a*) if the Local Government has fixed a duty under clause (*a*) of section 7 for like spirit manufactured in the part of the territory into which the spirit is to be brought, that duty, or,

(*b*) if the Local Government has not fixed a duty under that clause for like spirit manufactured in that part, a duty at such rate as the Local Government from time to time prescribes in this behalf, not exceeding the highest rate leviable, under the law for the time being in force, on spirit imported into British India by sea.

(*2*) The provisions of sub-section (*1*) with respect to spirit shall apply to fermented liquor also, with this modification, that the duty to be paid in respect of the liquor shall be the duty leviable on like liquor under the Indian Tariff Act, 1894,* or such lower duty as the Local Government, having regard to the rate or rates of duty for the time being leviable under clause (*a*) of section 8, may from time to time prescribe.

(*3*) If any question arises as to the duty to be charged on any spirit or fermented liquor under this section, the decision of the Local Government thereon shall be final.

**Spirit and fermented liquor from territory beyond India subject to duty.**

**32.** (*1*) The Governor-General in Council may, from time to time, by notification in the *Gazette of India*, impose such duty as he thinks fit on any spirit or fermented liquor brought by land from beyond the limits of India into any territory to which this Act extends, or into any specified part thereof, and may alter or abolish any duty so imposed.

(*2*) When any duty is imposed under this section, the Governor-General in Council may by rule prescribe the time, place, and manner of payment of the same.

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* Act VIII. of 1894.

1892. Act 12.

## CHAPTER VI.

### OFFICERS AND THEIR POWERS.

Collectors may appoint excise-officers.

**33.** The Collector may appoint persons, by name or by virtue of their office, to be officers for the collection of the excise-revenue and for the prevention of offences against this Act, and the officers so appointed shall, in addition to their ordinary designations (if any), be styled excise-officers.

Recovery of arrears of fees.

**34.** The Collector may recover any amount due to the Government under this Act or the rules made hereunder, by distress and sale of the moveable property of the person from whom such amount is due or of his surety, or by any other process for the time being in force for the recovery of arrears of land revenue due from landholders or from farmers of land or their sureties.

Power of excise-officers to inspect shops.

**35.** Any excise officer may enter and inspect at any time, by day or by night, the shop or premises in which any manufacturer or vendor licensed under this Act carries on the manufacture of country spirit, or the sale of country spirit, country fermented liquor, or intoxicating drugs.

Power of excise-officers to arrest persons carrying spirit, &c., liable to confiscation.

**36.** Any excise-officer may stop and detain any person carrying any spirit, fermented liquor, or intoxicating drug liable to confiscation under this Act, and may seize such spirit, liquor, or drug, together with any vessels, packages, or coverings in which it is contained, and any animals and conveyances used in carrying it, and may also arrest the person in whose possession such spirit, liquor, or drug is found.

Power of excise-officers to arrest persons in possession of article liable to confiscation, and to seize article.

**37.** Any excise-officer in the receipt of a monthly salary of not less than ten rupees, or who receives an annual remuneration equivalent to such salary, may arrest any person having in his possession any article liable to confiscation under this Act, or engaged in the unlawful sale of any spirit, fermented liquor, or intoxicating drug, and may seize such article, spirit, liquor, or drug.

Power of excise-officer to search on information of illicit manufacture or possession.

**38.** Whenever any excise-officer in receipt of such monthly salary or annual remuneration as aforesaid has reason to believe, from information given by any person (which information shall be taken down in writing), that in any place spirit is unlawfully manufactured, or any article liable to confiscation under this Act is kept or concealed, such officer may, after sunrise and before sunset (but always in the presence of an officer of police in the receipt of a monthly salary of not less than ten rupees, unless the excise-officer is himself such an officer of police), enter into such place, and, in case of resistance, may break open any door, and force and remove any other obstacle to such entry, and may seize and carry away such spirit or article, and may also arrest the occupier of the place with all other persons concerned in the manufacture of such spirit, or in the keeping and concealing of such article.

Collector may issue warrant of arrest in certain cases.

**39.** The Collector may issue his warrant for the arrest of any person whom he has reason to believe, either from information in writing, or from the proceedings in any other case under this Act or any other law, to be engaged in the unlawful sale of spirit,

or fermented liquor or intoxicating drugs, or to have in his possession any article liable to confiscation under this Act.

Collector may issue search-warrant.

**40.** (*1*) The Collector may issue his warrant for the search of any place in which he has reason to believe, either from information in writing, or from the proceedings in any other case under this Act or any other law, that spirit is unlawfully manufactured, or that any spirit, fermented liquor, or intoxicating drug liable to confiscation under this Act is kept or concealed.

(*2*) Such warrant may be executed by any excise-officer in the receipt of a monthly salary of not less than ten rupees at the time and in the manner prescribed in section 38.

(*3*) Whenever the Collector thinks that the search should be made after sunset and before sunrise on any particular day, he shall issue a warrant specially authorizing the search to be so made. Such warrant may be executed by any excise-officer as aforesaid in the manner prescribed in section 38, and shall cease to be in force at sunrise on the day next following.

Excise-officer to report arrest, &c., and take person arrested to Magistrate.

**41.** Whenever an excise-officer arrests any person, or seizes any article liable to confiscation under this Act, or enters any place for the purpose of searching for any such article, he shall, within twenty-four hours thereafter, make a full report of all the particulars of such arrest, seizure or search to his official superior, and unless acting under the warrant of the Collector, shall take the person arrested or the article seized with all convenient despatch to the Magistrate for trial or adjudication.

Procedure after arrest or seizure.

**42.** Whenever any person is arrested or any article is seized under the warrant of a Collector issued under this Act, the officer making such arrest or seizure shall, within twenty-four hours thereafter, take the person arrested or the article seized to the Collector, and the Collector, after such enquiry as he thinks necessary, shall send such person or article to the nearest Magistrate or shall order the immediate discharge of such person or the release of such article.

Police to aid excise officers.

**43.** All police-officers are required to aid the excise-officers in the due execution of this Act, upon request made by such excise-officers.

Power for Local Government to invest police-officers with powers of excise-officers.

**44.** (*1*) The Local Government may, from time to time, invest, either by name or in virtue of his office, —

(*a*) any police-officer with the powers conferred on excise-officers by section 36 of this Act;

(*b*) any police-officer in charge of a station or any police-officer of or above the grade of head-constable or sergeant with the powers conferred on excise-officers by sections 37 and 38 of this Act.

(*2*) Every officer so invested shall, for all purposes connected with the exercise of these powers, be deemed to be an excise-officer within the meaning of this Act.

## CHAPTER VII.

### PENALTIES.

**45.** (*1*) Whoever, in contravention of section 5, constructs, works, or possesses a distillery, still, or brewery, or makes fermented liquor, shall be punished with imprisonment for a term which may extend to four months, or with fine which may extend to one thousand rupees, or with both.

For illegally manufacturing spirit or liquor.

(*2*) All spirit and liquor made in contravention of section 5, and all materials and implements collected for the purpose of such manufacture, shall be liable to confiscation.

**46.** (*1*) Any person who,—

(*a*) without a special pass from the Collector, introduces, into the limits fixed for the consumption of spirit made at a distillery established under section 6, any country spirit manufactured at another place, or

For illegally introducing country spirit.

(*b*) in contravention of section 7 or section 8, or of any rule made under section 9 or section 10, removes any spirit from a distillery or any fermented liquor from a brewery, or

For illegally removing spirit or fermented liquor.

(*c*) in contravention of section 31, brings any spirit or fermented liquor into any territory to which this Act extends, or

For illegally importing spirit or fermented liquor.

(*d*) without payment of such duty (if any) as may for the time being be payable in pursuance of a notification under section 32, brings any spirit or fermented liquor into any territory to which this Act extends,

For importing spirit, fermented liquor, or intoxicating drug without paying duty.

shall be punished with imprisonment for a term which may extend to four months, or with fine which may extend to one thousand rupees, or with both.

(*2*) All such spirit or fermented liquor, together with the vessels containing the same, and any animals and conveyances used in carrying it, shall be liable to confiscation.

**47.** Any person who, except in cases herein otherwise provided for, wilfully contravenes any rule made under section 9 or section 10, shall be punished with fine not exceeding one hundred rupees.

For contravening rules prescribed by Chief Revenue Authority.

**48** (*1*) Any person who, in contravention of any provision of Chapter III., or any rule thereunder, or without payment of such duty (if any) as may for the time being be payable in pursuance of a notification under section 13,—

For illegally cultivating hemp, or collecting the spontaneous growth of hemp, or preparing, possessing, importing, exporting, or transporting intoxicating drugs.

(*a*) cultivates hemp, or

(*b*) collects the spontaneous growth of the hemp plant, or

(*c*) prepares any intoxicating drug, or

(*d*) possesses any intoxicating drug, or

(*e*) imports, exports, or transports any intoxicating drug,

shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

(*z*) Any intoxicating drug in respect of which an offence has been committed under this section, together with the vessels containing the same, and any animals and conveyances used in carrying it, shall be liable to confiscation.

For illicitly selling spirit, &c.

**49.** Any person who, in contravention of section 21, sells any spirit, fermented liquor, or intoxicating drug, shall be punished with imprisonment for a term which may extend to four months, or with fine which may extend to one thousand rupees, or with both.

For permitting drunkenness, &c., in shop.

**50.** Any person licensed to sell retail spirit, or fermented liquor, or intoxicating drugs, who permits drunkenness, riot, or gaming in his shop, or permits persons of notoriously bad character to meet or remain therein, or receives any wearing apparel or other effects in barter for spirit, fermented liquor, or intoxicating drugs, shall be punished with fine which may extend to two hundred rupees.

For illegally possessing spirit or liquor.

**51.** Any person who possesses any spirit or liquor in contravention of section 30 shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both; and the spirit or liquor, together with any vessels, packages, and coverings in which it is contained, and any animals and conveyances used in carrying it, shall be liable to confiscation.

For refusing to produce license, and for breach of rules and conditions.

**52.** Any person holding a license under this Act, and refusing to produce the same on the demand of any excise-officer, and any person who breaks any rule under this Act, or any condition of a license granted under this Act for the breach of which rule or condition no other penalty is hereby provided, shall be punished with fine which may extend to fifty rupees.

For conniving at illicit manufacture or sale of spirit, &c.

**53.** (*1*) Any owner or occupier of land, and any agent of any such owner or occupier, who authorizes or connives at the illegal manufacture of spirit, or the sale of spirit or fermented liquor or intoxicating drugs, shall, for every such offence, be punished with imprisonment for a term which may extend to four months, or with fine which may extend to one thousand rupees, or with both.

(*2*) Any person invested with local jurisdiction who authorizes or connives at the illegal sale of any spirit, fermented liquor, or intoxicating drug within the local limits of such jurisdiction, shall be punished with fine which may extend to five hundred rupees.

For police neglecting to aid excise-officers.

**54.** Any police-officer who, without lawful excuse, neglects or refuses to aid an excise-officer as required by section 43, and any officer in charge of a police-station who, on application made by an excise-officer desiring to act under section 38, fails to attend a search himself, or to depute a subordinate officer of the required rank, shall be punished with fine which may extend to five hundred rupees.

For vexatious search or seizure.

**55.** Any excise-officer who,—

(*a*) without reasonable grounds of suspicion, searches, or causes to be searched, any place, or

(*b*) vexatiously and unnecessarily seizes the moveable property of any person on the pretence of seizing or searching for any article liable to confiscation under this Act, or

(*c*) vexatiously and unnecessarily arrests any person, or

(*d*) commits any other excess not required for the execution of his duty,

shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

For delay in reporting arrest, &c., or in taking person arrested to Magistrate.

**56.** Any excise-officer who, in contravention of section 41 or section 42, neglects to report the particulars of an arrest, seizure, or search, or delays taking to the Magistrate or Collector, as the case may be, any person arrested or any article seized under this Act, shall be punished with fine which may extend to two hundred rupees.

Prosecutions restricted.

**57.** A Court shall not take cognizance of an offence punishable under any one of the following sections, namely, 45, 46, 47, 48, 49, 51, 52, and 53, except on the complaint or report of the Collector or an excise-officer; and a Court shall not take cognizance of any offence punishable under this Act unless the prosecution is instituted before the expiry of six months next after the commission of such offence.

Confinement in what jail.

**58.** Every person imprisoned for an offence under section 47 or section 52 shall be confined in the civil jail, and every person imprisoned for an offence under any other section shall be confined in the criminal jail.

Attempts and abetment

**59.** Whoever attempts to commit any offence punishable under this Act, or abets, within the meaning of the Indian Penal Code,* the commission of any such offence, shall be punished with the punishment provided for such offence.

Disposal of fines, &c., as rewards.

**60.** Any Magistrate before whom any person is convicted of any offence under sections 45, 46, 47, 48, 49, 51, or 53, may award to any person who has contributed in any way to such conviction, the whole or any portion of any fine imposed upon the offender, and paid by him or realized from his property.

Magistrate to pass order of confiscation.

**61.** Any article liable to confiscation under this Act may, on the application of an excise-officer, be confiscated by the order of any Magistrate within the local limits of whose jurisdiction it is found.

## CHAPTER VIII.

### Military Cantonments.

Manufacture and sale of spirits, &c., in military cantonments.

**62.** Within the limits of any military cantonment, and within such distance from those limits as the Local Government in any case prescribes, no licenses for the manufacture of spirit, or for the sale of spirit or fermented liquor, shall be granted, nor shall the fees leviable on licenses for the retail sale of such spirit

* Act XLV. of 1860.

or liquor, or the right to manufacture such spirit or liquor, be let in farm, unless with the knowledge and consent of the Commanding Officer; and upon his requisition any such license which has been granted, either by the Collector or by a farmer, within such distance or limits, shall be immediately cancelled. 1896. Act 12.

Application of Act to military cantonments.

**68.** In all other respects the provisions of this Act shall have effect within such limits or distance.

## CHAPTER IX.

### MISCELLANEOUS.

Collector subject to control of Commissioner.

**64.** (*1*) The Collector shall, in all proceedings under this Act, be subject to the control of the Commissioner of Revenue, and all orders passed by a Collector under this Act shall be appealable to such Commissioner in manner provided by the rules for the time being in force relating to appeals from the orders of Collectors.

(*2*) The Chief Revenue Authority may revise any order passed by a Collector under this Act, or by a Commissioner under this section.

Additional power for Chief Revenue Authority to make rules.

**65.** The Chief Revenue Authority may, from time to time, make rules consistent with this Act—

(*a*) as to the period for which any license or farm under this Act shall be granted;

(*b*) as to the fee payable for any such license or farm, and the time or times at which it shall be payable;

(*c*) as to the security to be given by any licensee or farmer under this Act;

(*d*) as to the form of any license or farming lease, and of the counterpart thereof (if any) to be taken from such licensee or farmer, and the conditions which may be inserted therein;

(*e*) as to the disposal of things confiscated under this Act;

(*f*) as to the duties of excise-officers; and

(*g*) to provide generally for carrying out the provisions of this Act.

Power for Local Government to exempt articles and persons.

**66.** The Local Government may, from time to time, by notification in the official Gazette, exempt, within any specified local area, any specified articles or any specified class of persons, from all or any of the provisions of this Act, and may, by like notification, cancel any such exemption.

## THE SCHEDULE.

(*See section 2.*)

| Year. | No. | Title or subject. | Extent of repeal. |
|---|---|---|---|
| 1881 | XXII. | The Excise Act, 1881. | The whole. |
| 1885 | VI. | Amending the Excise Act, 1881. | Ditto. |
| " | IX. | Amending the Excise Act, 1881, and other Acts. | So much as relates to the Excise Act, 1881. |
| 1887 | II. | Ditto ... | Ditto. |
| 1888 | XVIII. | Financial Commissioner, Burma | So much of section 7 and the schedule as relates to the Excise Act, 1881. |
| 1889 | XIII | The Cantonments Act, 1889 | So much of section 2 and the schedule as relates to the Excise Act, 1881. |
| 1890 | XIII. | Amending the Excise Act, 1881, and other Acts | Sections 2 to 5 (both inclusive). |
| " | XX. | The North-Western Provinces and Oudh Act, 1890. | Section 43. |
| 1891 | XII. | The Repealing and Amending Act, 1891. | So much as relates to the Excise Act, 1881. |
| 1893 | X | Amending the Excise Act, 1881 | The whole. |

RULINGS UNDER THE REPEALED EXCISE ACT.

ON the 30th October 1877, N was granted a license for the sale of spirituous and fermented liquors by retail, terminating on the 31st December 1877. On the 11th January 1878, such license was renewed by the Collector for a period terminating on the 31st March 1878. On the 14th January 1878, N's servant was convicted, under s. 62 of Act X of 1871, of the illicit sale of liquors between the 1st January 1878 and 10th January 1878, both days inclusive. *Held* that the renewal of N's license was a condonation of the offence, and the conviction was bad. *Semble.*—That, inasmuch as N had given no notice of his intention not to renew the license, nor had the Collector recalled it, the license remained in force, and the conviction was consequently bad under s. 32 of Act X of 1871.—EMPRESS v. SEYMOUR, I. L. R., 1 All. 630. [Stuart, C.J. Feb. 25, 1878.]

D WAS the holder of a license for the sale of spirituous and fermented liquors by retail for a period terminating on the 31st December 1877. On the 10th January 1878, his license not having been renewed by the Collector, D sold certain spirits by retail. On these facts he was convicted of the illicit sale of liquor. Subsequently to his conviction, his license was renewed. *Held* that, under such circumstances, his conviction was good. *Empress* v. *Seymour* (I. L. R., 1 All. 630) distinguished.—EMPRESS v. DHARAM DAS, I. L. R., 1 All. 635. [Stuart, C.J. Mar. 22, 1878.]

A HELD a license for the sale of spirituous and fermented liquors by retail for a period of three months terminating on the 31st December 1877. Prior to the 8th January 1878, no notice was given by A of her intention not to renew the license, nor had the license been recalled by the Collector. Between the 1st January 1878 and the 8th January 1878, both days inclusive, A's servants sold spirituous and fermented liquors by retail. On these facts A's servants were convicted, under s. 62 of Act X. of 1871, of the illicit sale of liquor. *Held*, following the opinion expressed in *Empress* v. *Seymour* (I. L. R., 1 All. 630), that the convictions were bad, as A's license, under the provisions of s. 32 of that Act, remained in force until she gave notice of her intention not to renew it, or it was recalled by the Collector. The principle of the decision in *Empress* v. *Seymour* (I. L. R., 1 All. 630) dissented from. A should have been prosecuted under s. 57 of the Excise Act for not paying her monthly fee in advance.—EMPRESS v. MAHINDRA LAL, I. L. R., 1 All. 638. [Turner, J. April 4, 1878.]

HELD, in a prosecution under ss. 19 and 63 of Act X of 1871, that the definition of "ser" given in s. 2 of Act XI. of 1870 was not so intelligible and clear as to be capable of general application, and that it did not supersede the local customary weight of a ser. *Held*, therefore, the local customary weight of a ser being ninety-five tolas (the Government ser weighing eighty tolas), and the accused having been found in possession of ninety-six tolas only, that excess of one tola over the local weight was not such as to warrant the presumption of the guilt of the accused.—EMPRESS v. HAIT RAM; EMPRESS v. CHEDA KHAN, I. L. R., 3 All. 404. [Stuart, C.J., and Straight, J. April 19, 1880.]

HELD that an officer invested with powers under ss. 27, 28, and 29 of Act XXII. of 1881, who had power in certain events to take the case before a Magistrate under s. 32, was an "excise-officer" within the meaning of s. 47 of the Act. *Queen-Empress* v. *Ram Charan* (Weekly Notes, 1896, p. 106) overruled.—QUEEN-EMPRESS v. MUKUNDA, I. L. R., 20 All. 70. [Edge, C.J., and Blair, J. July 8, 1897.]

# ACT NO. IV. OF 1884.*

## THE INDIAN EXPLOSIVES ACT, 1884.

PASSED BY THE GOVERNOR-GENERAL IN COUNCIL.

*Received the assent of the Governor-General on the 26th February 1884.*

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*An Act to regulate the manufacture, possession, use, sale, transport, and importation of Explosives.*

WHEREAS it is expedient to regulate the manufacture, possession, use, sale, transport, and importation of explosives; It is hereby enacted as follows:—

Short title. **1.** (*1*) This Act may be called the Indian Explosives Act, 1884; and

Local extent. (*2*) It extends to the whole of British India.

Commencement. **2.** This Act shall come into force on such day† as the Governor-General in Council, by notification in the Gazette of India, appoints.

* * * * * * * * * * *‡

**3.** * [*Repeal of portions of Act XII. of 1875.*] *Rep. by Indian Ports Act 1889 (X. of 1889).*

Definitions. **4.** In this Act, unless there is something repugnant in the subject or context,—

(*1*) "explosive"—

(*a*) means gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires, and every other substance, whether similar to those above mentioned or not, used or manufactured with a view to produce a practical effect by explosion, or a pyrotechnic effect; and

(*b*) includes fog-signals, fireworks, fuzes, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined:

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* For the Statement of Objects and Reasons, see Gazette of India, 1883, Pt. V., p. 22; for Proceedings in Council, see *ibid*, 1882, Supplement, p. 1856, and *ibid*, 1883, Supplement, p. 43, and *ibid*, 1884, Supplement, p. 377.

This Act has been declared, under s. 3 (*a*) of the Scheduled Districts Act (XIV. of 1874), to be in force in the districts of Hazáribágh, Lohardága, Palamau, and Mánbhum, and in Pargana Dhálbhum and the Kolhán in the Singbhum District of the Chota Nagpur Division, see Gazette of India, 1896, Pt. I., p. 972; it has been applied to the Santhál Parganas under s. 3 of the Santhál Pargannas Settlement Regulation (III. of 1872), as amended by the Santhál Parganas Laws Regulation (III. of 1886), see Calcutta Gazette, 1891, Pt. I., p. 222.

The Act has been declared in force in Upper Burma (except the Shan States), by the Burma Laws Act (XIII. of 1898). It had been previously extended there under s. 5 of Act XIV. of 1874, see Gazette of India, 1888, Pt. I., p. 539, and was declared to come into force on 19th February 1889, see Burma Rules Manual, Ed. 1897, p. 126.

† The 1st July 1887, see Gazette of India, 1887, Pt. I., p. 307.

‡ Sub-s. (*2*) has been repealed by the Repealing and Amending Act (XII of 1891)

1884. Act 4.

(2) "manufacture" includes the process of dividing into its component parts, or otherwise breaking up or unmaking, any explosive, or making fit for use any damaged explosive, and the process of re-making, altering, or repairing any explosive:

(3) "vessel" includes every ship, boat, and other vessel used in navigation, whether propelled by oars or otherwise:

(4) "carriage" includes any carriage, wagon, cart, truck, vehicle, or other means of conveying goods or passengers by land, in whatever manner the same may be propelled:

(5) "master" includes every person (except a pilot or harbour-master) having for the time being command or charge of a vessel: provided that, in reference to any boat belonging to a ship, "master" shall mean the master of the ship:

(6) "import" means to bring into British India by sea or land.

Power to make rules as to licensing of the manufacture, possession, use, sale, transport, and importation of explosives.

**5.** (1) The Governor-General in Council may for any part of British India, and each Local Government, with the previous sanction of the Governor-General in Council, may, for any part of the territories under its administration, make rules* consistent with this Act to regulate or prohibit, except under and in accordance with the conditions of a license granted as provided by those rules, the manufacture, possession, use, sale, transport, and importation of explosives, or any specified class of explosives.

(2) Rules under this section may provide for all or any of the following, among other matters, that is to say:—

(a) the authority by which licenses may be granted:

(b) the fees to be charged for licenses and the other sums (if any) to be paid for expenses by applicants for licenses: †

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* (1) For rules made by the Governor-General in Council under this section to regulate the transport and importation of explosives, see Gazette of India, 1897, Pt. I., p. 603. For rules made with reference to rule 14 of these rules as to the test which certain explosives shall be required to pass before importation, see Gazette of India, 1897, Pt. I., p. 618.

(2) For rules as to the transport of explosives in—

(a) the Port of Bombay, see Bombay Government Gazette, 1898 Pt. I., p. 2009;

(b) the Port of Aden, see Bombay List of Local Rules and Orders Ed. 1896, Vol. I., pp. 446 & 448,

(c) the Port of Karachi, see *ibid*, pp. 443-445;

(d) the Port of Madras, see Madras List of Local Rules and Orders, Ed. 1898, Vol. I., p. 214.

(3) For rules to regulate the manufacture, possession, and sale of explosives made under this section for—

(a) Assam see Assam Gazette, 1897, Pt. II., p. 625, and 1898, Pt. II., pp. 1049 and 1057;

(b) Bengal, see Calcutta Gazette, 1897, Pt. I., p. 1322, and *ibid* 1898 Pt. I., p. 1080;

(c) Bombay, see Bombay Government Gazette, 1897, Pt. I., p. 1365, and *ibid*, 1898, Pt. I., p. 300;

(d) Burma see Burma Gazette, 1897, Pt. I., p. 385;

(e) Central Provinces, see Central Provinces Gazette, 1897 Pt. III., pp. 217 and 289;

(f) Coorg, see Coorg District Gazette, 1898, Pt. I., p. 84;

(g) Madras, see Fort St. George Gazette, 1897, Pt. I., pp. 1006 & 1018, and *ibid*, 1898 p. 958;

(h) North Western Provinces and Oudh, see North-Western Provinces and Oudh List of Local Rules and Orders Ed. 1894 p. 119.

† For notification as to fee to be charged under this clause in the Presidency of Bombay, see Bombay List of Local Rules and Orders, Ed. 1896, Vol. I., p. 448.

For notification declaring that no fee shall be charged for licenses to possess explosives in reasonable quantities for blasting, see Gazette of India 1893, Pt. I., p. 211.

(*c*) the manner in which applications for licenses must be made, and the matters to be specified in such applications;

(*d*) the form in which, and the conditions on and subject to which, licenses must be granted;

(*e*) the period for which licenses are to remain in force; and

(*f*) the exemption absolutely or subject to conditions of any explosives from the operation of the rules.

(*3*) The authority making rules under this section may by the rules impose penalties on all persons manufacturing, possessing, using, selling, transporting, or importing explosives in breach of the rules, or otherwise contravening the rules:

Provided that the maximum penalty which may be imposed by any such rules shall not exceed—

(*a*) in the case of a person so importing or manufacturing an explosive, a fine which may extend to three thousand rupees;

(*b*) in the case of a person so possessing, using, or transporting an explosive, a fine which may extend to one thousand rupees;

(*c*) in the case of a person so selling an explosive, a fine which may extend to five hundred rupees; and

(*d*) in any other case, two hundred rupees.

**Power for Governor-General in Council to prohibit the manufacture, possession, or importation of specially dangerous explosives.**

**6.** (*1*) Notwithstanding anything in the rules under the last foregoing section, the Governor-General in Council may, from time to time, by notification in the Gazette of India,—

(*a*) prohibit, either absolutely or subject to conditions, the manufacture, possession, or importation of any explosive which is of so dangerous a character that, in the opinion of the Governor-General in Council, it is expedient for the public safety to issue the notification; and

(*b*) cancel any notification under this section.

(*2*) The officers of sea customs at every port shall have the same power in respect of any explosive with regard to the importation of which a notification has been issued under this section, and the vessel containing the explosive as they have for the time being in respect of any article the importation of which is prohibited or regulated by the law relating to sea customs * and the vessel containing the same; and the enactments for the time being in force relating to sea customs or any such article or vessel shall apply accordingly.

(*3*) Any person manufacturing, possessing, or importing an explosive in contravention of a notification issued under this section shall be punished with fine which may extend to three thousand rupees, and, in the case of importation by water, the owner and master of the vessel in which the explosive is imported shall, in the absence of reasonable excuse, each be punished with fine which may extend to three thousand rupees.

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* See Ch. IV. of the Sea Customs Act (VIII. of 1878).

Power to make rules conferring powers of inspection, search, seizure, detention, and removal.

**7.** (*1*) The Governor-General in Council, or the Local Government with the previous sanction of the Governor-General in Council, may make rules* consistent with this Act authorizing any officer, either by name or in virtue of his office—

(*a*) to enter, inspect, and examine any place, carriage, or vessel in which an explosive is being manufactured, possessed, used, sold, transported, or imported under a license granted under this Act, or in which he has reason to believe that an explosive has been or is being manufactured, possessed, used, sold, transported, or imported in contravention of this Act or of the rules made under this Act;

(*b*)† to search for explosives therein;

(*c*) to take samples of any explosive found therein on payment of the value thereof; and

(*d*)† to seize, detain, remove, and, if necessary, destroy any explosive found therein.

(*2*) The provisions of the Code of Criminal Procedure ‡ relating to searches under this Code shall, so far as the same are applicable, apply to searches by officers authorized by rules under this section.

Notice of accidents.

**8.** Whenever there occurs in or about, or in connection with, any place in which an explosive is manufactured, possessed, or used, or any carriage or vessel either conveying an explosive, or on or from which an explosive is being loaded or unloaded, any accident by explosion or by fire attended with loss of human life, or serious injury to person or property, or of a description usually attended with such loss or injury, the occupier of the place, or the master of the vessel, or the person in charge of the carriage, as the case may be, shall forthwith give notice thereof to the officer in charge of the nearest police-station.

Inquiry into accidents.

**9.** (*1*) Whenever, in the opinion of a District Magistrate, Sub-Divisional Magistrate, or any other Magistrate specially empowered by the Local Government in this behalf, an inquiry is necessary into the cause of any accident of the description mentioned in section 8, he may either himself make the inquiry or direct a Magistrate subordinate to himself to make the inquiry.

(*2*) Any Magistrate making an inquiry under this section shall, for the purposes of conducting the inquiry, have all the powers which he would have in holding an inquiry into an offence under the Code of Criminal Procedure.§

(*3*) The powers conferred on a Magistrate by this section may, in a Presidency-town, be exercised by the Commissioner of Police as well as by any Magistrate specially empowered in this behalf under sub-section (*1*).

Forfeiture of explosives.

**10.** When a person is convicted of an offence punishable under this Act or the rules made under this Act, the Court before which he is convicted may direct that the explosive, or ingredient of the explosive, or the substance (if any) in respect of which the offence

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* For rules appointing officers or giving power to appoint officers for the purposes of this section see Gazette of India, 1898, Pt. I., p. 603.

† For rules made under these clauses for Bombay, see Bombay List of Local Rules and Orders, Ed. 1896, Vol. I., p. 448.

‡ See now Act V. of 1898, Ch. VII.

§ See now Act V. of 1898.

has been committed, or any part of that explosive, ingredient, or substance, shall, with the receptacles containing the same, be forfeited.

Distress of vessel.

**11** Where the owner or master of a vessel is adjudged under this Act to pay a fine for an offence committed with, or in relation to, that vessel, the Court may, in addition to any other power it may have for the purpose of compelling payment of the fine, direct it to be levied by distress and sale of the vessel, and the tackle, apparel, and furniture thereof, or so much thereof as is necessary.

Abetment and attempts.

**12.** Whoever abets, within the meaning of the Indian Penal Code, the commission of an offence punishable under this Act, or the rules made under this Act, or attempts to commit any such offence, and in such attempt does any act towards the commission of the same, shall be punished as if he had committed the offence.

Power to arrest without warrant persons committing dangerous offences.

**13.** Whoever is found committing any act for which he is punishable under this Act or the rules under this Act, and which tends to cause explosion or fire in or about any place where an explosive is manufactured or stored, or any railway or port, or any carriage, ship, or boat, may be apprehended without a warrant by a police-officer, or by the occupier of, or the agent or servant of, or other person authorized by the occupier of, that place, or by any agent or servant of, or other person authorized by, the railway administration or conservator of the port, and be removed from the place where he is arrested, and conveyed, as soon as conveniently may be, before a Magistrate.

Saving for manufacture, possession, use, sale, transport, or importation by Government.

**14** Nothing in this Act shall apply to the manufacture, possession, use, sale, transport, or importation of any explosive—

(*a*) by order of the Government, or

(*b*) by any person employed under the Government in the execution of this Act, or as a keeper of a magazine, artizan, soldier, sailor, policeman, or otherwise, or enrolled as a volunteer under the Indian Volunteers Act, 1869, in the course of his employment or duty as such.

Saving of Indian Arms Act, 1878.

**15.** Nothing in this Act shall affect the provisions of the Indian Arms Act, 1878:

Provided that an authority granting a license under this Act for the manufacture, possession, sale, transport, or importation of an explosive, may, if empowered in this behalf by the rules under which the license is granted, direct, by an order written on the license, that it shall have the effect of a like license granted under the said Indian Arms Act.

Saving as to liability under other law.

**16.** Nothing in this Act or the rules under this Act shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or those rules, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or those rules:

Provided that a person shall not be punished twice for the same offence.

Extension of definition of "explosive" to other explosive substances.

**17.** The Governor-General in Council may, from time to time, by notification in the Gazette of India, declare that any substance which appears to the Governor-General in Council to be specially dangerous to life or property, by reason

1884. Act 4.

either of its explosive properties or of any process in the manufacture thereof being liable to explosion, shall be deemed to be an explosive within the meaning of this Act;* and the provisions of this Act (subject to such exceptions, limitations, and restrictions as may be specified in the notification) shall accordingly extend to that substance in like manner as if it were included in the definition of the term "explosive" in this Act.

Procedure for making publication and confirmation of rules.

**18.** (*1*) An authority making rules under this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(*2*) The publication shall be made in such manner as the Governor-General in Council, from time to time, by notification in the Gazette of India, prescribes.

(*3*) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(*4*) The authority making the rules shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(*5*) A rule made under this Act shall not take effect if it is made by the Governor-General in Council until it has been published in the Gazette of India, and if it is made by the Local Government until it has been published in the local official Gazette.

(*6*) The publication in the Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made, and, if it requires sanction, that it has been duly sanctioned.

(*7*) All powers to make rules conferred by this Act may be exercised from time to time as occasion requires.

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* Picric acid, with certain exceptions, has been declared to be an explosive within the meaning of the Act, see Gazette of India, 1897, Pt. I., p. 691.

# ACT NO. XVII. OF 1878

## THE NORTHERN INDIA FERRIES ACT, 1878.

RECEIVED THE G.-G.'S ASSENT ON THE 9TH NOVEMBER 1878.

*An Act to regulate Ferries in Northern India.*

WHEREAS it is expedient to regulate ferries in the Punjab, the North-Western Provinces, Oudh, the Central Provinces, Assam, and Ajmere and Merwara; It is hereby enacted as follows :—

Preamble.

### I.—PRELIMINARY.

Short title.

**1.** This Act may be called the Northern India Ferries Act, 1878 :

Local extent.

It extends only to the territories respectively administered by the Lieutenant-Governors of the Punjab and the North-Western Provinces, and the Chief Commissioners of Oudh, the Central Provinces, Assam, and Ajmere and Merwara :

Commencement.

It shall come into force in each of the said territories on such date* as the Local Government may, by notification in the official Gazette, fix in this behalf.

Repeal.

**2.** On and from the date on which it comes into force in the territories respectively administered by the Lieutenant Governor of the North-Western Provinces and the said Chief Commissioners, Bengal Regulation VI. of 1819 shall be repealed therein ; but all determinations, declarations, orders, and rules made, engagements entered into, and securities taken under that Regulation and then in force, shall be deemed to be respectively made, entered into, and taken under this Act.

Interpretation-clause.

**3.** In this Act the word "ferry" includes also a bridge-of-boats, pontoons or rafts, a swing bridge, a flying bridge, and a temporary bridge, and the approaches to, and landing-places of, a ferry.

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### II.—PUBLIC FERRIES.

Power to declare, establish, define, and discontinue public ferries.

**4.** The Local Government may from time to time—

(*a*) declare what ferries shall be deemed public ferries, and the respective districts in which, for the purposes of this Act, they shall be deemed to be situate ;

(*b*) take possession of a private ferry, and declare it to be a public ferry ;

(*c*) establish new public ferries where, in its opinion, they are needed ;

(*d*) define the limits of any public ferry ;

(*e*) change the course of any public ferry ; and

(*f*) discontinue any public ferry which it deems unnecessary.

Every such declaration, establishment, definition, change, or discontinuance, shall be made by notification in the official Gazette :

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* Act XVII. of 1878 came into force in the North-Western Provinces and Oudh on the 1st January 1879.—*See North-Western Provinces and Oudh Gazette, 1878, p. 2035.*

1878. Act 17.

Provided that, when a river lies between two Provinces, the powers conferred by this section shall, in respect of such river, be exercised by the Governor-General in Council, by notification in the *Gazette of India*, and not otherwise:

Provided also that, when any alteration in the course or in the limits of a public ferry is rendered necessary by changes in the river, such alteration may be made, by an order under his hand, by the Commissioner of the division in which such ferry is situate, or by such other officer as the Local Government may, from time to time, appoint by name or in virtue of his office in this behalf.

Claims for compensation.

**5.** Claims for compensation for any loss sustained by any person in consequence of a private ferry being taken possession of under section 4 shall be enquired into by the Magistrate of the district in which such ferry is situate, or such officer as he appoints in this behalf, and submitted for the consideration and orders of the Local Government.

Superintendence of public ferries.

**6.** The immediate superintendence of every public ferry shall, except as provided in section 7 "and section 7A,"* be vested in the Magistrate of the district in which such ferry is situate, or in such other officer as the Local Government may, from time to time, appoint by name or in virtue of his office in this behalf:

and such Magistrate or officer shall, except when the tolls at such ferry are leased, make all necessary arrangements for the supply of boats for such ferry, and for the collection of the authorized tolls leviable thereat.

Management may be vested in municipality;

**7.** The Local Government may direct that any public ferry situate within the limits of a town be managed by the officer or public body charged with the superintendence of the municipal arrangements of such town;

and proceeds paid into municipal fund.

and may further direct that all or any part of the proceeds from such ferry be paid into the municipal fund of such town;

and thereupon such ferry shall be managed, and such proceeds or part thereof shall be paid, accordingly.

[The following section (7A) is in force in the N.-W. P. and Oudh.]

In North-Western Provinces and Oudh, management may be vested in district board;

**7A.** The Lieutenant-Governor of the North-Western Provinces and the Chief Commissioner of Oudh may direct that any public ferry, wholly or partly within the area subject to the authority of a district board in any district in the North-Western Provinces or Oudh, as the case may be, be managed by that board, and may further direct that all or any part of the proceeds from such ferry be paid into the district fund of that district; and thereupon such ferry shall be managed, and such proceeds or part thereof shall be paid accordingly.—

and proceeds paid into district fund.

[*This section has been inserted by the N.-W. P. and Oudh Local Boards Act (XIV. of 1883), s. 64, for operation in the N.-W. P. and Oudh.*]

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* In s. 6 the words, figure, and letter quoted have been inserted for operation in—

(1) The N.-W. P. and Oudh, by the N.-W. P. and Oudh Local Boards Act (XIV. of 1883, s. 65;

(2) The Central Provinces, by the Central Provinces Local Self-government Act (I of 1883), s 44;

(3) The Punjab, by the Punjab District Boards Act (XX. of 1883), s. 79.

[The following section (7A) is in force in the Central Provinces:]

**7A.** The Chief Commissioner of the Central Provinces may direct that any public ferry wholly or partly within the area subject to the authority of a district council or local board in any district in those provinces be managed by that council or board, and may further direct that all or any part of the proceeds from such ferry be paid into the district fund of that district; and thereupon such ferry shall be managed, and such proceeds or part thereof shall be paid accordingly.—[*This section has been inserted by the Central Provinces Local Self-government Act (I. of 1883), s. 43, for operation in the Central Provinces.*]

In Central Provinces management may be vested in district council or local board; and proceeds paid into district fund.

[The following section (7A) is in force in the Punjab:]

**7A.** The Local Government may direct that any public ferry wholly or partly within the area subject to the authority of a district board or local board in any district in the territories under the administration of the Lieutenant-Governor of the Punjab shall be managed by that board, and may further direct that all or any part of the proceeds from such ferry be paid into the district fund; and thereupon such ferry shall be managed, and such proceeds or part thereof shall be paid accordingly.—[*This section has been inserted by the Punjab District Boards Act (XX. of 1883), s. 78, for operation in the Punjab.*]

In Bengal management of ferries may be vested in committees and boards.

**8.*** The tolls of any public ferry may, from time to time, be let by public auction for a term not exceeding five years with the approval of the Commissioner, or by public auction, or otherwise than by public auction, for any term, with the previous sanction of the Local Government.

Letting ferry-tolls.

The lessee shall conform to the rules made under this Act for the management and control of the ferry, and may be called upon by the officer in whom the immediate superintendence of the ferry is vested, or if the ferry is managed by a municipal or other public body under section 7 or section 7A, then by that body, to give such security for his good conduct and for the punctual payment of the rent as the officer or body, as the case may be, thinks fit.

When the tolls are put up to public auction, the said officer or body, as the case may be, or the officer conducting the sale on his or its behalf, may, for reasons recorded in writing, refuse to accept the offer of the highest bidder, and may accept any other bid, or may withdraw the tolls from auction.

**9.** All arrears due by the lessee of the tolls of a public ferry on account of his lease may be recovered from the lessee or his surety (if any) by the Magistrate of the district in which such ferry is situate, as if they were arrears of land-revenue.

Recovery of arrears from lessee.

**10.** The Local Government may cancel the lease of the tolls of any public ferry on the expiration of six months' notice in writing to the lessee of its intention to cancel such lease.

Power to cancel lease.

When any lease is cancelled under this section, the Magistrate of the district in which such ferry is situate shall pay to the lessee such compensation as such Magistrate may, with the previous sanction of the Local Government, award.

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* S. 8 has been substituted for the original s. 8 by the Northern India Ferries Act Amendment Act (III. of 1886), s. 1 (1).

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**11.** The lessee of the tolls of a public ferry may surrender his lease on the expiration of one month's notice in writing to the Local Government of his intention to surrender such lease, and on payment to the Magistrate of the district in which such ferry is situate of such compensation as such Magistrate, subject to the approval of the Commissioner, may in each case direct.

Surrender of lease.

**12.** Subject to the control of the Local Government the Commissioner of a division, or such other officer as the Local Government may, from time to time, appoint in this behalf, by name or in virtue of his office, may, from time to time, make rules consistent with this Act—

Power to make rules.

(*a*) for the control and the management of all public ferries within such division, and for regulating the traffic at such ferries;

(*b*)* for regulating the time and manner at and in which, and the terms on which, the tolls of such ferries may be let by auction, and prescribing the persons by whom auctions may be conducted;

(*c*) for compensating persons who have compounded for tolls payable for the use of any such ferry, when such ferry has been discontinued before the expiration of the period compounded for; and

(*d*) generally to carry out the purposes of this Act;

and, when the tolls of a ferry have been let under section 8, such Commissioner or other officer may, from time to time (subject as aforesaid), make additional rules consistent with this Act—

(*e*) for collecting the rents payable for the tolls of such ferries;

(*f*) in cases in which the communication is to be established by means of a bridge-of-boats, pontoons or rafts, or a swing bridge, flying bridge, or temporary bridge, for regulating the time and manner at and in which such bridge shall be constructed and maintained and opened for the passage of vessels and traffic through the same, and

(*g*) in cases in which the traffic is conveyed in boats, for regulating—

(1) the number and kinds of such boats, and their dimensions and equipment;

(2) the number of the crew to be kept by the lessee for each boat;

(3) the maintenance of such boats continually in good condition;

(4) the hours during which, and the intervals within which, the lessee shall be bound to ply; and

(5) the number of passengers, animals, and vehicles, and the bulk and weight of other things, that may be carried in each kind of boat at one trip.

The lessee shall make such returns of traffic as the Commissioner or other officer as aforesaid may from time to time require.

**13.** Except with the sanction of the Magistrate of the district or of such other officer as the Local Government may, from time to time, appoint in this behalf by name or in virtue of his office, no person shall establish, maintain,

Private ferries not to ply within two miles of public ferry without sanction.

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* Cl. (*b*) of s. 12 has been substituted for the original cl. (*b*) by the Northern India Ferries Act Amendment Act (III. of 1880), s. 1 (*a*).

or work a ferry to or from any point within a distance of two miles from the limits of a public ferry:*

Provided that, in the case of any specified public ferry, the Local Government may, by notification in the official Gazette, reduce or increase the said distance of two miles to such extent as it thinks fit:

Provided also that nothing hereinbefore contained shall prevent persons plying between two places, one of which is without, and one within, the said limits, when the distance between such two places is not less than three miles, or apply to boats "which do not ply for hire, or" † which the Local Government expressly exempts from the operation of this section.

Person using approaches, &c., liable to pay.

**14.** Whoever uses the approach to, or landing-place of, a public ferry, is liable to pay the toll payable for crossing such ferry.

Tolls.

**15.** Tolls, according to such rates as are from time to time fixed by the Local Government, shall be levied on all persons, animals, vehicles, and other things crossing any river by a public ferry, and not employed or transmitted on the public service:

Provided that the Local Government may, from time to time, declare that any persons, animals, vehicles, or other things, shall be exempt from payment of such tolls.

Where the tolls of a ferry have been let under section 8, any such declaration, if made after the date of the lease,‡ shall entitle the lessee to such abatement of the rent payable in respect of the tolls as may be fixed by the Commissioner of the division or such other officer as the Local Government may, from time to time, appoint in this behalf by name or in virtue of his office.

Table of tolls.

**16.** The lessee or other person authorized to collect the tolls of any public ferry shall affix a table of such tolls, legibly written or printed in the vernacular language, and also, if the Commissioner of the division so directs, in English, in some conspicuous place near the ferry,

List of tolls.

and shall be bound to produce, on demand, a list of the tolls, signed by the Magistrate of the district or such other officer as he appoints in this behalf.

Tolls, rents, compensation, and fines how disposed of.

**17.** Except as provided by section 7 "and section 7A,"§ all tolls, rents, and compensation received by or on behalf of Government, and all fines levied under this Act, shall be disposed of as follows, that is to say:

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* In s. 13, the first paragraph has been substituted for the original paragraph by the Northern India Ferries Act Amendment Act (III of 1886), s. 2 (1).

† In the second proviso to s. 13 the words quoted have been inserted by the Northern India Ferries Act Amendment Act (III of 1886), s. 2 (2).

‡ In the last paragraph of s. 15, the word 'lease' has been substituted for the word "auction" by the Northern India Ferries Act Amendment Act (III of 1886), s. 1 (3).

§ In s. 17, the words, figure, and letter quoted have been inserted for operation in—

(1) the Central Provinces, by s. 44 of the Central Provinces Local Self-government Act (II of 1883);

(2) the N.-W. P. and Oudh, by s. 65 of the N.-W. P. and Oudh Local Boards Act (XIV of 1883); and

(3) the Punjab, by s. 79 of the Punjab District Boards Act (XX. of 1883).

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(*a*) in the territories administered by the Lieutenant-Governor of the North-Western Provinces, the residue of such tolls, rents, compensation, and fines, after defraying thereout all charges incurred in carrying out this Act in those territories, shall be credited to the fund constituted for those territories by the North-Western Provinces Local Rates Act, 1878;

(*b*) in the territories administered by the Chief Commissioner of Oudh, the residue as aforesaid shall be credited to the fund constituted for those territories by the Oudh Local Rates Act, 1878;

(*c*) in the territories respectively administered by the Lieutenant-Governor of the Punjab and the Chief Commissioner of the Central Provinces, such tolls, rents, compensation, and fines, shall be credited to the Local Government, and applied, "in the first instance,"* to defraying all charges incurred in carrying out this Act in those territories respectively, "and shall then, at the discretion of the Local Government,—

(*i*) be placed at the disposal of any district board or district boards established under the Punjab District Boards Act, 1883, or,

(*ii*) be applied to any of the purposes specified in the second clause of section 5 of the Central Provinces Additional Rates Act, 1878, as the case may be; and"*

(*d*) in the territories respectively administered by the Chief Commissioner of Assam and the Chief Commissioner of Ajmere and Merwara, such tolls, rents, compensation, and fines shall be credited to the Local Government, and applied, first, to defraying all charges incurred in carrying out this Act in those territories respectively, and then to such local works and establishments likely to promote the public health, comfort, or convenience as the Local Government, subject to the control of the Governor-General in Council, may from time to time direct.

Compounding for tolls.

**18.** The Local Government may, if it thinks fit, from time to time, fix rates at which any person may compound for the tolls payable for the use of a public ferry.

### III.—Private Ferries.

Power to make rules.

**19.** The Commissioner of the division may, with the previous sanction of the Local Government, from time to time make rules for the maintenance of order, and for the safety of passengers and property, at ferries other than public ferries.

Tolls.

**20.** The tolls charged at such ferries shall not exceed the highest rates for the time being fixed under section 15 for similar public ferries

### IV.—Penalties and Criminal Procedure.

Penalty for breach of provisions as to table of tolls, list of tolls, and return of traffic.

**21.** Every lessee or other person authorized to collect the tolls of a public ferry who neglects to affix and keep in good order and repair the table of tolls mentioned in section 16,

* In s. 17 (*c*), the words and figures quoted have been substituted for the original words and figures, respectively, by the Repealing and Amending Act (XII. of 1891), Sch. II.

or who wilfully removes, alters, or defaces such table, or allows it to become illegible,

or who fails to produce on demand the list of the tolls mentioned in section 16,

and every lessee who neglects to furnish any return required under section 12,

shall be punished with fine which may extend to fifty rupees.

Penalty for taking unauthorized tolls and for causing delay.

**22.** Every such lessee or other person as aforesaid, and any person in possession of a private ferry, asking or taking more than the lawful toll, or without due cause delaying any person, animal, vehicle, or other thing, shall be punished with fine which may extend to one hundred rupees.

Penalty for breach of rules made under sections 12 and 19.

**23.** Every person breaking any rule made under section 12 or section 19 shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

Cancelment of lease on default or breach of rules.

**24.** When any lessee of the tolls of a public ferry makes default in the payment of the rent payable in respect of such tolls, or has been convicted of an offence under section 23, or, having been convicted of an offence under section 21 or section 22, is again convicted of an offence under either of those sections,

the Magistrate of the district may, with the sanction of the Commissioner of the division, cancel the lease of the tolls of such ferry, and make other arrangements for its management during the whole or any part of the term for which the tolls were let.

Penalties on passengers offending.

**25.** Every person crossing by any public ferry, or using the approach to or landing-place thereof, who refuses to pay the proper toll; and every person—

who, with intent to avoid payment of such toll, fraudulently or forcibly crosses by any such ferry without paying the toll, or

who obstructs any toll-collector or lessee of the tolls of a public ferry, or any of his assistants, in any way in the execution of their duty under this Act, or

who, after being warned by any such toll-collector, lessee, or assistant not to do so, goes or takes any animals, vehicles, or other things into any ferry boat, or upon any bridge, at such a ferry, which is in such a state or so loaded as to endanger human life or property, or

who refuses or neglects to leave, or remove any animals, vehicles, or goods from, any such ferry-boat or bridge, on being requested by such toll-collector, lessee, or assistant to do so,

shall be punished with fine which may extend to fifty rupees.

Penalty for maintaining private ferry within prohibited limits.

**26.*** Whoever establishes, maintains, or works a ferry in contravention of the provisions of section 13 shall be punished with fine which may extend to five hundred rupees, and with a further fine which may extend to one hundred

* S. 26 has been substituted for the original s. 26 by the Northern India Ferries Act Amendment Act (III. of 1886), s. 2 (3).

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rupees for every day during which the ferry is maintained or worked in contravention of those provisions.

Fines payable to lessee.

**27.** Where the tolls of any public ferry have been let under the provisions hereinbefore contained, the whole or any portion of any fine realized under section 25 or section 26 may, notwithstanding anything contained in section 17, be, at the discretion of the convicting Magistrate or Bench of Magistrates, paid to the lessee.

Penalty for rash navigation and stacking of timber.

**28.** Whoever navigates, anchors, moors, or fastens any vessel or raft, or stacks any timber, in a manner so rash or negligent as to damage a public ferry, shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both; and the toll-collector or lessee of the tolls of such ferry, or any of his assistants, may seize and detain such vessel, raft, or timber pending the enquiry and assessment hereinafter mentioned.

Power to arrest without warrant.

**29.** The police may arrest without warrant any person committing an offence against section 25 or section 28.

Power to try summarily.

**30.** Any Magistrate or Bench of Magistrates having summary jurisdiction under Chapter XXII. of the Code of Criminal Procedure, 1898,* may try any offence against this Act in manner provided by that chapter.

Magistrate may assess damage done by offender.

**31.** Every Magistrate or Bench of Magistrates trying any offence under this Act may enquire into and assess the value of the damage (if any) done or caused by the offender to the ferry concerned, and shall order the amount of such value to be paid by him in addition to any fine imposed upon him under this Act; and the amount so ordered to be paid shall be leviable as if it were a fine, or, when the offence is one under section 28, by the sale of the vessel, raft, or timber causing the damage, and of any thing found in or upon such vessel or raft.

The Commissioner of the division may, on the appeal of any person deeming himself aggrieved by an order under this section, reduce or remit the amount payable under such order.

## V.—Miscellaneous.

Power to take possession of boats, &c., on surrender or cancellation of lease.

**32.** When the lease of the tolls of any ferry is surrendered under section 11 or cancelled under section 24, the Magistrate of the district may take possession of all boats and their equipment, and all other materials and appliances used by the lessee for the purposes of such ferry, and use the same (paying such compensation for the use thereof as the Local Government may in each case direct) until such Magistrate can conveniently procure proper substitutes therefor.

Similar power in cases of emergency.

**33.** When any boats or their equipment, or any materials or appliances suitable for setting up a ferry, are emergently required for facilitating the transport of officers or troops of Her Majesty on duty, or of any other persons on the business of

* The original reference to Ch. XVIII. of Act X of 1872 has been altered in accordance with Act V. of 1898, s. 3 (*1*).

Her Majesty, or of any animals, vehicles, or baggage belonging to such officers, troops, or persons, or of any property of Her Majesty, the Magistrate of the district may take possession of and use the same (paying such compensation for the use thereof as the Local Government may in each case direct) until such transport is completed. 1878. Act 17.

**34.** No suit to ascertain the amount of any compensation payable, or abatement of rent allowable, under this Act, shall be cognizable by any Civil Court.

Jurisdiction of Civil Courts barred.

**35.** The Local Government may, from time to time, delegate, under such restrictions as it thinks fit, any of the powers conferred on it by this Act to any Commissioner of a division or Magistrate of a district, or to such other officer as it thinks fit, by name or by virtue of his office.

Delegation of powers.

**36.** [*Validation of proceedings since repeal of Regulation VI. of 1819 in Punjab.*] *Repealed by the Repealing and Amending Act (XII. of 1891), Sch. I.*

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CIVIL AND CRIMINAL RULINGS UNDER ACTS RELATING TO FERRIES.

1. FERRY—*Right to establish new ferry—Right to cross river or jhil in other way than by ferry.*] A stream, if navigable, is of itself a public highway. In the case of a stream, therefore, a riparian proprietor might start in a boat from any point on his own side, and proceed to any point at which he would have a right to land on the other side. But in the case of a jhil the soil and freehold of which is probably vested in some particular individual, persons might be in the habit of crossing it from point to point by means of a ferry-boat belonging to the owner, and indeed might have a right to do so. But such right, if it existed, would not lead to any inference that any proprietor of lands on the banks of the jhil would have any right to cross either way to the terminus of a public highway in any other manner than between the ascertained points and by the accustomed means, *viz*, the owner's ferry-boat.—HUNOOMAN DOSS *v.* SHAMACHURN BHUTTA, 1 Hay 426.

2. FERRY—*Invasion of rights of private ferry by Government—Ben. Reg. VI. of 1819, s. 3.*] S 3, Regulation VI. of 1819, while it empowers the Government to invade private rights of ferry, by the establishment of a public ferry, does not debar the Civil Court from giving relief in cases in which a Magistrate may, without the sanction of Government, have invaded a private right of ferry, nor does that Regulation prohibit Civil Courts from taking cognizance of matters connected with public ferries.—RAM GOBIND SINGH *v.* MAGISTRATE OF GHAZEEPORE, 4 N. W. 146.

3. FERRY—*Rights of private ferry—Invasion of right of ferry by order of Magistrate—Ben. Reg. VI. of 1819.*] In a suit to maintain the old boundaries of a ferry, which had been invaded by an order of the Magistrate extending the boundaries of a public ferry, the plaintiffs asserted that they had theretofore, without charging toll, transported in their own boats, or in boats hired by them, their labourers and cultivators and implements of husbandry, and that in the exercise of this right the order of the Magistrate was injurious to them. *Held* that the order of the Magistrate extending the boundaries of the public ferry was an invasion of their ancient right to cross in whatever ferry-boat they liked; as by s. 6 of the Regulation (VI. of 1819) persons are prohibited from employing ferry-boats plying for hire at, or in the vicinity of a public ferry, without the previous sanction of the Magistrate or Joint Magistrate, thus making persons dependent on the public ferry, and liable to whatever toll may be levied on the public ferry.—RAM GOBIND SINGH *v.* MAGISTRATE OF GHAZEEPORE, 4 N. W. 146.

4. FERRY—*Adjunct of right of fishery—Right of ferry.*] A right to the jalkar of a river—that is, right to the produce of the water, such as fish, &c.—does not necessarily carry with it a right of ferry.—GOPEE THAKOORAEE *v.* SHEO SEVUK MISSER, 5 N. W. 95.

5. FERRY—*Illegal conviction under Bombay Ferries Act (XXXV. of 1850).*] On a reference by a Sessions Judge, a conviction and sentence by a District Magistrate under the Bombay Ferries Act for conveying passengers for hire from Uran to Bombay was reversed, as the act charged did not constitute an offence under any section of

1878. CIVIL AND CRIMINAL RULINGS UNDER ACTS RELATING TO FERRIES—*contd.*

Act 17. the Act—REG *v.* MALHARI BIN SHIVJI, 3 Bom. Cr. 41.

6 FERRY — *Right of owner of both banks of a river.*] The mere fact of being the owner of both banks of a river does not give the right of ferry—SOFIR MERDHA *v.* NOBO KISHORE, 2 W. R 286.

7. FERRY—*Right to land at a ghaut as part of right of ferry—Form of suit.*] A plaintiff may recover possession of a ferry of which he has been dispossessed by the defendant, though the form of his action may have been for obtaining possession of a ghaut. The right to ply the ferry may include also a right at certain seasons of the year to land upon or start from a part of the river bank not included in the land taken for the ferry — BROJO KISHORE CHOWDHRAIN *v.* BILASH MONEE CHOWDHRAIN, 5 W. R 195.

8. FERRY — *Management of ferry—Ben. Reg. VI of 1819, s. 13, cl 2.*] Cl 2, s. 13, Regulation VI. of 1819, only applies where there has been an accident. Where the Magistrate thinks that a ferry is improperly kept, and is in a dangerous condition he should proceed under s 4.—QUEEN *v.* DEE YANUTOOLLAH, 7 W. R Cr. 32.

9. FERRY — *Suit for compensation for resumption of ferry by Government — Civil Procedure Code, s. 1 — Ben. Reg. VI of 1819.*] A suit for compensation for the loss sustained by reason of the resumption by Government, under Regulation VI. of 1819, of a ferry, is not cognizable by the Civil Courts—COLLECTOR OF PURNEA *v.* ROMANATH TAGORE; MAGISTRATE OF MALDAH *v.* GOLEBUNNESSA, B. L. R. Sup Vol. 630 : 7 W. R. 191.

10. FERRY — *Suit to re-open ferry — Ben. Act I. of 1859, s. 2.*] A suit to re open a ferry, which had been included in a settlement of an estate obtained by plaintiff from Government, but which had been closed by orders of the Assistant Magistrate, was held not to be maintainable, the ghaut where plaintiff wished to re-open it being within two miles of the place at which a public ferry was established.—RAM JEWAN SINGH *v.* COLLECTOR AND MAGISTRATE OF SHAHABAD, 15 W. R. 132.

11. FERRY—*Proprietary rights, Interference with—Dispossession.*] There are proprietary rights in a private ferry of such a nature that another party may not so interfere with the profits arising therefrom by running a boat, if not exactly on the same line, at least within such a distance as for all practical purposes would be the same as if it were on the same line. Preventing parties from crossing in a person's ferry, and driving his men away, amount to dispossession.—KISHOREE LALL ROY *v.* GOKOOL MONEE CHOWDHRAIN, 16 W. R. 281.

12 FERRY — *Rival ferry — Interference with existing ferry.*] A rival ferry cannot be set up so as to interfere with proprietary rights in an existing ferry — that is to say, under circumstances involving direct competition with such ferry. — NARAIN SINGH ROY *v.* NORENDRO NARAIN ROY, NORENDRO NARAIN ROY *v.* NARAIN SINGH ROY, 22 W. R 269.

13 FERRY — *Stipulation in lease of land that no ferry is to be made—Right of private ferry.*] It is quite competent to a lessor, when granting a lease of his land, to stipulate that no ferry shall be established thereupon to the prejudice of his own ferry (existent or possible), and it is quite competent to a lessee to agree to such a stipulation — JUGUT CHUNDER CHOWDHRY *v.* BHUBUT CHUNDER CHOWDHRY, 23 W. R. 237.

14. FERRY — *Change in starting point owing to change in course of river.*] The right to a ferry-ghaut cannot follow the starting point of the ferry wherever it may be carried by a change in the course of the river, unless the new position is within the possessor's own land — GORDON *v.* GOPEE SOONDURRE DOSSEE, 25 W. R 53

15 FERRY — *Ferry-rights, Infringement of — Right to restrain party starting a second ferry.* A, the owner of a ferry granted him under a Government settlement, brought a suit to restrain B from running another ferry over the same spot where A's ferry plied for hire. It appeared on the evidence that B levied no tolls on his ferry, but it was not shown that it was used only for the conveyance of his own servants and ryots. *Held* that such suit was maintainable—LUCHMESSUR SINGH *v.* LEELANUND SINGH, I. L. R., 4 Cal 590 ; 3 C L. R. 427.

16 FERRY—*Right of private ferry.*] The right of establishing a private ferry, and levying tolls, is recognized in British India, —PARMESHARI PROSHAD NARAIN SINGH *v.* MAHOMED SYED, I. L. R., 6 Cal. 608 ; 7 C. L. R. 504.

17 FERRY—*Ferry-rights, Infringement of — Right to restrain party starting a second ferry—User for twenty years—Crown grant—Limitation Act (XV of 1877), Part IV. and s 25.*] In a suit brought to establish the right to a ferry-franchise, and to restrain the working of a rival ferry, *held* that there is nothing in the law of Bengal as it was before the acquisition by the British

Government, or in the Regulations before or after 1793, to show that any person is entitled to claim a monopoly of a right of ferry by prescription or by any other means than a grant from the Crown. To such a monopoly, Part IV. of the Limitation Act of 1877, relating to the acquisition of ownership by prescription, is not applicable. The franchise of a ferry is not necessarily appurtenant to land, but when a right of ferry was claimed as appurtenant to certain villages, *held* that the grant of such right by the Crown would not be destroyed by mere *non-user* without waiver, nor by the running of an opposition-ferry. The franchise would continue as long as the grant continued, and until the person who set up an opposition-ferry could show a Crown-grant, or give evidence from which a Crown-grant could be presumed, the cause of action would remain. The disturbance of a right of a ferry is in the nature of a nuisance (*Yard* v. *Ford*, 2 Saund. 172), and the cause of action in the case of the violation of this right is a continuing wrong within s. 23 of the Limitation Act (XV of 1877.—NITYAHARI ROY v. DUNNE, I. L. R. 18 Cal. 652.

18. FERRY—*Plying boat for hire near public ferry—Disobedience of order promulgated by public servant.*] If, when directed by the order of a public servant, duly promulgated to him, to abstain from plying a boat for hire at, or in the immediate vicinity of, a public ferry, a person disobeys such direction, he renders himself liable to punishment under the Penal Code.—MUTHRA v. JAWAHIR, I. L. R., 1 All. 527.

19. FERRY—*Plying boat for hire near public ferry.*] A person plying a boat for hire at a distance of three miles from a public ferry cannot be said, with reference to such ferry, to commit "criminal trespass" within the meaning of that term in s. 441 of the Penal Code.—MUTHRA v. JAWAHIR, I. L. R., 1 All. 527.

20. FERRY—*Government ferry—Lease—Ben. Reg. VI. of 1819—Illegality of contract.*] *M* took a lease for three years of a Government ferry, and covenanted with the Magistrate, who granted the lease, not to underlet or assign the lease without leave or license of the Magistrate. *M* subsequently admitted *B* as his partner to share with him equally in the profits to be derived from the lease. *Held* that such partnership was not void by reason of the covenant not to underlet or assign the lease. *S. A. No. 1104 of 1872*, decided on the 1st August 1872, overruled.—GAURI SHANKAR v. MUMTAZ ALI KHAN, I. L. R., 2 All. 411.

# ACT NO. XXI. OF 1879.

## FOREIGN JURISDICTION AND EXTRADITION ACT.*

RECEIVED THE G.-G.'S ASSENT ON THE 14TH NOVEMBER 1879.

*An Act to provide for the Trial of Offences committed in Places beyond British India and for the Extradition of Criminals.*

Preamble.

WHEREAS by treaty, capitulation, agreement, grant, usage, sufferance, and other lawful means, the Governor-General of India in Council has power and jurisdiction within divers places beyond the limits of British India; and whereas such power and jurisdiction have, from time to time, been delegated to Political Agents and others acting under the authority of the Governor-General in Council; and whereas doubts having arisen how far the exercise of such power and jurisdiction, and the delegation thereof, were controlled by, and dependent on, the laws of British India, the Foreign Jurisdiction and Extradition Act, 1872,† was passed to remove such doubts, and also to consolidate and amend the law relating to the exercise and delegation of such power and jurisdiction, and to offences committed by British subjects beyond the limits of British India, and to the extradition of criminals;‡ and whereas it is expedient to repeal that Act, and re-enact it with the amendments hereinafter appearing; It is hereby enacted as follows:—

### CHAPTER I.

#### PRELIMINARY.

Short title.

**1.** This Act may be called "The Foreign Jurisdiction and Extradition Act, 1879."

Extent.

It extends to the whole of British India;§

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* For the Statement of Objects and Reasons, see Gazette of India, 1879, Pt. V., p. 831; for Proceedings in Council, see *ibid*, Supplement, pp. 1389 and 1535.

This Act has been declared in force in—

(1) The Santhal Parganas by the Santhal Parganas Settlement Regulation (III of 1872), s. 3, as amended by the Santhal Parganas Laws Regulation (III. of 1886);

(2) Upper Burma generally (except the Shan States) by the Upper Burma Laws Act (XX. of 1886), s. 6;

(3) British Baluchistan by the British Baluchistan Laws Regulation (I. of 1890), s. 3; and

(4) Angul and the Khondmals by the Angul District Regulation (I. of 1894), s. 3.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act (XIV. of 1874), to be in force in the Districts of Hazaribágh, Lohárdaga, and Manbhum, and Pargana Dhalbhum, and the Kolhán in the District of Singbhum.—See Gazette of India, 1881, Pt. I., p. 504. The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894.

Ss. 1 and 3 and Chs. IV. and V. of the Act have been extended to the Shan States by the Shan States Laws and Criminal Justice Order, 1895.—See Burma Gazette, 1895, Pt. I., p. 262, as amended by Notification No. 20, dated Aug. 23, 1898, Burma Gazette, 1898, Pt. I., p. 406.

† Act XI. of 1872 is repealed by s. 2 of this Act.

‡ The rendition of offenders as between different parts of Her Majesty's dominions, *e.g.*, India and Australia, is now regulated by the Fugitive Offenders Act, 1881 (44 and 45 Vict., c. 69). By s. 9 of that Act it is confined to offences punishable with rigorous imprisonment for twelve months or more.

§ As to the jurisdiction of the Courts over persons and places beyond the jurisdiction of the Indian Legislature, *e.g.*, in the case of offences committed on the high seas, see treatment of the question in Mayne's Criminal Law of India, Pt. II., Ch. II. For definition of the term "British India," see General Clauses Act (X. of 1897), s. 3 (7).

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to all Native Indian subjects* of Her Majesty beyond the limits of British India;† and

to all European British subjects* within the dominions of Princes and States in India in alliance with Her Majesty;†

Commencement.

and it shall come into force on the passing thereof.

Saving of other laws and of treaty.

But nothing contained in this Act shall affect the provisions of any law or treaty for the time being in force as to the extradition of offenders; and the procedure provided by any such law or treaty‡ shall be followed in every case to which it applies.

Repeal.

**2.** The Foreign Jurisdiction and Extradition Act, 1872, is repealed; but all existing appointments, delegations, certificates, requisitions, and rules made, and all existing notifications, summonses, warrants, orders, and directions issued, under that Act, shall, in so far as they are consistent herewith, be deemed to have been respectively made and issued hereunder.

Interpretation-clause.

**3.** In this Act, unless there is something repugnant in the subject or context,—

"Political Agent."

"Political Agent" means and includes—

(1) the principal officer representing the British Indian Government in any territory or place beyond the limits of British India;

(2) any "officer of the Government of India or of any Local Government"§ appointed by the Governor-General in Council, or "the

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* As to proceedings in the case of offences by—

(a) European British subjects in the dominions of a Prince or State in alliance with Her Majesty,

(b) Native Indian subjects of Her Majesty at any place beyond the limits of British India, see ss 54, 188, and 189 of the Code of Criminal Procedure (Act V. of 1898).

By s. 4 of the Indian Penal Code (Act XLV. of 1860), the provisions of that Code extend to every servant of the Queen "within the dominions of any Prince or State in alliance with the Queen by virtue of any treaty or engagement heretofore entered into with the East India Company, or which may have been or may hereafter be made in the name of the Queen by any Government of India"

† The power to legislate was conferred (a) as to all persons being Native Indian subjects of Her Majesty, *without and* beyond, as well as within, the Indian territories under the dominion of Her Majesty by s. 1 of the Indian Councils Act, 1865 (32 and 33 Vict., c. 98), (b) as to servants of Government in Allied Native States by the Indian Councils Act, 1861 (24 & 25 Vict., c. 67), s 22; and (c) as to European British subjects in such States by the Government of India Act (28 Vict., c 17), s 1; see also the Government of India Act, 1833 (3 & 4 Will IV., c. 85), s. 73 saved by the Indian Councils Act, 1861 (24 & 25 Vict., c 67), s 22, and I. L R., 2 All. 218, as to jurisdiction over Her Majesty's Indian Army serving anywhere.

‡ The English extradition treaty with France (Aug 14, 1876) expressly saves the treaty of March 7, 1815, relating to the East Indian possessions of Great Britain and France.

The treaty of 1876 is set out in *Clarke on Extradition*, Ed 3, Appendix, p. 89.

The treaty of 1815 is set out in *Hertslet's Treaties*, Ed 1840, p. 273, Article IX.

The extradition treaty with Portugal determined in 1890 Negotiations are pending for a fresh treaty. As to extradition of a person on one charge, and his conviction on another, see Mayne's Criminal Law of India pp 251-252.

§ In cl. (2) of s. 3, the words quoted have been substituted for the words "officer in British India" by the Foreign Jurisdiction and Extradition Act (1879) Amendment Act, 1896 (V. of 1896), s. 1.

Local Government,"* to exercise all or any of the powers of a Political Agent under this Act for any place not forming part of British India; and

"European British subject." "European British subject" means a European British subject as defined in the Code of Criminal Procedure.†

## CHAPTER II.

### POWERS OF BRITISH OFFICERS IN PLACES BEYOND BRITISH INDIA.

Exercise of powers of Governor-General in places beyond British India, and delegation thereof.

**4.**‡ The Governor-General in Council may exercise any power or jurisdiction§ which he for the time being has within any country or place beyond the limits of British India, and may delegate the same to any servant of the British Indian Government, in such manner and to such extent as the Governor-General in Council from time to time thinks fit.

Notification of exercise or delegation of such powers.

**5.**‡ A notification in the *Gazette of India* of the exercise by the Governor-General in Council of any such power or jurisdiction, and of the delegation thereof by him to any person or class of persons, and of the rules of procedure or other conditions to which such persons are to conform, and of the local area within which their powers are to be exercised, shall be conclusive proof of the truth of the matters stated in the notification.

Appointment, powers, and jurisdiction of Justices of the Peace.

**6.**‡ The Governor-General in Council may appoint any European British subject, either by name or by virtue of his office, "to be a Justice of the Peace in or for any such country or place;" ‖ and every such Justice of the Peace shall have, in proceedings against European British subjects, or persons accused of having committed offences conjointly with such subjects, all the powers conferred by the Code of Criminal Procedure† on Magistrates of the first class who are Justices of the Peace and European British subjects.

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* In cl. (2) of s. 3, the words quoted have been substituted for the words, "or the Governor in Council of the Presidency of Fort St. George or Bombay," by the Foreign Jurisdiction and Extradition Act (1879) Amendment Act, 1896 (V of 1896), s. 1.

† See now Act V of 1898 by s 4 of which "European British subject" is defined as—

"(1) any subject of Her Majesty, born, naturalized or domiciled in the United Kingdom of Great Britain and Ireland, or in any of the European, American, or Australian Colonies or possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal;

"(2) any child or grandchild of such person by legitimate descent."

‡ For notifications issued in exercise of powers conferred by ss. 4, 5, and 6, see the six volumes of Macpherson's Lists of British Enactments in force in Native States, published by the Legislative Department from 1878 to 1894.

§ As to "acts of State," see Mayne's Criminal Law of India, pp 318-325.

‖ In s 6 the words quoted have been substituted for the words, "in any such country or place to be a Justice of the Peace," by the Repealing and Amending Act (XII. of 1891). The amendment is to have effect as from the commencement of Act XXI. of 1879, see s. 2 (3) of Act XII. of 1891.

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The Governor-General in Council may direct to what Court having jurisdiction over European British subjects any such Justice of the Peace is to commit for trial.*

Confirmation of existing Political Agents and Justices.

**7.** All Political Agents and all Justices of the Peace appointed before the twenty-fifth day of April 1872 by the Governor-General in Council or the Governor in Council of the Presidency of Fort St. George or Bombay, in or for any such country or place as aforesaid, shall be deemed to be and to have been appointed, and to have had jurisdiction, under the provisions of this Act.

Extension of criminal law of British India to British subjects out of British India.

**8.**† The law relating to offences and to criminal procedure for the time being in force in British India shall, subject as to procedure to such modifications as the Governor-General in Council from time to time directs, extend—

(*a*) to all European British subjects in the dominions of Princes and States in India in alliance with Her Majesty; and

(*b*) to all Native Indian subjects of Her Majesty in any place beyond the limits of British India.

## CHAPTER III.

### INQUIRIES IN BRITISH INDIA INTO CRIMES COMMITTED BY BRITISH SUBJECTS IN PLACES BEYOND BRITISH INDIA.

**9, 10** *[Liability of British subjects for offences committed out of British India; Political Agent to certify fitness of inquiry into charge; Power to direct copies of depositions and exhibits to be received in evidence.] Repealed by the Code of Criminal Procedure (Act X. of 1882),‡ s. 2 and Sch. I. (b); See now ss. 108 to 190 of that Act.*

## CHAPTER IV.

### EXTRADITION.

Arrest and removal of persons other than European British subjects escaping into British India.

**11.** When an offence has been committed, or is supposed to have been committed, in any State against the law of such State by a person not being a European British subject, and such person escapes into or is in British India, the Political Agent for such State may issue a warrant for his arrest and delivery at a place and to a person to be named in the warrant—

if such Political Agent thinks that the offence is one which ought to be inquired into in such State;

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* For notification issued in pursuance of this power, see Western India Volume of Macpherson's Lists of British Enactments in force in Native States, Ed 1895, p. 14.

As to trial of European British subjects in British India for offences committed in Native States, see the Code of Criminal Procedure (Act V. of 1898), s. 188.

† For statutory authority to enact this section, see note (†) to s. 1.

‡ See now Act V. of 1898.

and if the act said to have been done would, if done in British India, have constituted an offence against any of the sections of the Indian Penal Code mentioned in the schedule hereto annexed, or under any other section of the said Code, or any other law, which may, from time to time, be specified by the Governor-General in Council by a notification in the *Gazette of India*.

The act of desertion from any body of Imperial Service Troops shall be deemed to be an offence in respect of which the Political Agent for the State to which such troops belong may issue a warrant under this section.*

**12.** Such warrant may be directed to the Magistrate of any district in which the accused person is believed to be, and shall be executed in the manner provided by the law for the time being in force with reference to the execution of warrants† and the accused person, when arrested, shall, "unless released on bail in accordance with the provisions of the next following section,"‡ be forwarded to the place, and delivered to the officer named in the warrant.

Direction and execution of warrant.

**12A**§ A Political Agent issuing a warrant for the arrest of any person under section 11 may in his discretion direct by endorsement thereon that, if such person executes a bond with sufficient sureties for his attendance before the officer mentioned in the warrant at a specified time, the Magistrate to whom the warrant is directed shall take such security and release such person from custody.

Powers to Political Agent to direct security to be taken and procedure thereon.

The endorsement shall state (*a*) the number of sureties (if any), (*b*) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound, and (*c*) the time and place at which he is to attend before the officer mentioned in the warrant.

Whenever security is taken under this section, the Magistrate shall certify the fact to the Political Agent by whom the warrant was issued, and shall retain the bond.

**12B**.§ If the person bound by any bond executed under the last foregoing section to appear before the officer mentioned therein does not so appear, the Magistrate may on being satisfied as to his default, issue a warrant directing that he be re-arrested and delivered over to such officer.

Arrest on breach of bond to appear.

**12C**.§ In the case of every bond required to be executed or which may have been executed in accordance with the foregoing provisions, the powers conferred by sections 513 and 514 of the Code of Criminal Procedure, 1882,‖ on the Court which has required the execution of or has taken a bond, may be exercised by the Magistrate.

Application of sections 513 and 514, Act X., 1882.

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* This paragraph has been added by the Foreign Jurisdiction and Extradition Act (1879) Amendment Act, 1896 (V of 1896), s. 2.

† See the Code of Criminal Procedure (Act V. of 1898), Ch. VI, heading B.

‡ In s. 12 the words quoted have been inserted by the Foreign Jurisdiction and Extradition Act (1879) Amendment Act, 1896 (V. of 1896), s. 3.

§ Ss. 12A, 12B, and 12C, have been inserted by the Foreign Jurisdiction and Extradition Act (1879) Amendment Act, 1896 (V. of 1896), s. 4.

‖ See now Act V. of 1898.

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**13.** Such Political Agent may either dispose of the case himself, or, if he is generally or specially directed* to do so by the Governor-General in Council, or by the Governor of the Presidency of Fort St. George in Council, or by the Governor of the Presidency of Bombay in Council, may give over the person so forwarded, whether he be a Native Indian subject of Her Majesty or not, to be tried by the ordinary Courts of the State in which the offence was committed, "or, in the case of a deserter, by a duly-constituted Military Court."†

Political Agent may himself dispose of case, or make over person to ordinary Courts for trial.

**14** Whenever a requisition is made to the Governor-General in Council or any Local Government by or by the authority of the persons for the time being administering the executive government of any part of the dominions of Her Majesty, or the territory of any Foreign Prince or State, that any person accused of having committed an offence in such dominions or territory should be given up, the Governor-General in Council or such Local Government, as the case may be, may issue an order to any Magistrate who would have had jurisdiction to inquire into the offence if it had been committed within the local limits of his jurisdiction, directing him to inquire into the truth of such accusation.

Requisitions for extradition by the executive of any part of British dominions or Foreign Power.

The Magistrate so directed shall issue a summons or warrant for the arrest of such person, according as the offence named appears to be one for which a summons or warrant would ordinarily issue; and shall inquire into the truth of such accusation, and shall report thereon to the Government by which he was directed to hold the said enquiry. If, upon receipt of such report, such Government is of opinion that the accused person ought to be given up to the persons making such requisition, it may issue a warrant for the custody and removal of such accused person and for his delivery at a place and to a person to be named in the warrant.

The provisions of section 10‡ shall apply to inquiries held under this section.

**15.** Whenever any person accused or suspected of having committed an offence out of British India is within the local limits of the jurisdiction of a Magistrate in British India, and it appears to such Magistrate that the Political Agent for any State could, under the provisions of section 11, issue a warrant for the arrest of such person, or that the persons for the time being administering the executive government of any part of the dominions of Her Majesty or the territory of any Foreign Prince or State could demand his surrender, such Magistrate may, if he thinks fit, issue a warrant for the arrest of such person on such information or complaint, and such evidence as would, in his opinion, justify the issue of such a warrant if the offence had been committed within the local limits of his jurisdiction.

Magistrate may in certain cases issue warrant for arrest of person accused of having committed an offence out of British India.

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* For rules as to the issue of warrants and treatment of prisoners issued under this section in conjunction with s. 18, see Notification No. 31-J., dated March 12, 1875, printed p. 16 of the Western India Volume of Macpherson's Lists of British Enactments in force in Native States, Ed. 1895.

† These quoted words have been added by the Foreign Jurisdiction and Extradition Act (1879) Amendment Act, 1896 (V. of 1896), s. 5.

‡ S. 10 was repealed by the Code of Criminal Procedure (Act X. of 1882). See now s. 189 of Act V. of 1898.

Any Magistrate issuing a warrant under this section shall, when the offence appears or is alleged to have been committed in a State for which there is a Political Agent, send immediate information of his proceedings to such Agent, and in other cases shall at once report his proceedings to the Local Government.

**Magistrate to inform Political Agent or Local Government.**

**16.** No person arrested on a warrant issued by a Magistrate under section 15 shall be detained more than two months from the date of his arrest, unless within such period the Magistrate receives a warrant under section 11 from the Political Agent for any State for the delivery of such person, or an order with reference to him under section 14 from the Governor-General in Council or Local Government, or such person is, in accordance with law, delivered up to some Foreign Prince or State.

**Person arrested to be released after certain time if not proceeded against.**

At any time before the receipt of such a warrant or order, the Magistrate, if he thinks fit, may, and the Magistrate if so directed by the Local Government shall, discharge the accused person.

**17.** The provisions of the Code of Criminal Procedure in respect of bail* shall apply in the case of any person arrested under section 15 in the same manner as if such person were accused of committing in British India the offence with which he is charged.

**Bail.**

**17A.**† Notwithstanding anything in the Code of Criminal Procedure 1882,‡ any person arrested without an order from a Magistrate and without a warrant, in pursuance of the provisions of section 54, clause *seventhly*, of the said Code,‡ may, under the orders of a Magistrate within the local limits of whose jurisdiction such arrest was made, be detained in the same manner and subject to the same restrictions as a person arrested on a warrant issued by such Magistrate under section 15 of this Act.

**Detention of persons arrested under section 54, clause *seventhly*, Act X., 1882.**

## CHAPTER V.

### MISCELLANEOUS.

**18.** The Governor-General in Council may, from time to time, make rules§ to provide for—

**Power to make rules.**

(1) the confinement, diet, and prison-discipline of British subjects, European or native, imprisoned by Political Agents under this Act;

(2) the removal of accused persons under this Act, and their control and maintenance until such time as they are handed over to the persons named in the warrant as entitled to receive them; and

(3) generally to carry out the purposes of this Act.

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* See Ch. XXXIX. of the Code of Criminal Procedure (Act V. of 1898).

† S. 17A has been added by the Foreign Jurisdiction and Extradition Act (1879) Amendment Act, 1896 (V. of 1896), s. 6.

‡ See now Act V. of 1898.

§ See the rules made under this section in conjunction with s. 13 referred to in footnote to that section, *supra*.

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Execution of Commissions issued by Foreign Criminal Courts.

**19.** The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal in the territory of any Foreign Prince or State in like manner as it may be obtained in relation to any civil matter under the Code of Civil Procedure, Chapter XXV.;* and the provisions of that chapter shall be construed as if the term "suit" included a proceeding against a criminal:

Provided that nothing in this section shall apply in the case of any criminal matter of a political character.

## THE SCHEDULE.

SECTIONS OF THE INDIAN PENAL CODE REFERRED TO IN SECTION 11.

Sections 206, 208, and 224; sections 230 to 263, both inclusive; sections 299 to 304, both inclusive; sections 307, 310, and 311; sections 312 to 317, both inclusive; sections 323 to 333, both inclusive; sections 347 and 348; sections 360 to 373, both inclusive; sections 375 to 377, both inclusive; sections 378 to 414, both inclusive; sections 435 to 440, both inclusive; sections 443 to 446, both inclusive; sections 464 to 468, both inclusive; sections 471 to 477, both inclusive.

* See now Act XIV. of 1882.

# ACT NO. XV. OF 1881.*

## THE INDIAN FACTORIES ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 15TH MARCH 1881.

*An Act to regulate Labour in Factories.*

**Preamble.** WHEREAS it is expedient to regulate labour in factories; It is hereby enacted as follows:—

*Preliminary.*

**Short title and local extent.** **1.** This Act may be called "The Indian Factories Act, 1881."

It applies to the whole of British India.* * * * †

**Interpretation-clause.** **2.** In this Act, unless there is something repugnant in the subject or context,—

**"factory:"** "factory" means any premises (other than indigo factories or premises situated on, and used solely for the purposes of, a tea or coffee plantation) wherein is carried on, for not less than four months in the whole in any one year, any process for, or incidental to, making, altering, repairing, ornamenting, finishing, or otherwise adapting for use, transport, or sale, any article or part of an article; and

(*a*) wherein steam, water, or other mechanical power is used in aid of any such process; and

(*b*) wherein, subject to the provisions of section 20, not less than fifty persons are on any day simultaneously employed in any manual labour in, or incidental to, any such process; and ‡

every part of a factory shall be deemed to be a factory, except any part used exclusively as a dwelling:

**"child:"** "child" means a person under the age of fourteen § years:

**"mill-gearing:"** "mill-gearing" includes every shaft, whether upright, oblique, or horizontal, and every wheel, drum, pulley, rope, driving strap, or band by which the motion of the first moving power is communicated to any machine:

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* For the Statement of Objects and Reasons, see Gazette of India, 1879, Pt. V., p. 946; for the Report of the Select Committee, see *ibid*, 1881, Pt. V., p. 127; for discussions in Council, see *ibid*, 1879, Supplement, pp. 1285 and 1382, and *ibid*, 1881, Supplement, p 385.

References to this Act are to be read as references to the Act as amended by the Indian Factories Act (XI. of 1891). See s. 19 Act XI. of 1891.

† Here the words, "and it shall come into force on the first day of July 1881," have been omitted, having been repealed by the Indian Factories Act (XI. of 1891), s 2.

‡ This clause (*b*) has been substituted for the original clause by the Indian Factories Act (XI. of 1891), s. 3. That clause ran as follows: "wherein not less than one hundred persons are on any day simultaneously employed in any manual labour in, or incidental to, any such process; and"

§ The word "fourteen" has been substituted for the word "twelve" by the Indian Factories Act (XI. of 1891), s. 5.

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"employed."

a person* who works in a factory, whether for wages or not,† in a manufacturing process or handicraft, or in cleaning any part of the factory used for any manufacturing process or handicraft, or in cleaning or oiling any part of the machinery, or in any other kind of work whatsoever incidental to, or connected with, the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process or handicraft therein, shall be deemed to be employed therein within the meaning of this Act.

*Inspectors and Certifying Surgeons.*

Inspectors.

**3.** The Local Government may in its discretion, by notification in the official Gazette, appoint, "by name or by office,"‡ such persons as it thinks fit to be Inspectors of factories within such local limits as it may assign to such Inspectors, and may suspend or dismiss any person so appointed.

The District Magistrate shall, in virtue of his office, be an Inspector of all factories, if any, in his district.§

Such Inspectors shall be deemed public servants within the meaning of the Indian Penal Code, and shall be officially subordinate to such authority as the Local Government may from time to time indicate in this behalf.

For Notifications issued under this section for—

(*1*) Lower Burma, see Burma Rules Manual, Ed. 1897, pp. 154 and 155;

(*2*) Bombay, see Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, pp. 252-54;

(*3*) Madras, see Madras List of Local Rules and Orders, Vol. I., Ed. 1898, p. 161; and

(*4*) N.-W. P. and Oudh, see N.-W. P. and Oudh List of Local Rules and Orders, Ed. 1894, p. 90.

Powers of Inspector.

**4.** An Inspector of factories may, within the local limits for which he is appointed—

(*a*) enter, with such assistants (if any) as he thinks fit, any factory whenever he has reason to believe that any person is employed therein;

(*b*) make such examination of the premises and machinery, and of the registers hereinafter prescribed, and take on the spot or otherwise such evidence of any person as such Inspector may deem necessary for carrying out the purposes‖ of this Act;

(*c*) order that any person shall not be employed in a factory when he has reason to believe that such employment would be in contravention of this Act,—

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* The word "person" has been substituted for the word "child," by the Indian Factories Act (XI. of 1891), s. 4 (*1*).

† Here the word "either" has been omitted, having been repealed by the Indian Factories Act (XI. of 1891), s. 4 (*2*).

‡ The words quoted have been inserted by the Indian Factories Act (XI. of 1891), s. 6 (*1*).

§ The second paragraph of s. 3 has been substituted for the original by the Indian Factories Act (XI of 1891), s 6 (*2*). The original paragraph ran as follows: 'In default of such appointment the Magistrate of the District shall, in virtue of his office, be Inspector of all factories (*if any*) in the district."

‖ The word "purposes" has been substituted for the word "provisions," by the Indian Factories Act (XI. of 1891), s. 7.

until the age of such person has been certified, in the manner hereinafter provided, to be above nine* years, or

for more than the time allowed by this Act for the employment of children, until his age has been so certified to be above fourteen† years.

Certifying Surgeons.

**5.** The civil surgeon or such other person practising medicine or surgery as the Local Government may from time to time appoint in this behalf for any local area (hereinafter called the certifying surgeon) shall, at the request of any person employed or desirous of being employed in a factory situate in such local area, or of the parent or guardian of such person, "and on payment by such person of such fee, if any, as may from time to time be prescribed by the Governor-General in Council by notification in the *Gazette of India*,"‡ examine such person, and grant him a certificate, stating whether his age, as nearly as it can be ascertained from such examination, is above or below nine * years or fourteen † years, as the case may be.

**For notifications issued under this power for—**

(*1*) **Bombay, see the Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, p. 255;**

(*2*) **Lower Burma, see Burma Rules Manual, Ed. 1897, p. 155:**

(*3*) **Madras, see Madras List of Local Rules and Orders, Vol. I., Ed. 1898, pp. 161 and 162; and**

(*4*) **N.-W. P. and Oudh, see N.-W. P. and Oudh List of Local Rules and Orders, Ed. 1894, p. 90.**

*All Operatives.*§

Limited stoppage of work daily in certain circumstances.

**5A.** (*1*) In every factory, except a factory in which a system of employment in shifts or sets approved by the Local Inspector is in force, there shall, between noon and two o'clock in the afternoon, be a stoppage of work for a full half hour:

(*2*) Provided that nothing in this section shall apply to any factory of a class to which the Governor-General in Council has, by notification in the *Gazette of India*, declared this section not to apply.

**The provisions of s. 5A have been declared not to apply to kilns connected with potteries.—See Gazette of India, 1893, Pt. I., p. 663.**

Holidays.

**5B.** (*1*) No person shall be employed in any factory on a Sunday:

(*2*) Provided as follows:—

(*a*) any manager, foreman, mechanic, artisan, or labourer, may be employed in a factory on a Sunday in examining or repairing, or in supervising or aiding in the examination or repair of, any machinery or other thing whatsoever necessary for the carrying on of the work performed in the factory:

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* The word "nine" has been substituted for the word "seven" by the Indian Factories Act (XI. of 1891), s. 9.

† The word "fourteen" has been substituted for the word "twelve," by the Indian Factories Act (XI. of 1891), s. 5.

‡ The words quoted have been inserted by the Indian Factories Act (XI. of 1891), s. 8. For notification issued under this power, see Gazette of India, 1892, Pt. I., p. 67.

§ The portion commencing from the heading "*All Operatives*" to the end of s. 11 has been substituted by the Indian Factories Act (XI. of 1891), s. 10.

(*b*) any person may be employed in a factory on a Sunday if he has had or will have a holiday for a whole day on one of the three days immediately preceding or succeeding the Sunday:

(*c*) the Local Government may from time to time, by notification in the official Gazette, declare sub-section (*1*) of this section not to apply to any factory or class of factories (the factory or class being described in the notification) in which the work performed—

(*i*) necessitates continuous production for technical reasons, or

(*ii*) supplies the public with articles of prime necessity which must be made every day, or

(*iii*) by its nature cannot be carried on except at stated seasons or at times dependent on the irregular action of natural forces: and

(*d*) the Governor-General in Council may from time to time, by notification in the *Gazette of India*, declare sub-section (*1*) of this section not to apply to factories of any class described in the notification.

(*1*) The provisions of sub-s. (*1*) of s. 5B have been declared not to apply to the Bombay Gas Factory, see notification at p. 256 of the Bombay List of Local Rules and Orders, Vol. I., Ed. 1896;

(*2*) For notifications issued under this power for Lower Burma, see Burma Laws List Ed. 1897, p. 136;

(*3*) For Madras, see Madras List of Local Rules and Orders, Vol. I., Ed. 1898, p. 162; and

(*4*) For the N.-W. P. and Oudh, see the N.-W. P. and Oudh List of Local Rules and Orders, Ed. 1894, pp. 90 and 91.

*Women.*

Employment of women.

**6.** (*1*) No woman shall be employed before five o'clock in the morning, or after eight o'clock in the evening, in any factory in which a system of employment in shifts or sets approved by the local Inspector is not in force.

(*2*) No woman shall be actually employed in any factory in any one day for more than eleven hours.

(*3*) Every woman shall be allowed an interval or intervals of rest amounting in the aggregate to at least an hour and-a-half in the day when she is actually employed for eleven hours, and to a proportionately less time when she is actually employed for less than eleven hours.

(*4*) The Governor-General in Council may from time to time, by notification in the *Gazette of India*, declare all or any of the foregoing sub-sections of this section not to apply to factories of any class described in the notification, or to women employed in any process so described.

*Children.*

Employment of children.

**7.** (*1*) No child shall be employed in any factory if he is under the age of nine years.

(*2*) No child shall be employed in any factory before five o'clock in the morning or after eight o'clock in the evening.

(*3*) No child shall be actually employed in any factory for more than seven hours in any one day.

(4) Every child who is actually employed in any factory for six hours in any one day shall be allowed an interval or intervals of rest amounting in the aggregate to at least half-an-hour.

**8.** No occupier of a factory shall allow any child to clean any part of the mill-gearing or machinery of such factory while the same is in motion, or to work between the fixed and traversing parts of any self-acting machine while such machine is in motion by the action of the steam-engine, water-wheel, or other mechanical power, as the case may be.

Prohibition of employment of child in certain dangerous work.

**9.** The Local Government may direct any occupier of a factory to keep in such form and with such particulars as such Government may from time to time prescribe, registers of the children (if any) employed in such factory, and of their respective employments.

Register of children in a factory.

For notification issued under s 9 for Lower Burma, See Burma Rules Manual, Ed. 1897, p. 155. See also note to s. 18, *infra*, as to Bombay.

*Women and Children.*

**10.** (*1*) The occupier shall set up and maintain, in some conspicuous place in the factory, a printed or written notice, in English and the languages of the district in which the factory is situated, showing the time at which such intervals as are required by section 6, sub-section (*3*), and section 7, sub-section (*4*), to be allowed to women and children respectively, shall be allowed, and the length of each interval.

Provisions supplementary to sections 6 and 7.

(*2*) A woman or child shall not be deemed to be actually employed within the meaning of section 6 or section 7 during any such interval as aforesaid.

**11.** No occupier of a factory shall employ therein on any day any woman or child who has to his knowledge already been employed on the same day in any other factory.

Prohibition of employment of woman or child in two factories on same day.

*Fencing.*

**12.** (*a*) Every fly-wheel directly connected with a steam engine,* water-wheel, or other mechanical power in any part of a factory, and every part of a steam-engine or water-wheel,

Fencing.

(*b*) every hoist or teagle near which any person is liable to pass or be employed, and

(*c*) every other part of the machinery or mill-gearing of a factory which may, in the opinion of the local Inspector, be dangerous if left unfenced, and which he may have ordered to be fenced,

shall, while the same is in motion, be kept by the occupier of such factory securely fenced.

Any order under clause (*c*) may be set aside, on appeal or otherwise, by the Local Government or such authority as it may appoint in this behalf.

For notification issued under the power conferred by the last para. of s. 12 in Burma, see Burma Rules Manual, Ed. 1897, p. 157.

*Notices.*

**13.** When any accident occurs in a factory causing death or bodily injury, whereby the person injured is prevented from returning to his work in the factory during forty-eight hours

Notice to be given of accidents.

* Here the word "or" has been omitted, having been repealed by the Indian Factories Act (XI. of 1891), s. 11.

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next* after the occurrence of the accident, the occupier of such factory, or, in his absence, his principal agent in the management of such factory, shall send such notice of the† accident to such authorities in such form and within such time as the Local Government may from time to time by rule direct.

For notification issued under the power conferred by s. 13 in Burma, see Burma Rules Manual, Ed. 1897, p. 157 See also note to s. 18, *infra*, as to Bombay.

Person beginning to occupy factory to give notice.

**14.** Every person shall, within one month after he begins to occupy a factory, send to the local Inspector a written notice containing the name of the factory and of‡ the place where it is situate, the address to which he desires his letters to be addressed, the nature of the work performed in such factory, the nature and amount of the moving power therein, and the name of the person§ under whom the business of the factory is to be carried on.

*Penalties.*

Penalties.

**15**‖ (*1*) Any person who, in breach of this Act or of any order or rule made thereunder,—

(*a*) employs any person in any factory;

(*b*) allows any child to perform the work forbidden by, or to work in contravention of, section 8;

(*c*) neglects to keep a register in manner prescribed under section 9;

(*d*) neglects to set up or maintain the notice required by section 10, sub-section (*1*);

(*e*) neglects to fence any machinery or mill-gearing in any factory;

(*f*) neglects to maintain a supply of water for the use of persons employed in any factory;

(*g*) neglects to ventilate any factory, or to keep any factory in a cleanly state and free from effluvia arising from any drain, privy, or other nuisance;

(*h*) suffers any factory to be so overcrowded, while work is carried on therein, as to be injurious to the health of the persons employed therein; or

(*i*) neglects to send any notice or furnish any return,

shall be punished with fine which may extend to two hundred rupees:

Provided that—

(*i*) no prosecution under this sub-section shall be instituted except by, or with the previous sanction of, the local Inspector; and

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* The word "next" has been inserted by the Indian Factories Act (XI. of 1891), s. 13.

† The word "the" has been substituted for the word "such" by the Indian Factories Act (XI of 1891), s. 12.

‡ The words "and of" have been inserted by the Indian Factories Act (XI. of 1891), s. 13 (*1*).

§ Here the words "(if any)" have been omitted, having been repealed by the Indian Factories Act (XI. of 1891), s. 13 (*2*).

‖ S. 15 has been substituted for the original section by the Indian Factories Act (XI. of 1891), s. 14.

(*n*) no person shall be liable under this sub-section to more than one penalty for any one description of offence committed on the same day, except where two or more persons are employed contrary to the provisions of this Act, in which case one penalty may be imposed in respect of each person so employed.

(*o*) Any person who corruptly uses, or attempts to use, as a certificate granted to himself under section 5, a certificate granted to another person under that section, or who, having procured a certificate under the said section, corruptly allows it to be used, or an attempt to use it to be made, by another person, shall be punished with fine which may extend to twenty rupees.

**Burden of proof as to age.**

**16.** Where an act or omission would, if a person were under nine* or fourteen† years of age, be an offence punishable under this Act, and such person is, in the opinion of the Court, apparently under such age, it shall lie on the accused to prove that such person is not under such age.

A declaration in writing by a certifying surgeon, that he had personally examined a person employed in a factory, and believes him to be under or over the age set forth in such declaration, shall, for the purposes of this Act, be admissible as evidence of the age of that person.

**Occupier primarily liable for breaches of Act or orders or rules thereunder.**

**17.**‡ Every occupier of a factory shall be deemed primarily liable for any breach therein of this Act or of any order or rule made thereunder; but he may discharge himself from such liability by proof that such breach was committed by some other person without his knowledge or consent, and in that case the person committing such breach shall be liable therefor.

*Miscellaneous.*

**Power to make rules.**

**18**§ (*1*) Subject to the control of the Governor-General in Council, the Local Government may from time to time make rules consistent with this Act to provide for—

(*a*) the fencing of machinery and mill-gearing in factories;

(*b*) the water-supply to be maintained for the use of persons employed in factories;

(*c*) the ventilation of factories and their cleanliness (including limewashing, painting, varnishing, and washing) and freedom from effluvia arising from any drain, privy, or other nuisance;

(*d*) the prevention of such overcrowding of factories, while work is carried on therein, as is likely to be injurious to the health of the persons employed therein;

(*e*) the inspection of factories;

(*f*) the manner in which appeals under this Act are to be presented and heard; and

(*g*) otherwise carrying out the purposes of this Act.

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* The word "nine" has been substituted for the word "seven" by the Indian Factories Act (XI. of 1891), s. 9.

† The word "fourteen" has been substituted for the word "twelve" by the Indian Factories Act (XI. of 1891), s. 5.

‡ S. 17 has been substituted for the original section by the Indian Factories Act (XI. of 1891), s. 15.

§ S. 18 has been substituted for the original section by the Indian Factories Act (XI of 1891), s. 16.

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(2) The Governor-General in Council may from time to time make rules requiring occupiers of factories to furnish such returns, occasional or periodical, as may be necessary for the effectual carrying out of this Act.

(3) Such rules shall be published in the local official Gazette or the *Gazette of India*, as the case may be, and shall thereupon have the force of law.

(4) Before making rules under clause (*b*), clause (*c*), or clause (*d*) of sub-section (1) of this section the Local Government, and before making rules under sub-section (2) of this section the Governor-General in Council, shall publish, in such manner as may in its or his opinion be sufficient for giving information to persons interested, a draft of the proposed rules, with a notice specifying a date (not less remote than two months from the publication of the notice) at or after which the draft will be taken into consideration, and shall consider any objection or suggestion which may be received from any person with respect to the draft before the date so specified.

For rules made for—

(1) Assam, see the Assam Manual of Local Rules and Orders, Ed 1893, p. 423;
(2) Lower Burma, see Burma Rules Manual, Ed. 1897, pp. 157, 158, 160, and Burma Laws List, Ed. 1897, pp. 136 and 137;
(3) For Bombay (under this and ss 9 and 13), see Bombay List of Local Rules and Orders, Vol. I., Ed 1886, pp. 250, 260, and 262
(4) Central Provinces, see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 97,
(5) Madras, see the Madras List of Local Rules and Orders, Vol. I., Ed. 1898, p. 103, and
(6) N.-W. P. and Oudh, see the N.-W. P. and Oudh List of Local Rules and Orders, Ed 1894, pp. 91 and 92

For rules made by the Governor-General in Council under s. 18, see *Gazette of India*, 1892, Pt I., p. 155

Crown factories.

**19** This Act shall apply to factories belonging to the Crown: provided that, in case of any public emergency, the Governor-General in Council or the Local Government may, by an order in writing, exempt any* factory from this Act to such extent and during such period as the Governor-General in Council or the Local Government, as the case may be, thinks fit.

Power to Local Government to extend definition of "factory."

**20.**† (1) Notwithstanding anything in clause (*b*) of the definition of the word "factory" in section 2, the Local Government may from time to time, by notification in the official Gazette, declare any premises, or premises of any class, which fulfil the other conditions of the said definition, to be a factory for all the purposes of this Act, or for such of those purposes as may be specified in the notification if the number of persons simultaneously employed in the premises on any day in any manual labour in, or incidental to, any such process as is referred to in the said clause (*b*) is less than fifty, and not less than twenty.

For notification issued for Bombay under sub-s. (1) of s. 20, see Bombay List of Local Rules and Orders, Vol. I., Ed 1896, p. 264.

(2) The Local Government may, by such notification, fix any number below fifty, and not below twenty, as the number of persons whose simultaneous employment as aforesaid is to be held to subject premises, as a factory, to all or any of the provisions of this Act and of the orders and rules made thereunder.

For notification issued under this section in Burma, see Burma Rules Manual, Ed. 1897, p 163.

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* Here the word "such" has been omitted, having been repealed by the Indian Factories Act (XI. of 1891), s. 17.

† S. 20 has been added by the Indian Factories Act (XI. of 1891), s. 18.

# ACT NO. VIII. OF 1870.

## THE FEMALE INFANTICIDE PREVENTION ACT, 1870.*

RECEIVED THE G.-G.'S ASSENT ON THE 18TH MARCH 1870.

*An Act for the Prevention of the Murder of Female Infants.*

Preamble.

WHEREAS the murder of female infants is believed to be commonly committed in certain parts of British India; and whereas it is necessary to make better provision for the prevention of the said offence; It is hereby enacted as follows:—

Power to take measures under Act in particular districts.

**1.** If it shall appear to the Local Government that the said offence is commonly committed in any district, or by any class, or family, or persons residing therein, the Local Government may, with the previous sanction of the Governor-General of India in Council, declare, by notification published in the official Gazette, and in such other manner as the Local Government shall direct, that measures for the prevention of such offence shall be taken under this Act in such district, or in respect of such class, or family, or persons.†

The notification shall define the limits of such district, or shall specify the class, or family, or persons to whom such notification is to be deemed to apply.

Power to make rules.

**2.** When such notification shall have been published as aforesaid, it shall be lawful for the Local Government, subject to the provisions of section 3, from time to time to make rules,‡ consistent with this Act, for all or any of the following purposes:—

(1.)—For making and maintaining registers of births, marriages, and deaths occurring in such district, or in or among the class, family, or persons to whom such notification has been made applicable; and for making, from time to time, a census of such persons, or of any other persons residing within such district:§

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* This short title has been given by the Indian Short Titles Act (XIV of 1897).

For Statement of Objects and Reasons, see Gazette of India, 1870, Pt. V. p. 15; for Proceedings in Council, see Gazette of India, 1870, Supplement, pp. 53, 131, 473.

Act VIII. of 1870 has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act (XIV of 1874), to be in force in the following Scheduled Districts: The Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum (see Gazette of India, 1881, Pt. I., p. 504). The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894.

Act VIII. of 1870 has also been declared in force in the Arakan Hill District by the Arakan Hill District Laws Regulation (IX. of 1874).

Act VIII. of 1870 has also been declared to extend, and to have extended from the 21st December 1870, to the Presidency of Bombay by s. 2 of Bom. Act III. of 1897 (*to amend Act VIII. of 1870*).

† For notification issued under this power in respect of certain classes of persons in the Ahmedabad and Kaira Districts of the Bombay Presidency, see Bombay List of Local Rules and Orders, Vol. I., Ed 1896, p. 58.

For notification issued under this power in respect of various localities in the North-Western Provinces, see List on pp. 36 to 39 of the North-Western Provinces List of Local Rules and Orders, Ed. 1894.

‡ For rules made under s. 2 for the North-Western Provinces and Oudh, see the List on p. 39 of the North-Western Provinces List of Local Rules and Orders, Ed. 1894.

§ For rules made by the Government of Bombay in respect of the classes referred to in the notification quoted above, see Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, pp. 59 and 60.

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(2.)—For the entertainment of any police-force in excess of the ordinary fixed establishment of police, or for the entertainment of any officers or servants, for the purpose of preventing or detecting the murder of female infants in such district, or in or among such class, family, or persons, or for carrying out any of the provisions of this Act:

(3.)—For prescribing how and by whom information shall be given to the proper officers of all births, marriages, and deaths occurring or about to occur in such district, or in or among such class, family, or persons:

(4.)—For the regulation and limitation of expenses* incurred by any person to whom such notification applies, on account of the celebration of marriage, or of any ceremony or custom connected therewith:

(5.)—For regulating the manner in which all or any of the expenses incurred in carrying into effect rules made under this section shall be recovered from all or any of the inhabitants of such district, or from the persons to whom such notification is applicable: †

(6.)—For defining the duties of any officer or servant appointed to carry out any rule made under this section.

Confirmation and publication of rules.

**3.** No rule or alteration made under section 2 shall take effect until it shall have been confirmed by the Governor-General of India in Council, and published in the *Gazette of India*, and also in the local Gazette.

Copies of every such rule shall be affixed in such places, and shall be distributed in such manner, as the Local Government may direct.

Punishment for breach of rules.

**4.** Whoever disobeys any such rule shall, on conviction before any officer exercising the powers of a Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Saving of prosecutions under other laws.

**5.** Nothing in this Act, or in any rule made and published as aforesaid, shall prevent any person from being prosecuted and punished under any other law for any offence punishable under this Act: Provided that no person shall be punished twice for the same offence.

Power to place neglected children under supervision.

**6.** If it appears to the Magistrate of the district that any person, to whom the notification mentioned in section 1 applies, neglects to make proper provision for the maintenance of any female child for whose maintenance he is legally responsible, and that the life or health of such child is thereby endangered, such Magistrate may, in his discretion, place the child under such supervision as he may think proper, and shall, if necessary, remove the child from the custody of such person.

The Magistrate of the district may order him to make a monthly allowance for the maintenance of the child at such monthly rate not exceeding fifty rupees as to such Magistrate shall seem reasonable; and, if such person wilfully neglects

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* For rules limiting marriage expenses among the classes referred to above, see Bombay List of Local Rules and Orders, Vol. I., pp. 61 to 65.

† As to the application of funds collected under the Act or the rules made thereunder for the educational benefit of those classes in the Ahmedabad District to whom the Act has been applied, see s. 1 of Bom. Act III. of 1897 (*to amend Act VIII. of 1870*).

to comply with such order, such Magistrate may, for every breach of the order, by warrant direct the amount due to be levied in manner provided by section 61* of the Code of Criminal Procedure.

Nothing in this section shall affect the powers of a Magistrate under section 316† of the same Code.

**Extent of Act.**

**7.** This Act shall, in the first instance, extend only to the North-Western Provinces, to the Panjab, and to Oudh; but the Governor-General of India in Council may, by order, extend it to any part of the territories (other than Oudh) under the immediate administration of the Government of India; and the Governor of Madras in Council, the Governor of Bombay in Council,‡ and the Lieutenant-Governor of Bengal, may severally, by order, extend it to any part of the territories under their respective Governments.

Every order under this section made by the Governor-General of India in Council shall be published in the *Gazette of India*. Every other order made under this section shall be published in the local official Gazette.

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* See now Act V. of 1898, ss. 386 and 387.

† See now Act V. of 1898, s. 488.

‡ The Act has been declared to extend and to have extended from the 21st December 1870 to the Presidency of Bombay by s. 2 of Bom. Act III. of 1897 (*to amend Act VIII. of 1870*).

# ACT NO. IV. OF 1897.

## THE INDIAN FISHERIES ACT, 1897.*

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*Received the assent of the Governor-General on the 4th February 1897.*

*An Act to provide for certain matters relating to Fisheries in British India.*

WHEREAS it is expedient to provide for certain matters relating to fisheries in British India; It is hereby enacted as follows:—

Title, extent, and commencement.

**1.** (*1*) This Act may be called "The Indian Fisheries Act, 1897."

(*2*) It extends to the whole of British India, except Burma;† and

(*3*) It shall come into force at once.

Act to be read as supplemental to other Fisheries Laws.

**2.** Subject to the provisions of sections 8 and 10 of the General Clauses Act, 1887,‡ this Act shall be read as supplemental to any other enactment§ for the time being in force relating to fisheries in any part of British India, except Burma.

Definitions.

**3.** In this Act, unless there is anything repugnant in the subject or context,—

(*1*) "fish" includes shell-fish;

(*2*) "fixed-engine" means any net, cage, trap, or other contrivance for taking fish, fixed in the soil, or made stationary in any other way; and

(*3*) "private water" means water which is the exclusive property of any person, or in which any person has for the time being an exclusive right of fishery, whether as owner, lessee, or in any other capacity.

*Explanation.*—Water shall not cease to be "private water" within the meaning of this definition by reason only that other persons may have by custom a right of fishery therein.

Destruction of fish by explosives in inland waters and on coasts.

**4.** (*1*) If any person uses any dynamite or other explosive substance in any water with intent thereby to catch or destroy any of the fish that may be therein, he shall be punishable with imprisonment for a term which may extend to two months, or with fine which may extend to two hundred rupees.

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* For Statement of Objects and Reasons, see Gazette of India, 1893, Pt. V, p 101; for Report of the Select Committee, see *ibid*, 1897, Pt. V., p. 15; and for Proceedings in Council, see *ibid*, 1893, Pt. VI., p 207; *ibid* 1896, p. 250, and *ibid*, 1897, p. 21.

This Act was extended to British Baluchistan, by notification under s. 5 of the Scheduled Districts Act (XIV. of 1874). See Gazette of India 1897, Pt. II., p. 792.

† As to the law in force in Lower Burma, see the Burma Fisheries Act (VII of 1875).

‡ See now ss. 4 and 26 of the General Clauses Act (X. of 1897).

§ For law relating to Fisheries in:—

(*1*) the Arakan Hills, see the Arakan Hill District Laws Regulation (IX. of 1874), s. 3,

(*2*) Assam, see the Assam Land and Revenue Regulation (I. of 1886), ss 16 and 155;

(*3*) Bengal and Assam (Private Fisheries), see the Private Fisheries Protection Act, 1889 (Ben. Act II. of 1889);

(*4*) Central Provinces, see Central Provinces Land Revenue Act (XVIII. of 1881);

(*5*) Nilgiris District, as to acclimatised fish, see "The Nilgiris Game and Fish Preservation Act, 1879" (Mad. Act II. of 1879).

(*a*) In sub-section (*1*) the word "water includes the sea within a distance" of one marine league of the sea-coast; and an offence committed under that sub-section in such sea may be tried, punished, and in all respects dealt with as if it had been committed on the land abutting on such coast.

**Destruction of fish by poisoning of waters.**

**5.** (*1*) If any person puts any poison, lime, or noxious material into any water with intent thereby to catch or destroy any fish, he shall be punishable with imprisonment for a term which may extend to two months, or with fine which may extend to two hundred rupees.

(*2*) The Local Government may, by notification in the official Gazette, suspend the operation of this section in any specified area, and may, in like manner, modify or cancel any such notification.

**Protection of fish in selected waters by rules of Local Government.**

**6.** (*1*) The Local Government may make rules for the purposes hereinafter in this section mentioned, and may, by a notification in the official Gazette, apply all or any of such rules to such waters, not being private waters, as the Local Government may specify in the said notification.

(*2*) The Local Government may also, by a like notification, apply such rules or any of them to any private water, with the consent in writing of the owner thereof, and of all persons having for the time being any exclusive right of fishery therein.

(*3*) Such rules may prohibit or regulate all or any of the following matters, that is to say:—

(*a*) the erection and use of fixed engines;

(*b*) the construction of weirs, and

(*c*) the dimension and kind of the nets to be used, and the modes of using them.

(*4*) Such rules may also prohibit all fishing in any specified water for a period not exceeding two years.

(*5*) In making any rule under this section the Local Government may—

(*a*) direct that a breach of it shall be punishable with fine which may extend to one hundred rupees, and, when the breach is a continuing breach, with a further fine which may extend to ten rupees for every day after the date of the first conviction during which the breach is proved to have been persisted in: and

(*b*) provide for—

(i) the seizure, forfeiture, and removal of fixed engines erected or used or nets used, in contravention of the rule, and

(ii) the forfeiture of any fish taken by means of any such fixed engine or net.

(*6*) The power to make rules under this section is subject to the condition that they shall be made after previous publication.

**Arrest without warrant for offences under this Act**

**7.** (*1*) Any police-officer or other person specially empowered by the Local Government in this behalf, either by name or as holding any office, for the time being, may, without

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an order from a Magistrate, and without warrant, arrest any person committing in his view any offence punishable under section 4 or 5, or under any rule under section 6—

(*a*) if the name and address of the person are unknown to him, and

(*b*) if the person declines to give his name and address, or if there is reason to doubt the accuracy of the name and address if given.

(*2*) A person arrested under this section may be detained until his name and address have been correctly ascertained:

Provided that no person so arrested shall be detained longer than may be necessary for bringing him before a Magistrate, except under the order of a Magistrate for his detention.

# ACT NO. III. OF 1864.*

## THE FOREIGNERS ACT, 1864.

RECEIVED THE G.-G.'S ASSENT ON THE 12TH FEBRUARY 1864.

*An Act to give the Government certain Powers with respect to Foreigners.*

Preamble.

WHEREAS it is expedient to make provision to enable the Government to prevent the subjects of Foreign States from residing or sojourning in British India, or from passing through or

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* Short title, "The Foreigners Act, 1864." See the Indian Short Titles Act (XIV. of 1897).

For special direction from Parliament to pass this Act, see s. 84 of the Government of India Act, 1833 (3 & 4 William IV., c. 85).

For the Statement of Objects and Reasons of the Bill which became Act III. of 1864, see Calcutta Gazette, 1863, p. 2163. For Proceedings relating to the Bill, see *ibid*, Supplement, p. 581, and Gazette of India 1864, Supplement, p. 41.

The Act has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared in force in—

Upper Burma generally (except the Shan States) by the First Part of the Second Schedule to the Upper Burma Laws Act (XX. of 1886), s. 6;

the Santhal Parganas by the Santhal Parganas Settlement Regulation (III. of 1872), s. 3, as amended by the Santhal Parganas Laws Regulation (III. of 1886);

the Arakan Hill District by the Arakan Hill District Laws Regulation (IX. of 1874), s 3.

British Baluchistan and the Agency Territories by the British Baluchistan Laws Regulation (I. of 1890), s. 3, and the Baluchistan Agency Laws Law, 1890, s. 4 (*1*), respectively;

Angul and the Khondmals by the Angul District Regulation (I. of 1894), s. 3.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely:—

| | | |
|---|---|---|
| Sindh . . . . . | See Gazette of India, | 1878, Pt. I., p. 482. |
| Aden . . . . . | Ditto | 1879, Pt. I., p. 434. |
| West Jalpáiguri, the Western Duárs, the Western Hills of Dárjeeling, the Dárjeeling Tarái, and the Damson Sub-division of the Dárjeeling District . . . . . | Ditto | 1881, Pt. I., p. 74. |
| The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum . . . | Ditto | 1881, Pt. I., p. 504. |
| The Porahat Estate in the Singbhum District . . . . . | Ditto | 1897, Pt. I., p. 1059. |
| The Scheduled portion of the Mirzápur District . . . . . | Ditto | 1879, Pt. I., p. 383. |
| Jaunsar Báwar . . . . . | Ditto | 1879, Pt. I., p. 382. |
| The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán . . | Ditto | 1886, Pt. I., p. 48. |
| The District of Lahaul . . . | Ditto | 1886, Pt. I., p. 301. |
| The Scheduled Districts of the Central Provinces . . . . | Ditto | 1879, Pt. I., p. 771. |
| The District of Sylhet . . . | Ditto | 1879, Pt. I., p. 631. |
| The rest of Assam except the North Lushai Hills . . . . | Ditto | 1897, Pt. I., p. 299. |

It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely:—

| | | |
|---|---|---|
| Kumáon and Garhwál . . | See Gazette of India, | 1876, Pt. I., p. 606. |
| The North-Western Provinces Tarái . . . . . | Ditto | 1876, Pt. I., p. 505. |

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travelling therein, without the consent of the Government: It is enacted as follows:—

Interpretation-clause.

**1.** The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context, repugnant to such construction, that is to say:—

The words "British India"* shall denote the territories which are or may become vested in Her Majesty by the Statute 21 & 22 Victoria, chapter 106, entitled "An Act for the Better Government of India:" †

The words "Local Government" shall denote the persons authorized to administer the executive government in any part of British India, or the chief executive officer of any part of British India under the immediate administration of the Governor-General of India in Council, when such chief executive officer shall, by an order of the Governor-General of India in Council published in the Gazette of India, be authorized to exercise the powers vested by this Act in a Local Government:

The word "foreigner" shall denote a person, not being either a natural-born subject of Her Majesty within the meaning of the Statute 3 & 4 William IV., chapter 85,‡ section 81, or a native of British India:

The words "the Magistrate of a district," shall denote the chief officer charged with the executive administration of a district, and exercising the powers of a Magistrate, by whatever designation the chief officer charged with the executive administration is styled, or, in the absence of such officer from the station at which his Court is usually held, the senior officer at the station exercising the powers of a Magistrate as defined in the Code of Criminal Procedure:

The word "vessel" shall include anything made for the conveyance by water of human beings or property: §

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number:

Words importing the masculine gender shall include females.‖

Proof of being foreigner.

**2.** If a question shall arise whether any person alleged to be a foreigner, and to be subject to the provisions of this Act, is a foreigner or not, or is or is not subject to the provisions of this Act, the onus of proving that such person is not a foreigner, or is not subject to the provisions of this Act, shall lie upon such person.

Government may order foreigner to remove himself.

**3.** The Governor-General of India in Council may, by writing, order any foreigner to remove himself from British India, or to remove himself therefrom by a particular route to be specified in the order:

and any Local Government may, by writing, make the like order with reference to any foreigner within the jurisdiction of such Government.

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* *Cf.* definition of "British India" in the Interpretation Act (52 & 53 Vict., c. 63), s 18, and in the General Clauses Act (X of 1897), s. 3 (7).

† See "the Government of India Act, 1858" (21 & 22 Vict., c. 106), printed, Collection of Statutes relating to India, Ed. 1881, Vol. II., p. 651.

‡ See "the Government of India Act, 1833" (3 & 4 William IV., c. 85), printed, Collection of Statutes relating to India, Vol I., p. 228.

§ *Cf.* definition in s. 3 (56) of the General Clauses Act (X. of 1897).

‖ *Cf.* definition in s. 13, *ibid.*

Foreigner refusing to remove, or returning without license after removal, may be apprehended and detained.

**4.** If any foreigner ordered to remove himself from British India, or ordered to remove himself therefrom by a particular route, shall neglect or refuse so to do; or

if any foreigner, having removed himself from British India in consequence of an order issued under any of the provisions of this Act, or having been removed from British India under any of the said provisions, shall wilfully return thereto without a license in writing granted by the Governor-General of India in Council, or by the Local Government under whose order he shall have removed himself or been removed,

such foreigner may be apprehended and detained in safe custody until he shall be discharged therefrom by order of the Governor-General of India in Council or of the Local Government within whose jurisdiction he shall be so apprehended or detained, upon such terms and conditions as the said Governor-General of India in Council or Local Government shall deem sufficient for the peace and security of British India, and of the Allies of Her Majesty, and of the neighbouring Princes and States.

Governor-General may order provisions of Act to be in force in British India, or in part thereof.

**5.** Whenever the Governor-General of India in Council shall consider it necessary to take further precautions in respect of foreigners residing or travelling in British India or any part thereof, it shall be lawful for the Governor-General of India in Council, by a notification published in the Gazette of India, to order that the provisions of this and the subsequent sections of this Act shall be in force in British India, or in such part thereof as shall be specified in such notification, for such period as shall be therein declared; and thereupon, and for such period, the whole of this Act, including this and the subsequent sections, shall have full force and effect in British India or such part thereof as shall have been so specified.

The Governor-General of India in Council may, from time to time, by a notification published as aforesaid, cancel or alter any former notification which may still be in force, or may extend the period declared therein:

Proviso.

Provided that none of the provisions of this or the subsequent sections of this Act shall extend—

to any foreign minister duly accredited by his Government;

to any consul or vice-consul;

to any person under the age of fourteen years; or

to any person in the service of Her Majesty.

Foreigner to report arrival in India in certain cases.

**6.** Every foreigner, on arriving in any part of British India in which all the provisions of this Act are for the time being in force under an order issued as provided in the last preceding section, from any port or place not within British India, or from any port or place within British India where all the provisions of this Act are not in force, shall, if he arrive at a presidency-town, forthwith report himself to the Commissioner of Police of such town, or, if he arrive at any other place, then he shall forthwith report himself to the Magistrate of the district, or to such other officer as shall be appointed to receive such reports by the Governor-General of India in Council or by the Local Government of such place.

What to be stated in report.

**7.** The report shall be in writing, and shall be signed by the person reporting himself, and shall specify his name or names, the nation to which he belongs, the place from which he

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shall have come, the place or places of his destination, the object of his pursuit, and the date of his arrival in such presidency-town or other place.

The report shall be recorded by the officer to whom it is made.

Foreigners, being masters of vessels or employed therein, when to report.

8. The provisions of the last two preceding sections shall not extend to any person being the master or commander of a vessel or employed therein;

but, if any such person shall be in any part of British India in which all the provisions of this Act are for the time being in force, after he shall have ceased to be actually employed in a vessel, he shall forthwith report himself in manner aforesaid.

Foreigners neglecting to report, how dealt with.

9. If any foreigner shall neglect to report himself as required by this Act, he may be dealt with in the manner hereinafter provided in respect of foreigners travelling without a license.

No foreigner to travel without license.

10. No foreigner shall travel in or pass through any part of British India in which all the provisions of this Act are for the time being in force without a license.

License by whom granted.

11. Licenses under this Act may be granted by the Governor-General of India in Council or by any of the Local Governments, under the signature of a Secretary to the Government of India or to such Local Government as the case may be, or by such other officers as shall be specially authorized to grant licenses by the Governor-General of India in Council, or by any of the Local Governments.

What to be stated in license.

12. Every such license shall state the name of the person to whom the license is granted, the nation to which he belongs, the district or districts through which he is authorized to pass, or the limits within which he is authorized to travel, and the period (if any) during which the license is intended to have effect.

License may be granted subject to conditions,

13. The license may be granted subject to such conditions as the Governor-General of India in Council or the Local Government may direct, or as the officer granting the license may deem necessary.

and may be revoked.

Any license may be revoked at any time by the Governor-General of India in Council or by the Local Government of any part of British India in which all the provisions of this Act are for the time being in force, and in which the foreigner holding the same may be, or by the officer who granted the license.

Foreigner travelling without, or contrary to conditions of, license, may be apprehended.

14. If any foreigner travel in, or attempt to pass through, any part of British India without such license as aforesaid, or beyond the districts or limits mentioned therein, or after such license shall have been revoked, or shall violate any of the conditions therein specified, he may be apprehended without warrant by any officer exercising any of the powers of a Magistrate, or by any European commissioned officer in the service of Her Majesty, or by any member of a volunteer corps enrolled by authority of Government whilst on duty, or by any police-officer.

Procedure upon apprehension.

15. If any person be apprehended by a person not exercising any of the powers of a Magistrate, and not being a police-officer, he shall be delivered over as soon as possible to a police-officer, and forthwith carried before the Magistrate of the district.

Whenever any person shall be apprehended by or taken before the Magistrate of the district, such Magistrate shall immediately report the case to the Local Government to which he is subordinate, and cause the person brought before him to be discharged, or to be conveyed to one of the presidency-towns, or, pending the orders of such Government, to be detained.

Magistrate to report to Government.

**16.** Any person apprehended or detained under the provisions of this Act may be admitted to bail by the Magistrate of the district, or by any officer authorized to grant licenses, and shall be put to as little inconvenience as possible during his detention in custody.

Persons apprehended may be admitted to bail.

**17.** The Local Government of any part of British India in which all the provisions of this Act are for the time being in force may order any person apprehended or detained under the provisions of this Act to remove himself from any such part of British India by sea or by such other route as the said Local Government may direct: or the said Local Government may cause him to be removed from such part of British India by such route and in such manner as to such Local Government shall seem fit.

Removal of persons apprehended.

The Governor-General of India in Council may exercise all the powers given by this section to any Local Government.

**18.** The Governor-General of India in Council may by order prohibit any person or any class of persons, not being natural-born subjects of Her Majesty within the meaning of the Statute 3 and 4 William IV., chapter 85, section 81, from travelling in or passing through any part of British India in which all the provisions of this Act may for the time being be in force, and from passing from any part thereof to another without a license to be granted by such officer or officers as shall be specified in the order;

Governor-General may prohibit persons not being natural-born subjects from travelling through India without license.

and if any person so prohibited shall wilfully disobey such order, he may be apprehended without warrant by any of the officers specified in section 14 of this Act, and carried before the Magistrate of the district, and dealt with under the provisions of section 17 in the same manner as if he were a foreigner.

Effect of disobedience.

and the Governor-General of India in Council may order such person to be detained in safe custody, or under the surveillance of the police, so long as it may be deemed necessary for the peace and security of British India or any part thereof.

**19.** The Local Government of any presidency or place in which all the provisions of this Act may for the time being be in force may by order prohibit any person, or any class of persons, not being natural-born subjects of Her Majesty within the meaning of the Statute 3 and 4 William IV., chapter 85, section 81, from travelling in or passing through such presidency or place, or any part thereof, and from passing from any part thereof to another, without a license to be granted by such officer or officers as shall be specified in the order:

Like power of Local Governments within their respective jurisdictions.

and if any person so prohibited shall wilfully disobey such order, he may be apprehended without warrant by any of the officers specified in section 14 of this Act, and carried before the Magistrate of the district, and dealt with under the provisions of section 17 in the same manner as if he were a foreigner:

Effect of disobedience.

and the Local Government may order such person to be detained in safe custody, or under the surveillance of the police, so long as it may be deemed necessary for the peace and security of British India or any part thereof.

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**20.** It shall be lawful for the Commissioner of Police, or for the Magistrate of the district, or for any officer appointed to receive reports as mentioned in section 6 of this Act, or for any police-officer under the authority of such Commissioner or Magistrate, to enter any vessel in any port or place within British India in which all the provisions of this Act may for the time being be in force, in order to ascertain whether any foreigner bound to report his arrival under the said section 6 of this Act is on board of such vessel;

Certain officers may board vessels to ascertain whether foreigners are on board.

and it shall be lawful for such Commissioner of Police, Magistrate, or other officer as aforesaid, to adopt such means as may be reasonably necessary for that purpose;

and the master or commander of such vessel shall also, before any of the passengers are allowed to disembark, if he shall be required so to do by such Commissioner of Police, Magistrate, or other officer as aforesaid, deliver to him a list in writing of the passengers on board, specifying the ports or places at which they embarked, and the ports or places of their disembarkation or intended disembarkation, and answer to the best of his knowledge all such questions touching the passengers on board the said vessel, or touching those who may have disembarked in any part of British India, as shall be put to him by the Commissioner of Police, Magistrate, or other officer as aforesaid.

Master of vessel to furnish list of passengers, and to give information respecting them.

If any foreigner on board such vessel in any part of British India shall refuse to give an account of his objects of pursuit in India, or if his account thereof shall not be satisfactory, the officer may refuse to allow him to disembark, or he may be dealt with in the same manner as a foreigner travelling in British India without a license.

Foreigner refusing to give account of himself, how dealt with.

**21.** If the master or commander of a vessel shall wilfully give a false answer to any question which by section 20 of this Act he is bound to answer, or shall make any false report, he shall be held to have committed the offence specified in section 177 of the Indian Penal Code.

Penalty for false answer or report.

**22.** If the master or commander of any vessel shall wilfully neglect or refuse to comply with the requisitions of this Act, he shall, on conviction before the Magistrate of the district or a Justice of the Peace, be liable to a fine not exceeding two thousand rupees.

Penalty for master not complying with requisitions of Act.

**23.** Whoever intentionally obstructs any officer in the exercise of any of the powers vested in him by this Act shall be held to have committed the offence specified in section 186 of the Indian Penal Code.

Penalty for obstructing officers.

**24.** All fines imposed under this Act may "be recovered in the manner provided by the law for the time being in force for the recovery of fines imposed by Criminal Courts."*

Fines imposed under Act how recovered.

**25.** The Governor-General of India in Council, or the Local Government of any part of British India in which this Act may for the time being be in force, may exempt any person, or any class of persons, either wholly or partially, or temporarily or otherwise, from all or any of the provisions of this Act contained in any of the sections subsequent to section 5, and may at any time revoke any such exemption.

Power to exempt from provisions of Act.

* The words quoted have been substituted for certain words repealed by Act XII, of 1891.

# ACT NO. VII. OF 1878.*

## THE INDIAN FOREST ACT, 1878.

RECEIVED THE G.-G.'S ASSENT ON THE 8TH MARCH 1878.

*An Act to amend the Law relating to Forests, the Transit of Forest-produce, and the Duty leviable on Timber.*

Preamble.

WHEREAS it is expedient to amend the law relating to forests, the transit of forest-produce, and the duty leviable on timber; It is hereby enacted as follows:—

### CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The Indian Forest Act, 1878."

Commencement.

It shall come into force at once in the territories respectively administered by the Governor of Bombay in Council, the Lieutenant-Governors of the Lower Provinces, the North-Western Provinces, and the Punjáb (except the District of Hazára†), and the Chief Commissioners of Oudh, the Central Provinces, and Assam.‡

Extension.

And any other Local Government may, from time to time, with the previous sanction of the Governor-General in Council, extend,§ by notification in the local official Gazette, this Act to all or any of the territories for the time being under its administration.

Repeal of enactments.

On and from the date on which this Act comes into force in any of the said territories, the enactments mentioned in the schedule hereto annexed shall be repealed in such territories. But all rules made under or validated by any of the said enactments, and in force

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* For the Statement of Objects and Reasons, see Gazette of India, 1877, Pt. V., p. 11; for the first Report of the Select Committee, see *ibid*, Pt. V, p. 400; for Proceedings in Council, see *ibid* Supplement, pp 86 121, 2744, and *ibid*, 1878, pp. 326 and 437.

Act VII. of 1878 has been declared in force in the Santhál Parganas by the Santhál Parganas' Settlement Regulation (III of 1872), s 3, as amended by the Santhál Parganas' Laws Regulation (III of 1886); and in Angul and the Khondmals by the Angul District Regulation (I. of 1894), s. 3

Act VII. of 1878 has been declared, by notification under s 3 (*a*) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts in the Chota Nagpore Division, namely: the Districts of Házaribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See Gazette of India, 1881, Pt. I., p 504 The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894

† For the forest-law in force in the Hazára District, see the Hazára Forest Regulation (VI. of 1893).

‡ Act VII. of 1878 was repealed in Assam from the 1st April 1892.—See the Assam Forest Regulation (VII. of 1891), ss 1 (*3*), 2 (*1*)

§ *Act VII. of 1878 has been extended under this power to the Province of Coorg.*—See Coorg District Gazette, 1887, Pt I., p 640.

For Madras, Ajmere-Merwára, Burma, British Baluchistan, and Assam, there are special Forest laws: see the Madras Forest Act (V. of 1882); the Ajmere Forest Regulation (VI of 1874); the Burma Forest Act XIX of 1881); the Upper Burma Forest Regulation (VI. of 1887); the British Baluchistan Forest Regulation (V. of 1890); the Assam Forest Regulation (VII. of 1891).

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at the date of such repeal, shall, so far as they are consistent with this Act, be deemed to have been made and published hereunder.

Interpretation-clause.

**2.** In this Act, unless there be something repugnant in the subject or context,—

"Forest-officer" means any person whom the Governor-General in Council or the Local Government, or any officer empowered by the Governor-General in Council or the Local Government in this behalf, may, from time to time, appoint by name, or as holding an office, to carry out all or any of the purposes of this Act, or to do anything required by this Act or any rule made under this Act to be done by a Forest-officer:

"Tree"* includes palms, bamboos, stumps, brushwood, and canes:

"Timber"† includes trees when they have fallen or have been felled, and all wood, whether cut up, or fashioned, or hollowed out for any purpose or not:

"Forest-produce"† includes—

(*a*) the following, whether found in, or brought from, a forest or not, that is to say:—

timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish bark, lac, mahua flowers, and myrabolams, and

(*b*) the following, when found in, or brought from, a forest, that is to say:—

(*i*) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned of trees,

(*ii*) plants not being trees (including grass, creepers, reeds, and moss), and all parts or produce of such plants,

(*iii*) wild animals and skins, tusks, horns, bones, silk, cocoons, honey, and wax, and all other parts or produce of animals, and

(*iv*) peat, surface-oil, rock, and minerals (including limestone, laterite, mineral oils, and all products of mines or quarries):

"Forest-offence" means an offence punishable under this Act, or under any rule made under this Act:

"Cattle" includes elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats, and kids:

"River" includes streams, canals, creeks, and other channels, natural or artificial.

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## CHAPTER II.

### OF RESERVED FORESTS.‡

Power to reserve forests.

**3.** The Local Government may, from time to time, constitute any forest-land or waste-land which is the property of Government, or over which the Government has proprietary rights, or

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* The definition of "tree" has been substituted for the original definition by the Forest Act (V. of 1890), s. 2 (*1*). The wording of the original clause only referred to "bamboos stumps, and brushwood."

† The definitions of timber and forest-produce have been substituted for the original definitions by the Forest Act (V. of 1890), s. 2 (*2*) and (*4*) respectively.

‡ As to the application of provisions relating to reserved forests, (1) to village-forests, see s. 27, last paragraph; (2) to forests and lands not the property of the Government, see ss. 36–38; (3) to forests, waste-land, or produce, the joint property of the Government and other persons, see s. 79, *infra*.

to the whole or any part of the forest-produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.

Notification by Local Government.

**4.** Whenever it is proposed to constitute any land a reserved forest, the Local Government may publish a notification in the local official Gazette—

(*a*) declaring that it is proposed to constitute such land a reserved forest;

(*b*)* specifying, as nearly as possible, the situation and limits of such land; and

(*c*) appointing an officer (hereinafter called "the Forest Settlement-officer") to inquire into and determine the existence, nature, and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits, or in or over any forest-produce, and to deal with the same as provided in this chapter.

*Explanation.*—For the purpose of clause (*b*) of this section, it shall be sufficient to describe the limits of the forest by roads, rivers, ridges, or other well known or readily intelligible boundaries.

The officer appointed under clause (*c*) of this section shall ordinarily be a person not holding any forest-office except that of Forest Settlement-officer.

Nothing in this section shall prevent the Local Government from appointing any number of officers not exceeding three, not more than one of whom shall be a person holding any forest office except as aforesaid, to perform the duties of a Forest Settlement-officer under this Act.

Bar of accrual of forest-rights.

**5.** During the interval between the publication of such notification and the date fixed by the notification under section 19, no right shall be acquired in or over the land comprised in such notification except by succession or under a grant or contract in writing made or entered into by or on behalf of Government or some person in whom such right was vested when the former notification was issued, and no fresh clearings for cultivation or for any other purpose shall be made in such land, "except in accordance with rules prescribed by the Local Government."†

Proclamation by Forest Settlement-officer.

**6.** When a notification has been issued under section 4, the Forest Settlement-officer shall publish in the language of the country, in every town and village in the neighbourhood of the land comprised therein, a proclamation—

(*a*) specifying, as nearly as possible, the situation and limits of the proposed forest;‡

(*b*) explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest; and

(*c*) fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right mentioned in section 4 or 5, either to present to such officer within such period a written notice specifying, or to appear before him and state, the nature of such right, and the amount and particulars of the compensation (if any) claimed in respect thereof.

Enquiry by Forest Settlement-officer.

**7.** The Forest Settlement-officer shall take down in writing all statements made under section 6, and shall, at some convenient place, inquire into all claims duly preferred under that

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* Cl. (*b*) of s. 4 has been substituted by the Forest Act (V. of 1890), s. 3. The original clause ran as follows: "(*b*) specifying the limits of such forest; and."

† The words quoted have been added by the Forest Act (V. of 1890), s. 4.

‡ Cl. (*a*) of s. 6 has been substituted by the Forest Act (V. of 1890), s. 5.

1878. Act 7.

section, and the existence of any rights mentioned in section 4 or 5, and not claimed under section 6, so far as the same may be ascertainable from the records of Government and the evidence of any persons likely to be acquainted with the same.

Powers of Forest Settlement-officer.

8. For the purposes of such enquiry, the Forest Settlement-officer may exercise the following powers, that is to say:

(*a*) power to enter, by himself or any officer authorized by him for the purpose, upon any land, and to survey, demarcate, and make a map of the same; and

(*b*) the powers of a Civil Court in the trial of suits.

Extinction of rights.

9. Rights in respect of which no claim has been preferred under section 6, and of the existence of which no knowledge has been acquired by enquiry under section 7, shall be extinguished, unless, before the notification under section 19 is published, the person claiming them satisfies the Forest Settlement-officer that he had sufficient cause for not preferring such claim within the period fixed under section 6.

Treatment of claims relating to practice of shifting cultivation.

9A.* (*1*) In the case of a claim relating to the practice of shifting cultivation, the Forest Settlement-officer shall record a statement setting forth the particulars of the claim, and of any local rule or order under which the practice is allowed or regulated, and submit the statement to the Local Government, together with his opinion as to whether the practice should be permitted or prohibited, wholly or in part.

(*2*) On receipt of the statement and opinion, the Local Government may make an order permitting or prohibiting the practice wholly or in part.

(*3*) If such practice is permitted wholly or in part, the Forest Settlement-officer may arrange for its exercise —

(*a*) by altering the limits of the land under settlement so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient, for the purposes of the claimants; or

(*b*) by causing certain portions of the land under settlement to be separately demarcated, and giving permission to the claimants to practise shifting cultivation therein under such conditions as he may prescribe.

All arrangements made under this sub-section shall be subject to the previous sanction of the Local Government.

(*4*) The practice of shifting cultivation shall in all cases be deemed a privilege subject to control, restriction, and abolition by the Local Government.

Power to acquire land over which right is claimed.

10. In the case of a claim to a right in or over any land, other than a right of way or pasture, or to forest-produce or a watercourse, the Forest Settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

If such claim is admitted in whole or in part, the Forest Settlement-officer shall either (1) exclude such land from the limits of the proposed forest; or (2)

* S. 9A has been inserted by the Forest Act (V. of 1890), s. 6.

come to an agreement with the owner thereof for the surrender of his right; or (3) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1870.* 1870. Act X.

For the purpose of so acquiring such land—

(*a*) the Forest Settlement-officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1870:*

(*b*) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under section 9 of that Act;†

(*c*) the provisions of the preceding sections of that Act‡ shall be deemed to have been complied with; and

(*d*) the Collector, with the consent of the claimant, or the Court, with the consent of both parties, may award compensation in land, or partly in land and partly in money.

Order on claims to rights of pasture or to forest-produce.

**11.** In the case of a claim to rights of pasture or to forest-produce, the Forest Settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

Record to be made by Forest Settlement-officer.

**12.** The Forest-Settlement officer, when passing any order under section 11, shall record, so far as may be practicable,—

(*a*) the name, father's name, caste, residence, and occupation of the person claiming the right;

(*b*) the designation, position, and area of all fields or groups of fields (if any), and the designation and position of all buildings (if any) in respect of which the exercise of such rights is claimed.

Record where he admits claim.

**13.** If the Forest Settlement-officer admits, in whole or in part, any claim under section 11, he shall also record the extent to which the claim is so admitted, specifying the number and description of the cattle which the claimant is from time to time entitled to graze in the forest, the season during which such pasture is permitted, the quantity of timber and other forest-produce which he is from time to time authorized to take or receive, or such other particulars as the case may require. He shall also record whether the timber or other forest-produce obtained by the exercise of the rights claimed may be sold or bartered.

Exercise of rights admitted.

**14.** After making such record, the Forest Settlement-officer shall, to the best of his ability, and having due regard to the maintenance of the reserved forest in respect of which the claim is made, pass such orders as will ensure the continued exercise of the rights so admitted. For this purpose the Forest Settlement-officer may—

(*a*) set out some other forest-tract of sufficient extent, and in a locality reasonably convenient for the purposes of such claimants, and record an order conferring upon them a right of pasture or to forest-produce (as the case may be) to the extent so admitted; or

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* Read now the Land Acquisition Act (I. of 1894), s. 2.

† This reference to s. 9 of Act X. of 1870 should now be read as referring to s. 9 of Act I. of 1894.—See s. 2 of the latter Act.

‡ This reference to the Land Acquisition Act (X. of 1870) should now be read as referring to the Land Acquisition Act (I. of 1894).—See s. 2 of the latter Act.

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(*b*) so alter the limits of the proposed forest as to exclude forest-land of sufficient extent, and in a locality reasonably convenient, for the purposes of the claimants; or

(*c*) record an order, continuing to such claimants a right of pasture or to forest-produce (as the case may be), to the extent so admitted, at such seasons, within such portions of the proposed forest, and under such rules, as may from time to time be prescribed by the Local Government.

Commutation of rights.

**15.** In case the Forest Settlement-officer finds it impossible, having due regard to the maintenance of the reserved forest, to make such settlement under section 14 as shall ensure the continued exercise of the said rights to the extent so admitted, he shall (subject to such rules as the Local Government may from time to time prescribe in this behalf) commute such rights, either by the payment to such persons of a sum of money in lieu thereof, or by the grant of land, or in such other manner as he thinks fit.

Appeal from order passed under section 10, 11, 14, or 15.

**16.** Any person who has made a claim under this Act, or any forest-officer or other person generally or specially empowered by the Local Government in this behalf, may, within three months from the date of the order passed on such claim by the Forest Settlement-officer under section 10, 11, 14, or 15, present an appeal from such order to such officer of the Revenue Department, of rank not lower than that of a Collector or Deputy Commissioner, as the Local Government may, from time to time, by notification in the local official Gazette, appoint by name, or as holding an office, to hear appeals from such orders:

Provided that, if the Local Government establishes (as it is hereby empowered to do) a Court (hereinafter called the Forest Court) composed of three persons to be appointed by the Local Government, such appeals shall be presented to such Court.

Appeal under section 16.

**17.** Every appeal under section 16 shall be made by petition in writing, and may be delivered to the Forest Settlement-officer, who shall forward it without delay to the authority competent to hear the same.

If the appeal be to an officer appointed under section 16, it shall be heard in the manner prescribed for the time being for the hearing of appeals in matters relating to land-revenue.

If the appeal be to the Forest Court, the Court shall fix a day and a convenient place in the neighbourhood of the proposed forest for hearing the appeal, and shall give notice thereof to the parties, and shall hear such appeal accordingly.

The order passed thereon by such officer or Court, or by the majority of the members of such Court, shall be final, subject to revision by the Local Government.

Pleaders.

**18.** The Local Government, or any person who has made a claim under this Act, may appoint any person to appear, plead, and act on its or his behalf before the Forest Settlement-officer, or the Appellate Officer or Court, in the course of any inquiry or appeal under this Act.

Notification declaring forest reserved.

**19.** When the following events have occurred (namely):—

(*a*) the period fixed under section 6 for preferring claims has elapsed, and all claims (if any) made within such period have been disposed of by the Forest Settlement-officer; and

(*b*) if such claims have been made, and the period limited by section 16 for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the Appellate Officer or Court; and

(*c*) all lands (if any) to be included in the proposed forest, which the Forest Settlement-officer has, under section 10, elected to acquire under the Land Acquisition Act, 1870,* have become vested in the Government under section 16 of that Act,†

the Local Government may publish a notification in the local official Gazette, specifying definitely, according to boundary-marks erected, or otherwise, the limits of the forest which it is intended to reserve, and declaring the same to be reserved from a date fixed by such notification.

From the date so fixed, such forest shall be deemed to be a reserved forest.

Publication of translation of such notification in neighbourhood of forest.

**20.** The forest-officer shall, before the date fixed by such notification, cause a translation thereof into the language of the country to be published in every town and village in the neighbourhood of the forest.

Power to revise arrangement made under section 14 or 17.

**21.** The Local Government may, within five years from the publication of any notification under section 19, revise any arrangement made under section 14 or 17, and may, for this purpose, rescind or modify any order made under section 14 or 17, and direct that any one of the proceedings specified in section 14 be taken in lieu of any other of such proceedings, or that the rights admitted under section 11 be commuted under section 15.

No right acquired over reserved forest, except as here provided.

**22.** No right of any description shall be acquired in or over a reserved forest except by succession or under a grant or contract in writing made by or on behalf of the Government or of some person in whom such right was vested when the notification under section 19 was issued.

Rights not to be alienated without sanction.

**23.** Notwithstanding anything contained in section 22, no right continued under section 14, clause (*c*), shall be alienated by way of grant, sale, lease, mortgage, or otherwise, without the sanction of the Local Government: Provided that, when any such right is appendant to any land or house, it may be sold or otherwise alienated with such land or house.

No timber or other forest-produce obtained in exercise of any such right shall be sold or bartered, except to such extent as may have been admitted in the order recorded under section 13.

Power to stop ways and water-courses in reserved forests.

**24.** The forest-officer may, from time to time, with the previous sanction of the Local Government or of any officer duly authorized in that behalf, stop any public or private way or water-course in a reserved forest: Provided that a substitute for the way or water-course so stopped, which the Local Government deems to be

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* Read now the Land Acquisition Act (I. of 1894), s. 2.

† This reference to s. 16 of Act X. of 1870 should now be read as referring to s. 16 of Act I. of 1894.—See s. 2 of the latter Act.

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reasonably convenient, already exists, or has been provided or constructed by the forest-officer in lieu thereof.

Acts prohibited in such forests.

**25.** Any person who—

(*a*) makes any fresh clearing prohibited by section 5; or

(*b*) sets fire to a reserved forest, or, in contravention of any rules made by the Local Government, kindles any fire, or leaves any fire burning in such manner as to endanger such a forest; *

or who, in a reserved forest—

(*c*) kindles, keeps, or carries any fire except at such seasons as the forest-officer may from time to time notify in this behalf;

(*d*) trespasses or pastures cattle, or permits cattle to trespass;

(*e*) causes any damage by negligence in felling any tree, or cutting or dragging any timber;

(*f*) fells, girdles, lops, taps, or burns any tree, or strips off the bark or leaves from, or otherwise damages, the same;

(*g*) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest-produce

(*h*) clears or breaks up any land for cultivation or any other purpose; or,

(*i*) in contravention of any rules which the Local Government may from time to time prescribe, "kills or catches elephants, †" hunts, shoots, fishes, poisons water, or sets traps or snares,

shall be punished with imprisonment for a term which may extend to six months, or with fine not exceeding five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid.

Nothing in this section shall be deemed to prohibit (*a*) any act done by permission in writing of the forest-officer, or under any rule made by the Local Government; or (*b*) the exercise of any right continued under section 14, clause (*c*), or created by grant or contract in writing made by or on behalf of Government under section 22

Whenever fire is caused wilfully or by gross negligence in a reserved forest, the Local Government may (notwithstanding that any penalty has been inflicted under this section) direct that in such forest, or any portion thereof, the exercise of all rights of pasture or to forest-produce shall be suspended for such period as it thinks fit.

Power to declare forest no longer reserved.

**26.** The Local Government may, with the previous sanction of the Governor-General in Council, by notification in the local official Gazette, direct that, from a date fixed by such notification, any forest or any portion thereof reserved under this Act shall cease to be a reserved forest.

From the date so fixed, such forest or portion shall cease to be reserved; but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.

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* Cl. (*b*) of s 25 has been substituted for the original clause by the Forest Act (V. of 1890), s. 7. The original clause ran as follows: "(*b*) sets fire to a reserved forest, or kindles any fire in such manner as to endanger the same."

† The words quoted are repealed in the North Western Provinces, Oudh, the Central Provinces, and Coorg, and in local areas to which the Elephants' Preservation Act (VI. of 1879) extends or is extended.—See s. 2 of that Act.

## CHAPTER III.

### OF VILLAGE-FORESTS.

Formation of village-forests.

**27.** The Local Government may, from time to time, assign to any village-community the rights of Government to or over any land which has been constituted a reserved forest, and may cancel such assignment. All forests so assigned shall be called village-forests.

The Local Government may, from time to time, make rules for regulating the management of village-forests prescribing the conditions under which the community to which any such assignment is made may be provided with timber or other forest-produce or pasture, and their duties for the protection and improvement of such forest.

All provisions of this Act relating to reserved forests shall (so far as they are consistent with the rules so made) apply to village-forests.

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## CHAPTER IV.

### OF PROTECTED FORESTS.*

"Protected forests."

**28.** The Local Government may, from time to time, by notification in the local official Gazette, declare the provisions of this chapter applicable to any forest-land or waste-land which is not included in a reserved forest, but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled.

The forest-land and waste-land comprised in any such notification shall be called a "protected forest."

No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein have been enquired into and recorded at a survey or settlement, or in such other manner as the Local Government thinks sufficient.

Every such record shall be presumed to be correct until the contrary is proved:

Provided that if, in the case of any forest-land or waste-land, the Local Government thinks that such enquiry and record are necessary, but that they will occupy such length of time as that the rights of Government will in the meantime be endangered, the Local Government may (pending such enquiry and record) declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

Power to issue notification—

**29.** The Local Government may from time to time, by notification in the local official Gazette,—

reserving trees,

(*a*) declare any or all trees in a protected forest, or any trees in any such forest, to be reserved from a date fixed by such notification:

closing forests,

(*b*) declare that a portion of such forest be closed for such term not exceeding twenty years as the Local Government thinks fit, and that the rights of private persons (if any) over such portion shall be suspended during such term: Provided that the remainder of such

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* As to the application of provisions relating to protected forests (*1*) to land not the property of the Government, see s. 38; (*2*) to forests, waste-land, or produce, the joint property of the Government and other persons, see s. 79, *infra*.

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forest be sufficient, and in a locality reasonably convenient, for the due exercise of the rights suspended in the portion so closed;

(*c*) prohibit, from a date fixed as aforesaid, the quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing process, or removal, of any forest-produce, in any such forest, and the breaking up or clearing for cultivation, for building, for herding cattle, or for any other purpose, any land in any such forest; and

prohibiting collection of forest-produce, &c., and breaking up or clearing of land.

(*d*) alter or cancel such declaration or prohibition.

**30.** The Collector or Deputy Commissioner of the district shall cause a translation, into the language of the district, of every notification issued under section 29, to be affixed in a conspicuous place in every town and village in the neighbourhood of the forest comprised in the notification.

Publication of translation of such notification in neighbourhood.

Power to make rules for protected forests.

**31.** The Local Government may from time to time make rules* to regulate the following matters:—

(*a*) the cutting, sawing, conversion, and removal of trees and timber, and the collection, manufacture, and removal of forest-produce, from protected forests;

(*b*) the granting of licenses to the inhabitants of towns and villages in the vicinity of protected forests to take trees, timber, or other forest-produce for their own use, and the production and return of such licenses by such persons;

(*c*) the granting of licenses to persons felling or removing trees or timber or other forest-produce from such forests for the purposes of trade, and the production and return of such licenses by such persons;

(*d*) the payments (if any) to be made by the persons mentioned in clauses (*b*) and (*c*) of this section for permission to cut such trees, or to collect and remove such timber or other forest-produce;

(*e*) the other payments (if any) to be made by them in respect of such trees, timber, and produce, and the places where such payments shall be made;

(*f*) the examination of forest-produce passing out of such forests;

(*g*) the clearing and breaking up of land for cultivation or other purposes in such forests;

(*h*) the protection from fire of timber lying in such forests and of trees reserved under section 29;

(*i*) the cutting of grass and pasturing of cattle in such forests;

(*j*) † killing or catching elephants, † hunting, shooting, fishing, poisoning water, and setting traps or snares in such forests;

(*k*) the protection and management of any portion of a forest closed under section 29;

(*l*) the exercise of rights referred to in section 28.

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* For rules under s 31 for—

(*1*) Bombay, see pp. 167, 171, and 174 of the Bombay List of Local Rules and Orders, Ed. 1896;

(*2*) For protected forests of Naini Tal, Ranikhet, and Lalitpur, see p. 62 of the N.-W. P. and Oudh List of Local Rules and Orders, Ed. 1894.

† In cl. (*j*) of s 31 the words quoted are repealed in the North-Western Provinces, Oudh, the Central Provinces, and Coorg, and in local areas to which the Elephants' Preservation Act (VI. of 1879) extends or is extended —See s. 2 of that Act.

Penalties for acts in contravention of notification under section 29.

**32.** Any person who commits any of the following offences:—

(*a*) fells, girdles, lops, taps, or burns any tree reserved under section 29, or strips off the bark or leaves from, or otherwise damages, any such tree;

(*b*) contrary to any prohibition under section 29, quarries any stone, or burns any lime or charcoal, or collects, subject to any manufacturing process, or removes, any forest-produce;

(*c*) contrary to any prohibition under section 29, breaks up or clears for cultivation or any other purpose any land in any protected forest;

(*d*) sets fire to such forest, or kindles a fire without taking all reasonable precautions to prevent its spreading to any trees reserved under section 29, whether standing, fallen, or felled, or to any closed portion of such forest:

(*e*) leaves burning any fire kindled by him in the vicinity of any such trees or closed portion:

(*f*) fells any tree or drags any timber so as to damage any tree reserved as aforesaid;

(*g*) permits cattle to damage any such tree;

(*h*) infringes any rule made under section 31;

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

* [Whenever fire is caused wilfully or by gross negligence in a protected forest, the Local Government may (notwithstanding that any penalty has been inflicted under this section) direct that in such forest or any portion thereof the exercise of any right of pasture or to forest-produce shall be suspended for such period as it thinks fit.

Nothing in this chapter to prohibit act done in certain cases.

**33.** Nothing in this chapter shall be deemed to prohibit any act done with the permission in writing of the forest-officer, or in accordance with rules made under section 31, or (except as regards any portion of a forest closed under section 29 † [or any rights the exercise of which has been suspended under section 32 †] in the exercise of any right recorded under section 28.

## CHAPTER V.

### FORESTS UNDER CONSERVANCY—ADMINISTRATION WHEN THIS ACT COMES INTO FORCE

Forests under conservancy—administration when this Act comes into force.

**34.** Within twelve months from the date on which this Act comes into force in the territories administered by any Local Government, such Government shall, after consideration of the rights of the Government and private persons in all forest-lands or waste-lands then under its executive control for purposes of forest-conservancy, determine which of such lands (if any) can, according to justice, equity, and good conscience, be classed as reserved forests or protected forests under this Act, and declare, by notification in the local official Gazette, any lands so classed to be reserved or protected forests, as the case may be:

Provided that such declaration shall not affect any rights of the Government or private persons to or over any land or forest-produce in any such forest, which have, previous to the date of such declaration, been enquired into, settled, and recorded in a manner which the Local Government thinks sufficient:

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* This paragraph has been added by the Indian Forest (Amendment) Act (V. of 1901), s. 2.

† The words and figures quoted have been inserted by the Indian Forest (Amendment) Act (V. of 1901), s. 3

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Provided also that, if any such rights have not, on such date, been so enquired into, settled, and recorded, the Local Government shall direct that the same shall be enquired into, settled, and recorded in the manner provided by this Act for reserved or protected forests, as the case may be; and, until such enquiry, settlement, and record have been completed, no such declaration shall abridge or affect such rights.

## CHAPTER VI.

### OF THE CONTROL OVER FORESTS AND LANDS NOT BEING THE PROPERTY OF GOVERNMENT.

Protection of forests for special purposes.

**35.** The Local Government may, from time to time, by notification in the local official Gazette, regulate or prohibit in any forest or waste-land—

(*a*) the breaking-up or clearing of land for cultivation;

(*b*) the pasturing of cattle;

(*c*) the firing or clearing of the vegetation; when such regulation or prohibition appears necessary for any of the following purposes:—

*1st*—for protection against storms, winds, rolling stones, floods, and avalanches;

*2nd*—for the preservation of the soil on the ridges and slopes, and in the valleys of hilly tracts, the prevention of landslips and of the formation of ravines and torrents, and the protection of land against erosion, or the deposit thereon of sand, stones, or gravel;

*3rd*—for the maintenance of a water supply in springs, rivers, and tanks;

*4th*—for the protection of roads, bridges, railways, and other lines of communication;

*5th*—for the preservation of the public health;

and may alter or cancel such notification.

The Local Government may, for any such purpose, construct at its own expense, in or upon any forest or waste land, such work as it thinks fit:

Provided that no such notification shall be made or work begun until after the issue of a notice to the owner of such forest or land, calling on him to show cause, within a reasonable period to be specified in such notice why such notification should not be made or work constructed, and until his objection (if any), and any evidence he may produce in support of the same, have been heard by an officer duly appointed in that behalf, and have been considered by the Local Government.

Power to assume management of forests.

**36.** In case of neglect of, or wilful disobedience to, any regulation or prohibition under section 35, or if the purposes of any work to be constructed under that section so require, the Local Government may, after notice in writing to the owner of such forest or land, and after considering his objections (if any), place the same under the control of a forest-officer, and may declare that all or any of the provisions of this Act relating to reserved forests shall apply to such forest or land.

The nett profits (if any) arising from the management of such forest or land shall be paid to the said proprietor.

Expropriation of forests in certain cases.

**37.** In any case under this chapter in which the Local Government considers that, in lieu of placing the forest or land under the control of a forest-officer, the same should be acquired for public purposes, the Local Government may proceed to acquire it in the manner prescribed by the Land Acquisition Act, 1870.*

* Read now the Land Acquisition Act (I. of 1894), s. 2.

The owner of any forest or land comprised in any notification under section 35 may, at any time not less than three or more than twelve years from the date thereof, require that such forest or land shall be acquired for public purposes, and the Local Government shall acquire such forest or land accordingly. 1878. Act 7.

**38.** The owner of any land, or, if there be more than one owner thereof, the owners of shares therein amounting in the aggregate to at least two-thirds thereof, may, with a view to the formation or conservation of forests thereon, represent in writing to the Collector or Deputy Commissioner their desire— Protection of forests at request of owners.

(*a*) that such land be managed on their behalf by the forest-officer as a reserved or a protected forest on such terms as may be mutually agreed upon; or

(*b*) that all or any of the provisions of this Act be applied to such land.

In either case, the Local Government may, by notification in the local official Gazette, apply to such land such provisions of this Act as it thinks suitable to the circumstances thereof, and as may be desired by the applicants.

Any such notification may be altered or cancelled by a like notification.

## CHAPTER VII.

### OF THE DUTY ON TIMBER AND OTHER FOREST-PRODUCE.*

**39.** The Local Government, with the previous sanction of the Governor-General in Council, may levy a duty in such manner, at such places, and at such rates, as it may from time to time prescribe by notification in the local official Gazette on all timber "or other forest-produce,"† Power to impose duty on timber.

(*a*) which is produced in British India, and in respect of which the Government has any right;

(*b*) which is brought from any place beyond the frontier of British India.

In every case in which such duty is directed to be levied *ad valorem*, the Local Government may, with the like sanction, from time to time, fix, by like notification, the value on which such duty shall be assessed. Power to fix value for *ad-valorem* duty.

All duties on timber "or other forest-produce,"† which, at the time when this Act comes into force in any territory, are levied therein under the authority of the Local Government, shall be deemed to be and to have been duly levied under the provisions of this Act.

**40.** Nothing in this chapter shall be deemed to limit the amount (if any) chargeable as purchase-money or royalty on any timber or other forest-produce, although the same is levied on such timber or produce while in transit, in the same manner as duty is levied. Limit not to apply to purchase-money or royalty.

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* This heading has been substituted for the original heading, "Of the Duty on Timber," by the Forest Act (V. of 1890), s. 8, sub-s. (*1*).

† The words quoted have been inserted by the Forest Act (V. of 1890), s. 8, sub-s. (*2*).

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## CHAPTER VIII.

### OF THE CONTROL OF TIMBER AND OTHER FOREST-PRODUCE IN TRANSIT.

Power to make rules to regulate transit of forest-produce.

**41.** The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber and other forest-produce in transit by land or water, is vested in the Local Government, and it may from time to time make rules* to regulate the transit of all timber and other forest-produce.

Such rules† may (among other matters)—

(*a*) prescribe the routes by which alone timber "or other"‡ forest-produce may be imported, exported, or moved into, from, or within British India;

(*b*) prohibit the import and export or moving of such timber or other produce without a pass from an officer duly authorized to issue the same, or otherwise than in accordance with the conditions of such pass;

(*c*) provide for the issue, production, and return of such passes, and for the payment of fees therefor;

(*d*) provide for the stoppage, reporting, examination, and marking of timber or other forest-produce in transit, in respect of which there is reason to believe that any money is payable to Government on account of the price thereof, or on account of any duty, fee, royalty, or charge due thereon, or to which it is desirable, for the purposes of this Act, to affix a mark;

(*e*) provide for the establishment and regulation of depôts, to which such timber or other produce shall be taken by those in charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it; and the conditions under which such timber or other produce shall be brought to, stored at, and removed from, such "depôts;"§

(*f*) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest-produce, and the throwing of grass, brushwood, branches, and leaves into any such river, or any act which may cause such river to be closed or obstructed;

(*g*) provide for the prevention and removal of any obstruction of the channel or banks of any such river, and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated the same;

(*h*) prohibit absolutely or subject to conditions, within specified local limits, the establishment of saw-pits, the converting, cutting, burning, concealing, or marking of timber, the altering or effacing of any marks on the same, and the possession or carrying of marking-hammers or other implements used for marking timber;

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* For rules made by the Government of Bengal to regulate the transit of timber on the Gandak river so far as it flows within the jurisdiction of that Government, see Calcutta Gazette, 1898, Pt. I, p. 141.

† For rules made under this section for—

(*1*) Bombay, see list on p. lix. of the Bombay List of Local Rules and Orders, Vol. I., Ed. 1896,

(*2*) The Central Provinces, see p 25 of the Central Provinces List of Local Rules and Orders, Ed. 1896;

(*3*) The N.-W. P., see p. 66 of the N.-W P. and Oudh List of Local Rules and Orders, Ed. 1894.

‡ In cl. (*a*) of s. 41, the words "or other" have been substituted for the words "and other" by the Forest Act (V. of 1890), s. 8, sub-s (*3*)

§ The word "depôts" has been substituted for the word "depôt" by the Repealing and Amending Act (XII. of 1891).

(*i*) regulate the use of property-marks for timber, and the registration of such marks; prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration. 1878. Act 7.

The Local Government may direct that any rule made under this section shall not apply to any specified class of timber or other forest-produce or to any specified local area.*

**Penalty for breach of rules made under section 41.**

**42.** The Local Government may by such rules prescribe as penalties for the infringement thereof imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

Double penalties may be inflicted in cases where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or if the offender has been previously convicted of a like offence.

**Government and forest-officers not liable for damage to forest-produce at depôt**

**43.** The Government shall not be responsible for any loss or damage which may occur in respect of any timber or other forest-produce while at a depôt established under a rule made under section 41, or while detained elsewhere for the purposes of this Act; and no forest-officer shall be responsible for any such loss or damage unless he causes such loss or damage negligently, maliciously, or fraudulently.

**All persons bound to aid in case of accident at depot.**

**44.** In case of any accident or emergency involving danger to any property at any such depot, every person employed at such depôt, whether by the Government, or by any private person, shall render assistance to any forest-officer or police-officer demanding his aid in averting such danger and securing such property from damage or loss.

## CHAPTER IX.

### OF THE COLLECTION OF DRIFT AND STRANDED TIMBER.

**Certain kinds of timber to be deemed property of Government until title thereto proved, and may be collected accordingly.**

**45.** All timber found adrift, beached, stranded, or sunk;

all wood or timber bearing marks which have not been registered under section 41, or on which the marks have been obliterated, altered, or defaced by fire or otherwise; and,

in such areas as the Local Government directs,† all unmarked wood and timber,

shall be deemed to be the property of Government, unless and until any person establishes his right and title thereto, as provided in this chapter.

Such timber may be collected by any forest-officer or other person entitled to collect the same by virtue of any rule made under section 51, and may be brought

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* This para. has been added by the Forest Act (V. of 1890), s. 8, sub-s. (*d*).

† For rules for—

(*1*) The Central Provinces under s. 45, see p. 30 of the Central Provinces List of Local Rules and Orders, Ed. 1896;

(*2*) The N.-W. P. and Oudh, see p. 66 of the N.-W. P. and Oudh List of Local Rules and Orders, Ed. 1894.

1878. Act 7.

to such depôts as the forest-officer may, from time to time, notify as depôts for the reception of drift-timber.

The Local Government may, by notification in the local official Gazette, exempt any class of timber from the provisions of this section, and withdraw such exemption.

Notice to claimants of drift-timber.

**46.** Public notice shall, from time to time, be given by the forest-officer, of timber collected under section 45. Such notice shall contain a description of the timber, and shall require any person claiming the same to present to such officer, within a period not less than two months from the date of such notice, a written statement of such claim.

Procedure on claim preferred to such timber.

**47.** When any such statement is presented as aforesaid, the forest-officer may, after making such enquiry as he thinks fit, either reject the claim after recording his reasons for so doing, or deliver the timber to the claimant.

If such timber is claimed by more than one person, the forest-officer may either deliver the same to any of such persons whom he deems entitled thereto, or may refer the claimants to the Civil Courts, and retain the timber pending the receipt of an order from any such Court for its disposal.

On rejection of claim to such timber, claimant may institute suit.

Any person whose claim has been rejected under this section may, within three* months from the date of such rejection, institute a suit to recover possession of the timber claimed by him; but no person shall recover any compensation or costs against the Government, or against any forest-officer, on account of such rejection, or the detention or removal of any timber, or the delivery thereof to any other person under this section.

No such timber shall be subject to process of any Civil, Criminal, or Revenue Court until it has been delivered, or a suit has been brought, as provided in this section.

Disposal of unclaimed timber.

**48.** If no such statement is presented as aforesaid, or if the claimant omits to prefer his claim in the manner and within the period prescribed by the notice issued under section 46, or, on such claim having been so preferred by him and having been rejected, omits to institute a suit to recover possession of such timber within the further period limited by section 47, the ownership of such timber shall vest in the Government, or, when such timber has been delivered to another person under section 47, in such other person free from all encumbrances "not created by him."†

Government and its officers not liable for damage to such timber.

**49.** The Government shall not be responsible for any loss or damage which may occur in respect of any timber collected under section 45, and no forest-officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously, or fraudulently.

Payments to be made by claimant before timber is delivered to him.

**50.** No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the forest-officer or other person entitled to receive it such sum on account thereof as may be due under any rule made in pursuance of section 51.

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* The word "three" has been substituted for the word "two" by the Forest Act (V. of 1890), s. 9

† The words quoted have been added by the Forest Act (V. of 1890), s. 10.

Power to make rules and prescribe penalties.

**51.** The Local Government may, from time to time, make rules* to regulate the following matters (namely):—

(*a*) the salving, collection, and disposal of all timber mentioned in section 45;

(*b*) the use and registration of boats used in salving and collecting timber;

(*c*) the amounts to be paid for salving, collecting, moving, storing, and disposing of such timber;

(*d*) the use and registration of hammers and other instruments to be used for marking such timber.

The Local Government may, from time to time, prescribe, as penalties for the infringement of any rules made under this section, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

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## CHAPTER X.

### PENALTIES AND PROCEDURE

Seizure of property liable to confiscation

**52.** When there is reason to believe that a forest-offence has been committed in respect of any forest-produce, such produce, together with all tools, boats, carts, and cattle used in committing any such offence, may be seized by any forest-officer or police-officer.

Application for confiscation.

Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

Provided that, when the forest-produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

Procedure thereupon.

**53.** Upon the receipt of any such report, the Magistrate shall, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law.

Forest-produce, tools, &c., when liable to confiscation.

**54.** All timber or forest-produce which is not the property of Government, and in respect of which a forest-offence has been committed, and all tools, boats, carts, and cattle used in committing any forest-offence, shall be liable to confiscation.

Such confiscation may be in addition to any other punishment prescribed for such offence.

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* For rules under s. 51 for—

(*1*) Bombay, see pp. 191 and 192 of the Bombay List of Local Rules and Orders Vol. I., Ed. 1896;

(*2*) The Central Provinces, see p. 30 of the Central Provinces List of Local Rules and Orders, Ed. 1896;

(*3*) The N.-W. P. and Oudh, see p. 66 of the N.-W. P. and Oudh List of Local Rules and Orders, Ed. 1894.

1878. Act 7.

**55.** When the trial of any forest-offence is concluded, any forest-produce in respect of which such offence has been committed shall, if it is the property of Government, or has been confiscated, be taken charge of by a forest-officer; and in any other case may be disposed of in such manner as the Court may direct.

Disposal, on conclusion of trial for forest-offence, of produce in respect of which it was committed.

**56.** When the offender is not known or cannot be found, the Magistrate may, if he finds that an offence has been committed, order the property in respect of which the offence has been committed to be confiscated and taken charge of by the forest-officer, or to be made over to the person "whom the Magistrate deems to be entitled to the same:"*

Procedure when offender not known, or cannot be found.

Provided that no such order shall be made until the expiration of one month from the date of seizing such property, or without hearing the person (if any) claiming any right thereto, and the evidence (if any) which he may produce in support of his claim.

**57.** The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under section 52 and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold.

Procedure as to perishable property seized under section 52.

**58.** The officer who made the seizure under section 52, or any of his official superiors, or any person claiming to be interested in the property so seized, may, within one month from the date of any order passed under section 54, 55, or 56, appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall be final.

Appeal from orders under sections 54, 55, and 56.

**59.** When an order for the confiscation of any property has been passed under section 54 or 56, as the case may be, and the period limited by section 58 for an appeal from such order has elapsed, and no such appeal has been preferred, or when, on such an appeal being preferred, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the Government free from all incumbrances.

Property when to vest in Government.

**60.** Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the Local Government from directing at any time the immediate release of any property seized under section 52.

Saving of power to release property seized.

**61.** Any forest-officer or police-officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Punishment for wrongful seizure.

**62.** Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code,—

Penalty for counterfeiting or defacing marks on trees and timber, and for altering boundary-marks.

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* The words quoted have been substituted for the words "whom he deems to be entitled to the same," by the Forest Act (V of 1890), s. 11.

(*a*) knowingly counterfeits upon any timber or standing tree a mark used by forest-officers to indicate that such timber or tree is the property of the Government or of some person, or that it may lawfully be cut or removed by some person; or

(*b*) alters, defaces, or obliterates any such mark placed on a tree or on timber by or under the authority of a forest-officer; or

(*c*) alters, moves, destroys, or defaces any boundary-mark of any forest or waste-land to which the provisions of this Act are applied,

shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

Power to arrest without warrant.

**63.** Any forest-officer or police-officer may, without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest-offence punishable with imprisonment for one month or upwards.

Every officer making an arrest under this section shall, without unnecessary delay, take or send the person arrested before the Magistrate having jurisdiction in the case, "or to the officer in charge of the nearest police-station."*

Nothing in this section shall be deemed to authorize such arrest for any act which is an offence under Chapter IV of this Act, unless such act has been prohibited under section 29, clause (*c*).

Power to prevent commission of offence.

**64.** Every forest-officer and police-officer shall prevent, and may interfere for the purpose of preventing, the commission of any forest-offence.

Power to try offences summarily.

**65.** The Magistrate of the district† and any Magistrate of the first class specially empowered in this behalf by the Local Government may try summarily, under the Code of Criminal Procedure,‡ any forest-offence punishable only with imprisonment for a term not exceeding six months, or fine not exceeding five hundred rupees, or both.

Operation of other laws not barred.

**66.** Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act, or the rules made under it, or from being liable under such other law to any higher punishment or penalty than that provided by the rules made under this Act: Provided that no person shall be punished twice for the same offence.

Power to compound offences.

**67.**§ (*1*) The Local Government may, from time to time, by notification in the official Gazette, empower a forest-officer by name or as holding an office,—

(*a*) to accept from any person against whom a reasonable suspicion exists that he has committed any forest-offence, other than an offence specified in section 61 or section 62, a sum of money by way of compensation for the offence which such person is suspected to have committed, and,

(*b*) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.

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* The words quoted have been added by the Forest Act (V. of 1890), s. 12.

† Now District Magistrate.—See the Code of Criminal Procedure (Act V. of 1898), s. 3.

‡ See now Act V. of 1898.

§ S. 67 has been substituted for the original section by the Forest Act (V. of 1890), s. 13.

1878. Act 7.

(*g*) On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceedings shall be taken against such person or property.

(*g*) A forest-officer shall not be empowered under this section unless he is a forest-officer of a rank not inferior to that of a ranger, and is in receipt of a monthly salary amounting to at least one hundred rupees, and the sum of money accepted as compensation under sub-section (*f*), clause (*a*), shall in no case exceed the sum of fifty rupees.

Presumption that forest-produce belongs to Government.

**68.** When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest-produce is the property of the Government, such produce shall be presumed to be the property of the Government until the contrary is proved.

## CHAPTER XI.

### CATTLE-TRESPASS.

Cattle Trespass Act, 1871, to apply.

**69.** Cattle trespassing in a reserved forest, or in any portion of a protected forest which has been lawfully closed to grazing, shall be deemed to be cattle doing damage to a public plantation within the meaning of the eleventh section of the Cattle Trespass Act, 1871, and may be seized and impounded as such by any forest-officer or police-officer.

Power to alter fines fixed by that Act.

**70.** The Local Government may, from time to time, by notification in the local official Gazette, direct that, in lieu of the fines fixed by the twelfth section of the Act last aforesaid, there shall be levied, for each head of cattle impounded under section 69 of this Act, such fines as it thinks fit, but not exceeding the following, that is to say:—

| | Rs. | As. |
|---|---|---|
| For each elephant ... ... ... ... | 10 | 0 |
| „ each buffalo or camel ... ... ... | 2 | 0 |
| „ each horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow, or heifer ... ... ... | 1 | 0 |
| „ each calf, ass, pig, ram, ewe, sheep, lamb, goat, or kid | 0 | 8 |

## CHAPTER XII.

### OF FOREST-OFFICERS.

Local Government may invest forest-officers with certain powers.

**71.** The Local Government may invest any forest-officer by name, or as holding an office, with the following powers, that is to say:—

(*a*) power to enter upon any land, and to survey, demarcate, and make a map of the same;

(*b*) the powers of a Civil Court to compel the attendance of witnesses and the production of documents;

(*c*) power to issue a search-warrant under the Code of Criminal Procedure;*

* Read now the Code of Criminal Procedure (Act V. of 1898).

(*d*) power to hold an enquiry into forest-offences, and, in the course of such enquiry, to receive and record evidence.

Any evidence recorded under clause (*d*) of this section shall be admissible in any subsequent trial before a Magistrate, provided that it has been taken in the presence of the accused person.

Forest-officers deemed public servants.

**72.** All forest-officers shall be deemed to be public servants within the meaning of the Indian Penal Code.

Indemnity for acts done in good faith.

**73.** No suit shall lie against any public servant for anything done by him in good faith under this Act.

Forest-officers not to trade.

**74.** Except with the permission in writing of the Local Government, no forest-officer shall, as principal or agent, trade in timber or other forest-produce, or be or become interested in any lease of any forest, or in any contract for working any forest, whether in British or Foreign territory.

## CHAPTET XIII.

### SUBSIDIARY RULES.

Additional powers to make rules.

**75.** The Local Government may, from time to time, make rules*—

(*a*) to prescribe and limit the powers and duties of any forest-officer under this Act;

(*b*) to regulate the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act;

(*c*) for the preservation, reproduction, and disposal of trees and timber belonging to Government, but grown on lands belonging to or in the occupation of private persons; and

(*d*) generally to carry out the provisions of this Act.

Penalties for breach of rules.

**76.** Any person breaking any rule under this Act, for the breach of which no special penalty is provided, shall be punished with imprisonment for a term which may extend to one month, or fine which may extend to five hundred rupees, or both.

Rules when to have force of law.

**77.** All rules made by the Local Government under this Act shall be published in the local official Gazette, and shall thereupon, so far as they are consistent with this Act, have the force of law:

Provided that no rule made under section 27, 31, or 41, shall be so published without the previous sanction of the Governor-General in Council.

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* For rules made under s. 75 for—

(1) Bombay, see pp. 195 to 200 of the Bombay List of Local Rules and Orders, Vol. I., Ed. 1896;

(2) The Central Provinces, see pp. 31 to 34 of the Central Provinces List of Local Rules and Orders, Ed. 1896;

(3) The N.-W. P. and Oudh, see pp. 68 to 70 of the N.-W. P. and Oudh List of Local Rules and Orders, Ed. 1894.

1878. Act 7.

## CHAPTER XIV.

### MISCELLANEOUS.

Persons bound to assist forest-officers and police-officers.

**78.** Every person who exercises any right in a reserved or protected forest, or who is permitted to take any forest-produce from, or to cut and remove timber or to pasture cattle in such forest, and

every person who is employed by any such person in such forest, and

every person in any village contiguous to such forest who is employed by the Government, or who receives emoluments from the Government for services to be performed to the community,

shall be bound to furnish, without unnecessary delay, to the nearest forest-officer or police officer, any information he may possess respecting the commission of, or intention to commit, any forest-offence, and shall assist any forest-officer or police-officer*

(*a*) in extinguishing any fire occurring in such forest;

(*b*) in preventing any fire which may occur in the vicinity of such forest from spreading to such forest; "and shall assist any forest-officer or Police-officer demanding his aid."†

(*c*) in preventing the commission in such forest of any forest offence; and

(*d*) when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender.

Management of forests, the joint property of Government and other persons.

**79.** If the Government and any person be jointly interested in any forest or waste-land, or in the whole or any part of the produce thereof, the Local Government may, from time to time, either—

(*a*) undertake the management of such forest, waste-land, or produce, accounting to such person for his interest in the same; or

(*b*) issue such regulations for the management of the forest, waste-land, or produce by the person so jointly interested as it deems necessary for the management thereof and the interests of all parties therein.

When the Local Government undertakes, under clause (*a*) or this section, the management of any forest, waste-land, or produce, it may, from time to time, by notification in the local official Gazette, declare that any of the provisions contained in Chapters II. and IV. of this Act shall apply to such forest, waste-land, or produce, and thereupon such provisions shall apply accordingly.

Failure to perform service for which a share in produce of Government forest is enjoyed.

**80.** If any person be entitled to a share in the produce of any forest which is the property of Government, or over which the Government has proprietary rights, or to any part of the forest-produce of which the Government is entitled, upon the condition of duly performing any service connected with such forest, such share shall be liable to confiscation in the event of the fact being established to the satisfaction of the Local Government that such service is no longer so perfomed: Provided that no such share shall be confiscated until the person entitled thereto, and the evidence (if any) which he may produce in proof of the due performance of such service, have been heard by an officer duly appointed in that behalf by the Local Government.

Recovery of money due to Government.

**81.** All money payable to the Government under this Act, or under any rule made under this Act, or on account of the price of any forest-produce, or of expenses incurred in the exe-

* The words "demanding his aid" have been omitted by the Indian Forest (Amendment) Act (V. of 1901), s. 4.

† The words quoted have been inserted by the Indian Forest (Amendment) Act (V. of 1901), s. 4.

cution of this Act in respect of such produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land-revenue.

Lien on forest-produce for such money.

**82.** When any such money is payable for or in respect of any forest-produce, the amount thereof shall be deemed to be a first charge on such produce, and such produce may be taken possession of by a forest-officer, until such amount has been paid.

Power to sell such produce.

If such amount is not paid when due, the forest-officer may sell such produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount.

The surplus (if any), if not claimed within two months from the date of the sale by the person entitled thereto, shall be forfeited to Her Majesty.

Land required under this Act to be deemed to be needed for a public purpose under Land Acquisition Act.

**83.** Whenever it appears to the Local Government that any land is required for any of the purposes of this Act, such land shall be deemed to be needed for a public purpose within the meaning of the Land Acquisition Act, 1870,* section 4.

Recovery of penalties due under bond.

**84.**† When any person, in compliance with any rule under this Act, binds himself by any instrument to perform any duty or act, or covenants by any instrument that he, or that he and his servants and agents, will abstain from any act, the whole sum mentioned in such instrument as the amount to be paid in case of a breach of the conditions thereof may, notwithstanding anything in section 74 of the Indian Contract Act, 1872, be recovered from him in case of such breach as if it were an arrear of land-revenue.

## SCHEDULE.

(*See section 1.*)

ENACTMENTS REPEALED.

| Number and year of Act or Regulation. | Title. | Extent of repeal. |
|---|---|---|
| Act VII. of 1865 ... | An Act to give effect to rules for the management and preservation of Government forests. | So much as has not been repealed. |
| Act VII. of 1869 ... | An Act to give validity to certain rules relating to forests in British Burma. | The whole. |
| Act XIII. of 1873 ... | An Act to amend the law relating to timber floated down the rivers of British Burma. | So much as has not been repealed. |
| Regulation IX. of 1874 ... | The Arakan Hill District Laws Regulation, 1874. | So far as it relates to Acts VII. of 1865 and VII. of 1869. |

* Read now the Land Acquisition Act (I. of 1894), see s. 2 of the Act.

† S. 84 has been added by the Forest Act (V. of 1890), s. 14.

Act 7.

POSSESSION of wood by a forest-inspector, who is a servant of Government, is possession of the Government itself; and a dishonest removal of it, without payment of the necessary fees, from his possession, albeit with his actual consent, constitutes theft, within the meaning of s. 378 of the Penal Code, if that consent was unauthorized or fraudulent.—REG *v.* HANMANTA, I. L. R., 1 Bom. 610 [Melvill and Kemball, JJ. Feb. 26, 1877.]

No order confiscating forest-produce which is the property of Government, in respect of which a forest-offence has been committed, is necessary, or can be made All that need be done is to direct a forest-officer to take charge of such forest-produce An order directing the confiscation of forest-produce not belonging to Government, in respect of which a forest-offence has been committed, can only be made at the time the offender is convicted. The High Court is competent, under s 297 of Act X. of 1872, to revise an order made by a District Judge under s. 58 of the Forests Act, 1878, on appeal from the order of a Magistrate made under s. 54 of that Act, the jurisdiction of the High Court under s 297 of Act X. of 1872 not being expressly taken away by s. 58 of the Forests Act, 1878—EMPRESS *v.* NATHU KHAN, I. L. R., 4 All. 417. [Straight, J. May 4, 1882.]

THE accused was charged, in the alternative, by the trying Magistrate, as follows: "I, W. W. Drew, Magistrate, First Class, hereby charge you, Ramji Sajabarao as follows: 'That you, on or about the 13th day of October 1882, at Nandarpada, stated that you had seen Vishnu Vaman and Mahadu Lakhsman carrying teakwood from Gohe Forest to Narayan Ramchandra, range forest-officer, and on 14th February 1885 you stated on oath before the First-class Magistrate at Pen, at the trial of these persons, that you did not see where they had brought the wood from, and thereby committed an offence punishable under s. 182 or s. 193 of the Penal Code (Act XLV. of 1860), and within my cognizance; and I hereby direct that you, Ramji Sajabarao, be tried by the said Court on the same charge.'" At the trial the accused asserted the truth of the former of these two statements, and denied having made the other. The Magistrate was unable to find which of them was false, and convicted the accused, in the alternative, either under s. 182 or s. 193 of the Penal Code (Act XLV. of 1860). *Held* that the charge was bad in law, being an alternative charge in a form forbidden by s. 233 of the Criminal Procedure Code (Act X. of 1882), which directs that for every distinct offence of which any person is charged, there shall be a separate charge. Nor could the accused be tried upon a charge framed in the alternative as in the form given in Sch. V. XXVIII. (4) of the Criminal Procedure Code (Act X. of 1882). For, upon the facts alleged, there was no way of charging him with one distinct offence on the ground of self-contradiction He could not successfully be charged, under s. 193 of the Penal Code (Act XLV. of 1860), on contradictory statements, because he only made one deposition, in which there were no discrepancies; and, similarly, he could not be charged under s. 182 of the Penal Code, for he only once gave information to a public servant. *Held* also that, having regard to ss. 225, 232 and 537 of the Criminal Procedure Code (Act X. of 1882), the accused, convicted upon such a charge, must be held to have been misled in his defence, and his conviction and sentence reversed. In charges founded upon supposed contradictory statements, every presumption in favour of the possible reconciliation of the statements must be made. Under s. 172 of the Forests Act (VII. of 1878), a forest-officer is a public servant within the meaning of the Penal Code (Act XLV of 1860) Any information given to him with the intent mentioned in s 182 of the Penal Code is punishable under that section, whether that information is volunteered by the informant or is given in answer to questions put to him by that officer—QUEEN-EMPRESS *v.* RAMJI SAJABARAO, I. L. R., 10 Bom. 124. [Ninabhai Haridas and Wedderburn, JJ. Sep 7. 1885.]

UNDER s 21 (*d*) of the Madras Forest Act (Madras Act V of 1882), the owner of cattle cannot be convicted in the absence of evidence that he either pastured the cattle, or permitted them to trespass in the reserve. —QUEEN-EMPRESS *v.* KRISHTNAYYAN, I. L. R., 15 Mad. 156. [Collins, C.J., and Wilkinson, J. Oct. 8, 1891.]

# ACT NO. III. OF 1867.*

## THE PUBLIC GAMBLING ACT, 1867.†

RECEIVED THE G.-G.'S ASSENT ON THE 25TH JANUARY 1867.

*An Act to provide for the punishment of public gambling and the keeping of common gaming-houses in the North-Western Provinces of the Presidency of Fort William, and in the Punjab, Oudh, the Central Provinces, and Lower Burma.‡*

Preamble.

WHEREAS it is expedient to make provision for the punishment of public gambling and the keeping of common gaming-houses in the territories‡ respectively subject to the governments of the Lieutenant-Governor of the North-Western Provinces of the Presidency of Fort William "and"§ of the Lieutenant-Governor of the Punjab, and to the administrations of the Chief Commissioner of Oudh, of the Chief Commissioner of the Central Provinces, and of the Chief Commissioner of Lower Burma; ‡ It is hereby enacted as follows:—

Interpretation-clause.

**1.** In this Act—

"Lieutenant-Governor."

"Lieutenant-Governor" means the Lieutenant-Governor of the said North-Western Provinces or the Punjab, as the case may be:

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* Act III. of 1867 has been extended, by notification under the Scheduled Districts Act (XIV. of 1874), to the Chief Commissionership of Assam.—See Notification No. 1244, dated Nov. 26, 1880, Gazette of India, 1880, Pt. I., p. 666, and Assam Gazette, 1880, Pt. II., p 614.

Act III. of 1867 was extended to Coorg by notification under the Scheduled Districts Act (XIV. of 1874).—See Notification No. 761, dated June 19, 1878, Gazette of India, 1878, Pt. I., p. 373. The powers of a Chief Commissioner under the Act are exercised by the Chief Commissioner of Coorg.

Act III of 1867 was extended, by notification of the Lieutenant-Governor of the North-Western Provinces, No. 346A, dated June 8, 1867, to the following towns of Ajmere and Merwara, namely, Ajmere, Bhinae, Kekree, Khurwah, Masuda, Nusserabad, Nyanagar, Pisangun, Pokar Ramsur, Sawur, and Srinagar.—See N.-W. P. Gazette, dated July 31, 1867, p. 511.

Act III. of 1867 has been declared in force in Upper Burma (except the Shan States).—See Act XX. of 1886, Sch. II., Pt I.

Act III. of 1867 has been declared in force in British Baluchistan.—See Reg. I. of 1890, s. 3 (*1*). It has also been applied to the Agency Territories.—See the Baluchistan Agency Laws Law, 1890, s. 4 (*1*).

Act III. of 1867 has been declared by the Scheduled Districts Act (XIV. of 1874), s. 10, to be in force in the tract of land ceded to the British Government in the year 1863, and lying between the railway station at Sutna and the eastern boundary of the Jubbulpur District.

Act III. of 1867 has been declared, by notification under the Scheduled Districts Act (XIV. of 1874) to be in force in the Tarai Parganas.—See Notification No. 1554, dated Sep. 22, 1876, Gazette of India, 1876, p. 505, and N.-W. P. Gazette, 1876, p. 1278

Taking part in the game of "*ti*" or other game of a like nature is to be deemed gaming and playing within the meaning of this Act.—See the Burma Gaming Act (XVI. of 1884), s. 2 (*1*).

For power of Chief Commissioner to extend the local application of this Act, see the Burma Gaming Act (XVI. of 1884), s. 4 (*1*).

† This is the short title given to this Act by the Repealing and Amending Act (V. of 1897), Sch. III.

‡ The territories are now known as Lower Burma.—See Act XX. of 1886, s. 2 (*1*) (*b*). The Chief Commissioner is now Lieutenant-Governor of Burma.—See Proclamation, dated April 9, 1897, in Gazette of India, 1897, Pt. I., p. 261.

§ The word "and" has been inserted by the Repealing and Amending Act (XII. of 1891).

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"Chief Commissioner" means the Chief Commissioner of Oudh, the Central Provinces, or Lower Burma,* as the case may be:

"Chief Commissioner."

"Common gaming-house" means any house, walled enclosure, room, or place in which cards, dice, tables, or other instruments of gaming, are kept or used for the profit or gain of the person owning, occupying, using, or keeping such house, enclosure, room, or place, whether by way of charge for the use of the instruments of gaming, or of the house, enclosure, room, or place, or otherwise howsoever:

"Common gaming-house."

Words in the singular include the plural, and *vice versâ*: and

Number.

Words denoting the masculine gender include females.

Gender.

**2.** Sections 13 and 17† of this Act shall extend to the whole of the said territories; and it shall be competent to the Lieutenant-Governor or the Chief Commissioner, as the case may be, whenever he may think fit, to extend, by notification to be published in three successive numbers of the official Gazette,‡ all or any of the remaining sections of this Act to any city, town suburb, railway station-house, and place being not more than three miles distant from any part of such station-house within the territories subject to his Government or Administration, and in such notification to define, for the purposes of this Act, the limits of such city, town, suburb, or station-house, and from time to time to alter the limits so defined.§

Power to extend Act.

From the date of any such extension, so much of any rule having the force of law which shall be in operation in the territories to which such extension shall have been made, as shall be inconsistent with or repugnant to any section so extended, shall cease to have effect in such territories.

**3.** Whoever, being the owner or occupier, or having the use, of any house, walled enclosure, room, or place situate within the limits to which this Act applies, opens, keeps, or uses the same as a common gaming-house; and

Penalty for owning or keeping, or having charge of, gaming-house.

whoever, being the owner or occupier of any such house, walled enclosure, room, or place as aforesaid, knowingly or wilfully permits the same to be opened, occupied, used, or kept by any other person as a common gaming-house; and

whoever has the care or management of, or in any manner assists in conducting, the business of any house, walled enclosure, room, or place as aforesaid, opened, occupied, used, or kept for the purpose aforesaid; and

whoever advances or furnishes money for the purpose of gaming with persons frequenting such house, walled enclosure, room, or place,

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* The territories are now known as Lower Burma.—See Act XX. of 1886, s 2 (*t*) (*b*). The Chief Commissioner is now Lieutenant-Governor of Burma —See Proclamation, dated April 9, 1897 in Gazette of India, 1897, Pt. I. p 261.

† The words and figures, "sections 13 and 17," have been substituted for the words and figures, "sections 13, 17, and 18," as s. 18 has already been repealed —See Act XII. of 1891.

‡ For notification issued by the Chief Commissioner of Assam in exercise of this power, see pp. 9 and 10 of the Assam Rules Manual, Ed. 1893.

§ Under s. 2, the remaining sections of this Act have been extended to a large number of places in Burma, too numerous to be here specified.

shall be liable to a fine not exceeding two hundred rupees, or to imprisonment of either description, as defined in the Indian Penal Code, for any term not exceeding three months.*

Penalty for being found in gaming-house.

4. Whoever is found in any such house, walled enclosure, room, or place, playing or gaming with cards, dice, counters, money, or other instruments of gaming, or is found there present for the purpose of gaming, whether playing for any money, wager, stake, or otherwise, shall be liable to a fine not exceeding one hundred rupees, or to imprisonment of either description as defined in the Indian Penal Code for any term not exceeding one month;*

and any person found in any common gaming-house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming.

Power to enter and authorize police to enter and search.

5. If the Magistrate of a district,† or other officer invested with the full powers of a Magistrate,‡ or the District Superintendent of Police, upon credible information, and after such inquiry as he may think necessary, has reason to believe that any house, walled enclosure, room, or place, is used as a common gaming-house,

he may either himself enter, or by his warrant authorize any officer of police, not below such rank as the Lieutenant-Governor or Chief Commissioner shall appoint in this behalf, to enter, with such assistance as may be found necessary, by night or by day, and by force, if necessary, any such house, walled enclosure, room, or place;

and may either himself take into custody, or authorize such officer to take into custody, all persons whom he or such officer finds therein, whether or not then actually gaming;

and may seize, or authorize such officer to seize, all instruments of gaming, and all moneys and securities for money, and articles of value, reasonably suspected to have been used, or intended to be used, for the purpose of gaming, which are found therein;

and may search, or authorize such officer to search, all parts of the house, walled enclosure, room, or place, which he or such officer shall have so entered, when he or such officer has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he or such officer so takes into custody;

and may seize, or authorize such officer to seize, and take possession of, all instruments of gaming found upon such search.

Finding cards, &c., in suspected houses, to be evidence that such houses are common gaming-houses.

6. When any cards, dice, gaming-tables, cloths, boards, or other instruments of gaming, are found in any house, walled enclosure, room, or place, entered or searched under the provisions of the last preceding section, or about the person of any of those who are found therein, it shall be evidence, until the contrary is made to appear, that such house, walled enclosure,

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* As to enhanced punishment for a second conviction of an offence under s. 3 or s. 4, see s. 15, *infra*.

† For power of Local Government to authorize Magistrates of the second class to exercise the powers conferred by s. 5 on the Magistrate of the district, see Act XVI. of 1884, s. 5.

‡ Now the District Magistrate or a Magistrate of the first class.—See Act X. of 1882, s. 3.

1867. Act 3. room, or place, is used as a common gaming-house, and that the persons found therein were there present for the purpose of gaming, although no play was actually seen by the Magistrate or police-officer, or any of his assistants.

Penalty on persons arrested for giving false names and addresses.

**7.** If any person found in any common gaming-house entered by any Magistrate or officer of police under the provisions of this Act, upon being arrested by any such officer, or upon being brought before any Magistrate, on being required by such officer or Magistrate to give his name and address, shall refuse or neglect to give the same, or shall give any false name or address, he may, upon conviction before the same or any other Magistrate, be adjudged to pay any penalty not exceeding five hundred rupees, together with such costs as to such Magistrate shall appear reasonable, and on the non-payment of such penalty and costs, or in the first instance, if to such Magistrate it shall seem fit, may be imprisoned for any period not exceeding one month.

On conviction for keeping gaming-house, instruments of gaming to be destroyed.

**8.** On conviction of any person for keeping or using any such common gaming-house, or being present therein for the purpose of gaming, the convicting Magistrate may order all the instruments of gaming found therein to be destroyed, and may also order all or any of the securities for money and other articles seized, not being instruments of gaming, to be sold and converted into money, and the proceeds thereof with all moneys seized therein to be forfeited; or, in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled.

Proof of playing for stakes unnecessary.

**9.** It shall not be necessary, in order to convict any person of keeping a common gaming-house, or of being concerned in the management of any common gaming-house, to prove that any person found playing at any game was playing for any money, wager, or stake.

Magistrate may require any person apprehended to be sworn and give evidence.

**10.** It shall be lawful for the Magistrate before whom any persons shall be brought, who have been found in any house, walled enclosure, room, or place, entered under the provisions of this Act, to require any such persons to be examined on oath or solemn affirmation, and give evidence touching any unlawful gaming in such house, walled enclosure, room, or place, or touching any act done for the purpose of preventing, obstructing, or delaying the entry into such house, walled enclosure, room, or place, or any part thereof, of any Magistrate, or officer authorized as aforesaid.

No person so required to be examined as a witness shall be excused from being so examined when brought before such Magistrate as aforesaid, or from being so examined at any subsequent time by or before the same or any other Magistrate, or by or before any Court on any proceeding or trial in any ways relating to such unlawful gaming or any such acts as aforesaid, or from answering any question put to him touching the matters aforesaid, on the ground that his evidence will tend to criminate himself.

Any such person so required to be examined as a witness, who refuses to make oath or take affirmation accordingly, or to answer any such question as aforesaid, shall be subject to be dealt with in all respects as any person committing the offence described in section 178 or section 179 (as the case may be) of the Indian Penal Code.

**11.** Any person who shall have been concerned in gaming contrary to this Act, and who shall be examined as a witness before a Magistrate on the trial of any person for a breach of any of the provisions of this Act relating to gaming, and who, upon such examination, shall, in the opinion of the Magistrate, make true and faithful discovery, to the best of his knowledge, of all things as to which he shall be so examined, shall thereupon receive from the said Magistrate a certificate in writing to that effect, and shall be freed from all prosecutions under this Act for anything done before that time in respect of such gaming.

Witnesses indemnified.

**12.** Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill, wherever played.

Act not to apply to certain games.

Gaming and setting birds and animals to fight in public places.

**13.** A police-officer may apprehend without warrant—

any person found playing for money or other valuable thing with cards, dice, counters, or other instruments of gaming, used in playing any game not being a game of mere skill, in any "public street, place, or thoroughfare,"* situated within the limits aforesaid, or

any person setting any birds or animals to fight in any public street, place, or thoroughfare, situated within the limits aforesaid, or

any person there present aiding and abetting such public fighting of birds and animals.

Such person, when apprehended, shall be brought without delay before a Magistrate, and shall be liable to a fine not exceeding fifty rupees, or to imprisonment, either simple or rigorous, for any term not exceeding one calendar month;

and such police-officer may seize all instruments of gaming found in "such public place,"† or on the person of those whom he shall so arrest, and the Magistrate may, on conviction of the offender, order such instruments to be forthwith destroyed.

Destruction of instruments of gaming found in public places.

**14.** Offences punishable under this Act shall be triable by any Magistrate having jurisdiction in the place where the offence is committed.

Offences by whom triable.

But such Magistrate shall be restrained within the limits of his jurisdiction under the Code of Criminal Procedure, 1882,‡ as to the amount of fine or imprisonment he may inflict.

**15.** Whoever, having been convicted of an offence punishable under section 3 or section 4 of this Act, shall again be guilty of any offence punishable under either of such sections, shall be subject for every such subsequent offence to double the amount of punishment to which he would have been liable for the first commission of an offence of the same description:

Penalty for subsequent offence.

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* In Lower Burma, for the words, "public street, place, or thoroughfare," the words, "street or thoroughfare or place to which the public have access," should be substituted.—See the Burma Gaming Act (XVI of 1884), s. 6 (*a*), *infra*, p. 208.

† In Lower Burma, for the words, "such public place," the words "such place," should be substituted.—See the Burma Gaming Act (XVI. of 1884), s. 6 (*b*), *infra*, p. 208.

‡ See Act V. of 1898, ss. 3, 32, 34, and 446.

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Provided that he shall not be liable in any case to a fine exceeding six hundred rupees, or to imprisonment for a term exceeding one year.

Portion of fine may be paid to informer.

**16.** The Magistrate trying the case may direct any portion of any fine which shall be levied under sections 3 and 4 of this Act, or any part of the moneys or proceeds of articles seized and ordered to be forfeited under this Act, to be paid to an informer.

Recovery and application of fines.

**17.** All fines imposed under this Act may be recovered in the manner prescribed by sections 386, 387, and 389 of the Code of Criminal Procedure, 1898,* and such fines shall (subject to the provisions contained in the last preceding section) be applied as the Lieutenant-Governor or Chief Commissioner, as the case may be, shall from time to time direct.

**18.** [*Offences under this Act to be offences within meaning of Penal Code.*] [*Repealed by the Repealing Act (XVI. of 1874).*]

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* The sections of the new Code cited in s. 17 have been substituted for s. 307 of Act X. of 1872.—See Act V. of 1898, s. 3.

# ACT NO. XVI. OF 1884.*

## THE BURMA GAMING ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 3RD OCTOBER 1884.

*An Act to provide more effectually for the suppression of certain forms of Gaming in Lower Burma.*

WHEREAS it is expedient to provide more effectually for the suppression of certain forms of gaming in Lower Burma; It is hereby enacted as follows:—

**1.** (*1*) This Act may be called "The Burma Gaming Act, 1884."

Short title, extent, and commencement.

(*2*) It extends to all the territories† for the time being under the administration of the Chief Commissioner of Lower Burma;† and

(*3*) It shall come into force at once.

**2.** (*1*) Taking part in the game of "*ti*," or in any other game or pretended game of a like nature, shall be deemed gaming and playing within the meaning of Act III. of 1867.‡

Application of Act III. of 1867 to game of *ti* and like games.

(*2*) Every house, walled enclosure, room, or place, whether public or private, where any such game or pretended game is carried on, shall, for the purpose of that Act, be deemed a common gaming-house, and all expressions referring to the use of any such house, enclosure, room, or place as a common gaming-house, shall include the use thereof for any such game or pretended game on a single occasion.

(*3*) All boxes, receptacles, lists, papers, tickets, and forms used for the purpose of any such game or pretended game, shall be deemed instruments of gaming within the meaning of the said Act.

**3.** Whoever conducts or assists in conducting the game of "*ti*," or any other game or pretended game of a like nature, as manager, stake-holder, or *daing*, or who is, according to the rules of the game or pretended game, entitled to receive the surplus proceeds, or any part of the surplus proceeds, of the stakes, after deducting the amount payable to the successful player or players, or who promotes the game or pretended game by soliciting or collecting stakes or otherwise, shall be punished with imprisonment for a term which may, for a first offence, extend to six months, and, for a subsequent offence, to two years, or with fine, or with both.

Penalty on conducting game of *ti* and like games.

**4.** (*1*) The Chief Commissioner may from time to time, by notification published in the official Gazette, extend to the whole or any part of the territories for the time being under his administration any such of the provisions of Act III. of 1867‡ as do not for the time being extend thereto.

Power to extend local application of Act III. of 1867 within Burma.

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* This Act has been declared in force in Upper Burma (except the Shan States).—See the Upper Burma Laws Act (XX. of 1886), Sch. II., Pt. I.

† The territories are now known as Lower Burma.—See the Upper Burma Laws Act (XX. of 1886), s. 2 (*1*) (*b*); and the Chief Commissioner is styled Chief Commissioner of Burma.—See Proclamation, dated 25th September 1886, Gazette of India, 25th *idem*, Pt. I., p. 539.

‡ See *supra*, p. 201.

1894. Act 16.

(*a*) From the date of any such extension so much of any rule having the force of law in operation in the territories to which the extension is made as is inconsistent with or repugnant to any provision so extended shall cease to have effect in those territories.

Power to invest 2nd-class Magistrates with powers under Act III. of 1867, section 5.

**5.** The Local Government may authorize any Magistrate of the second class to exercise the powers conferred by section 5 of Act III. of 1867* on the Magistrate of the district.

Amendment of Act III. of 1867, section 13.

**6.** In section 13 of Act III. of 1867†—

(*a*) for the words, "public street, place, or thoroughfare," where they first occur, the words, "street or thoroughfare or place to which the public have access." shall be substituted; and

(*b*) in the last clause, for the words, "such public place," the words, "such place," shall be substituted.

Power to arrest without warrant.

**7.** A police-officer may arrest without warrant any person soliciting or collecting stakes for the game of *ti*, or any other game or pretended game of a like nature, in any street or thoroughfare or place to which the public have access.

Power to demand security.

**8.** Whenever a District Magistrate, Sub-Divisional Magistrate, or, when he is specially empowered in this behalf by the Local Government, a Magistrate of the first class, receives information that any person within the local limits of his jurisdiction earns his livelihood, wholly or in part, by carrying on, or assisting in carrying on, the game of *ti* or any other game or pretended game of a like nature, he may deal with such person as nearly as may be as if the information received about him were of the description mentioned in section 110 of the Code of Criminal Procedure; and for the purposes of any proceeding under this section the fact that a person earns his livelihood as aforesaid may be proved by evidence of general repute or otherwise.

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## RULINGS UNDER THE GAMBLING LAWS.

ON a reference by a Sessions Judge where certain persons were found guilty of gaming by a Full-power Magistrate solely on the evidence of a person supposed to have been concerned in the offence, whom the Magistrate had pardoned, *held* that a Magistrate has no power to tender a pardon in a case which he tries himself, but only, under s. 209 of the Criminal Procedure Code, in the case of an offence triable by the Court of Session. — REG. v. REMEDIOS, 3 Bom. H. C. R. 59. [Couch, C.J., and Newton and Warden, JJ. June 12, 1867.]

A PERSON apprehended by the police, and brought before the Magistrate with the accused, is, though not discharged by the Magistrate, a competent witness against the accused, provided he be not charged along with the accused. Conviction of keeping a common gaming-house upheld, where portion of the evidence against the accused consisted of instruments of gaming found in such house, which had been entered in pursuance of a search-warrant illegally issued, there being sufficient evidence *aliunde* to justify the conviction.—REG. v. NARAYAN SUNDER, 5 Bom. H. C. R. 1 [Couch, C.J., and Newton, J. Jan. 16, 1868.]

THE gist of the offence under s. 4 of Act III. of 1867 consists in the fact that the house in which the gambling takes place is "a common gaming-house." The gist of the offence under s. 13 is "the gambling in a public street or place." Gambling in

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* See *supra*, p. 203.

† See *supra*, p. 205.

a private house is not an offence under the Act.—QUEEN v. KHYROO, 2 N.-W. P. 289. [Turner, Offg. C.J. July 8, 1870.]

A COMMON gaming-house is one which is kept or used for profit or gain, and may constitute a public nuisance; but it cannot be held, in the absence of evidence of any actual annoyance to the public, that every person who admits gamblers into his house, and all persons who game therein, are guilty of a public nuisance within the meaning of s. 268 of the Penal Code.—REG. v. HAU NAGJI. 7 Bom. H. C. R. 74. [Gibbs and Melvill, JJ. Dec. 1, 1870.]

To authorize an entry or search of a house under s. 5 of Act III. of 1867, there must be credible information before the Magistrate or police-officer who may take action under such section that the house is a common gaming-house. Unless a house is entered or searched under the provisions of s. 5, the finding of cards dice, &c., therein, will not be *primâ facie* evidence for the purposes mentioned in Act III. of 1867.—QUEEN v. SUBSOOKH, 2 N.-W. P. 476. [Turner and Turnbull, JJ. Dec. 17, 1870.]

GAMBLING is not ordinarily punishable as an offence; it is only so punishable when carried on in a common gaming-house or in a public street or place.—QUEEN v. SHEOSHUNKER SINGH. 3 N.-W. P. 1. [Turner, J. Jan. 4, 1871.]

A WARRANT issued under s. 58 of Act XIII. of 1856 should be addressed to some one or more inspectors, and not generally to "all constables and peace-officers." Where a warrant in the latter form was executed under the direction of an inspector, it was held that the error in the form of the warrant was merely an error of procedure, and did not affect the validity of the conviction, under s. 57, of persons apprehended in pursuance of the warrant so executed. *Held* on the evidence that there was sufficient to show that the house in which the prisoners were arrested was a common gaming-house. A person is "found gaming," within the meaning of s. 57 of Act XIII of 1856, who, having been *seen* gaming by an inspector of police, is shortly afterwards, in a place adjoining the room in which he was seen gaming, apprehended by police-constables acting under the direction of such inspector.—REG. v. NANA MOROJI, 8 Bom. H. C. R. 1 [Green, J. Jan. 16, 1871.]

GAMING is not punishable by law unless it be carried on in public places or thoroughfares, or in common gaming-houses. Common gaming-houses are houses in which instruments of gambling are kept or used for the profit or gain of the owner or occupier, whether by way of charge for the use of the instrument of gaming, or of the houses, or otherwise howsoever.—QUEEN v. SUJJUD ALI, 3 N.-W. P. 134. [Turner, J. June 16, 1871.]

THE notification which the Government is empowered to issue under s. 2 of the Gaming Act, II of 1867 (B. C.), should specify the limits of any town to which it is intended the Act should apply, and must be published in three consecutive Gazettes. Where a first notification, which extends the Act to a town with specification of limits to which it was intended to be applied, was published only once, and a subsequent notification, published three times, extended the Act to the town without specifying the limits to which the Act was to apply, it was *held* that the subsequent notifications were not sufficient, but that did not prevent the operation of the Act in places which are shown to be undoubtedly within the town according to its ordinary designation.—BANEE MADHUB KOONDOO, PETITIONER, 21 W. R. 23. [Markby and Birch, JJ. Dec. 22, 1873.]

WHERE a police-officer, unauthorized by a Magistrate or District Superintendent of Police, enters and searches an alleged gaming-house, and arrests persons found therein, a Magistrate is justified in convicting such persons, if it is proved, without resorting to the presumption created by Ben. Act II. of 1867, s 6, that the house is a gaming-house.—NAZIR KHAN v PROLADH DUTTA, I. L. R., 4 Cal. 650. [Jackson, Offg. C.J., and McDonell, J. Nov. 29, 1878.]

A DEPUTY INSPECTOR of police is not authorized to enter and search an alleged gaming-house, unless he receives authority so to do from a Magistrate or a District Superintendent of Police. Where such an unauthorized entry and subsequent arrest of persons in a gaming-house takes place, there being no other evidence of an offence under s 5 of Act II. of 1867, a Magistrate has no evidence before him on which he can convict. The evidence required cannot be presumed under s. 6 of the Act, because that presumption only arises when the proceedings are authorized by s 5.—SREERAM CHUNDRA LARKAN v. BIPINDASS, I. L. R., 4 Cal. 710 [Mitter and McDonell, JJ. Feb. 2, 1879.]

A COIN is not an instrument of gaming within the meaning of s. 11 of Bom. Act III. of 1866. An instrument of gaming means an implement devised or intended for that purpose.—IMPERATRIX v. VITHAL BHAICHAND, I. L. R., 6 Bom. 19. [Melvill and Pinhey, JJ. Nov. 17, 1881.]

The lessee of a house, who permitted disorderly people to use it for gambling, and thereby caused annoyance to the public, was convicted of an offence under the Penal Code, s. 290. It appeared, however, that the accused had not engaged the house with the object of letting it out as a gaming-house. *Held* that the conviction was right. —QUEEN-EMPRESS *v.* [HANDAVARAYUDU, *I. L. R.*, 14 Mad. 364. [Muttusami Ayyar and Wilkinson, JJ. Jan 28, 1891.]

A COIN is not an "instrument of gaming" within the meaning of s. 12 of Bom. Act IV. of 1887 as amended by Bom. Act I. of 1890. The expression "instrument of gaming," as used in s. 12 of the Act of 1887, means an implement devised or intended for that purpose. *Imperatrix v. Vithal* (I. L. R., 6 Bom. 19) followed.—QUEEN-EMPRESS *v.* GOVIND, I. L. R., 16 Bom. 283. [Birdwood, Jardine, and Parsons, JJ. July 9, 1891.]

The accused rented a place near a public road at Bombay at Rs. 350 a month. There they erected a shed containing eleven *pedhis* or stalls. In the centre of the shed they put up, in a prominent position, a clock for keeping accurate time. The stalls were let out to certain persons, each at the rate of Rs. 100 a month. The roofs of several adjoining houses surrounded this place. From one of these roofs rain fell into the place. Numbers of people resorted to this place for the purpose of rain-betting. The rain betters staked certain sums of money, on the chance whether the rain would fall or would not fall within a certain time. After making the bets, the parties betting would go to one of the stall-keepers, and get him to register the particulars of the bet in a book kept for the purpose, and each deposited with the stall-keeper the amount staked. The bets as to rain-falling were determined by persons at the place seeing the rain falling in a stream from such of the roofs of the adjoining houses as had been chosen by the betters on making the bets, and seeing also the time, by the clock, if there was any doubt as to the time After the bet was determined, the winner received from the stall-keeper the amount of the stake. Under these circumstances, the accused were charged before the Chief Presidency Magistrate with committing the offence of keeping a "common gaming-house" under s 4, cls. *a*, *b*, and *c*, of the Bombay Gambling Act, IV. of 1887, as amended by Act I of 1890. On a reference by the Magistrate under s 432 of the Code of Criminal Procedure (Act X. of 1882), *held* that to bring the place in question within the definition of a "common gaming-house" in s. 3 of the Bombay Gambling Act (IV. of 1887), as amended by Bombay Act I. of 1890, the instrument of gaming or wagering must be in the place itself, either kept there, or brought there and used there, for profit and gain. It is not sufficient that wagers are made in the place upon or by means of some article or other which is outside the place. The roofs of the houses surrounding the place in question could not, therefore, be regarded as "instruments of gaming," either kept or used therein, within the meaning of s. 3 of the Act. *Held* also that the word "used" in s 3 of the Act, as amended by Act I. of 1890, must be taken, in its ordinary sense, as meaning *actually* used. Any article which is *in fact* used as a means of wagering comes within the definition of "an instrument of gaming" even though it may not have been specially devised or intended for that purpose *Held per* Telang, J., that neither the stalls, nor the books in which the bets were registered, nor the money staked and deposited with the stall-keeper, were instruments of gaming or wagering. —QUEEN-EMPRESS *v.* KANJI BHIMJI, I. L. R., 17 Bom 184. [Parsons and Telang, JJ. Sep. 20, 1892.]

# ACT NO. X. OF 1897.

## THE GENERAL CLAUSES ACT, 1897.

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# ACT NO. X. OF 1897.*

## THE GENERAL CLAUSES ACT, 1897.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*Received His Excellency's assent on the 11th March 1897.*

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*An Act to consolidate and extend the General Clauses Acts, 1868† and 1887.†*

WHEREAS it is expedient to consolidate and extend the General Clauses Acts, 1868† and 1887;† It is hereby enacted as follows:—

*Preliminary.*

**Short title and commencement.**

**1.** (*1*) This Act may be called the General Clauses Act, 1897; and

(*2*) It shall come into force at once.

**Repeal.**

**2.** The Acts mentioned in the schedule are repealed to the extent specified in the fourth column thereof.

*General Definitions.*

**Definitions.**

**3.** In this Act, and in all Acts of the Governor-General in Council and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,—

"Abet."

(*1*) "abet," with its grammatical variations and cognate expresssions, shall have the same meaning as in the Indian Penal Code:

"Act."

(*2*)‡ "act," used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions:

"Affidavit."

(*3*)§ "affidavit" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing:

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* For Statement of Objects and Reasons, see Gazette of India, 1897, Pt. V., p. 38; for Report of the Select Committee, see *ibid*, p. 77; and for Proceedings in Council, see *ibid*, Pt. VI., pp. 35, 40, 56, and 76.

Act X. of 1897 has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act (XIII. of 1898).—See the Fifth Schedule.

† Acts I. of 1868 and I of 1887, respectively

‡ Compare the Indian Penal Code (Act XLV. of 1860) and the Madras General Clauses Act (Mad. Act III. of 1891).

§ Compare the definitions of "oath" and "swear" in sub-ss. (*36*) and (*55*), respectively, *infra*. As to affidavits in civil proceedings, see Ch. XVI. of the Code of Civil Procedure (Act XIV. of 1882); as to criminal proceedings, see Code of Criminal Procedure (Act V. of 1898).

(4)* "barrister" shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland.

"Barrister."

(5) "Bengal Act"† shall mean an Act made by the Lieutenant-Governor of Bengal in Council under the Indian Councils Acts, 1861‡ and 1892‡:

"Bengal Act."

(6) "Bombay Act" shall mean an Act made by the Governor of Bombay in Council under the Indian Councils Acts 1861‡ and 1892‡:

"Bombay Act."

(7)§ "British India" shall mean all territories and places within Her Majesty's dominions which are for the time being governed by Her Majesty through the Governor-General of India, or through any Governor or other officer subordinate to the Governor-General of India:

"British India."

(8)‖ "British possession" shall mean any part of Her Majesty's dominions, exclusive of the United Kingdom, and, where parts of those dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one British possession:

"British possession."

"Chapter."

(9) "Chapter" shall mean a chapter of the Act or Regulation in which the word occurs:

(10)¶ "Collector" shall mean, in a Presidency-town, the Collector of Calcutta, Madras, or Bombay, as the case may be, and elsewhere the chief officer in charge of the revenue-administration of a district:

"Collector."

(11)** "Colony" shall mean any part of Her Majesty's dominions, exclusive of the British Islands and of British India, and, where parts of those dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one colony:

"Colony."

(12) "commencement."†† used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force:

"Commencement."

(13)‡‡ "Commissioner" shall mean the chief officer in charge of the revenue-administration of a division:

"Commissioner."

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* Compare the Indian High Courts Act, 1861 (24 & 25 Vict., c. 104), s. 19.

† Since the passing of this Act, the Punjab and Burma Legislative Councils have been constituted, and their Acts may by analogy be referred to as "Punjab" and "Burma Acts."

‡ Stats. 24 & 25 Vict., c. 67, and 55 & 56 Vict., c. 14, respectively.

§ Compare the Interpretation Act, 1889 (52 & 53 Vict., c. 63), s. 18 (4). For definition of "India" see *infra*, sub-s. (27).

‖ Compare the Interpretation Act, 1889 (52 and 53 Vict., c. 63), s. 18 (2).

¶ Compare the Bombay General Clauses Act (Bom Act III. of 1886), s. 3 (12), and the N.-W. P. and Oudh General Clauses Act (N.-W. P. and Oudh Act I. of 1887), s. 2 (12).

** Compare the Interpretation Act, 1889 (52 & 53 Vict., c. 63), s. 18 (3).

†† For rules determining when any given Act is to come into force, see s. 5, *infra*.

‡‡ Compare the N.-W. P. and Oudh General Clauses Act (N.-W. P. and Oudh Act I. of 1887).

"Consular officer."

(*14*)* "consular officer" shall include consul-general, consul, vice-consul, consular agent, pro-consul, and any person for the time being authorized to perform the duties of consul-general, consul, vice-consul, or consular agent:

"District Judge."

(*15*)† "District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction:

"Document."

(*16*)‡ "document" shall include any matter written, expressed, or described upon any substance by means of letters, figures, or marks, or by more than one of those means, which is intended to be used, or which may be used, for the purpose of recording that matter:

"Enactment."

(*17*) "enactment" shall include a Regulation (as hereinafter defined) and any Regulation of the Bengal, Madras, or Bombay Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid:

"Father."

(*18*) "father," in the case of any one whose personal law permits adoption, shall include an adoptive father:

"Financial year."

(*19*)§ "financial year" shall mean the year commencing on the first day of April;

"Good faith."

(*20*)‖ a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not:

"Government."

(*21*)¶ "Government" or "the Government" shall include the Local Government as well as the Government of India:

"Government of India."

(*22*) "Government of India" shall mean the Governor-General in Council or, during the absence of the Governor-General from his Council, the President in Council, or the Governor-General alone as regards the powers which may be lawfully exercised by them or him respectively:

"Her Majesty" or "the Queen."

(*23*)** "Her Majesty" or "the Queen" shall include her successors:

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* Compare the Consular Salaries and Fees Act, 1891 (54 & 55 Vict., c. 36), s. 3.

† As to definition of "High Court," see sub-s. (*24*), *infra*.

‡ Compare the Indian Evidence Act (I. of 1872). As to definition of "written," see sub-s. (*58*), *infra*.

§ Compare the Interpretation Act, 1889 (52 & 53 Vict., c. 63), s. 22.

‖ Compare the Bills of Exchange Act, 1882 (45 & 46 Vict., c. 61), s. 90, and the Sale of Goods Act, 1893 (56 & 57 Vict., c. 71), s. 62.

As to discussion in Council regarding definition of "good faith," see Gazette of India, 1897, Pt. VI., pp. 56 to 62 and 76 to 79.

¶ Compare the Code of Civil Procedure (Act XIV. of 1882), s. 2. As to definition of Local Government, see sub-s. (*29*), *infra*.

** Compare the Interpretation Act, 1889 (52 & 53 Vict., c. 63), s. 30, as to references to the reigning Sovereign.

As to Her Majesty's title as Empress of India, see the Royal Titles Act, 1876 (39 Vict., c. 10).

(24) "High Court," used with reference to civil proceedings, shall mean the highest Civil Court of appeal in the part of British India in which the Act or Regulation containing the expression operates:

"High Court."

(25) "immoveable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth:*

"Immoveable property."

(26) "imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code:

"Imprisonment."

(27)† "India" shall mean British India, together with any territories of any Native Prince or Chief under the suzerainty of Her Majesty exercised through the Governor-General of India, or through any Governor or other officer subordinate to the Governor-General of India:

"India."

(28)‡ "local authority" shall mean a municipal committee, district board, body of port commissioners, or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund:

"Local authority."

(29)§ "Local Government" shall mean the person authorized by law to administer executive government in the part of British India in which the Act or Regulation containing the expression operates, and shall include a Chief Commissioner:

"Local Government."

(30) "Madras Act" shall mean an Act made by the Governor of Fort St. George in Council under the Indian Councils Act, 1861‖ and 1892:‖

"Madras Act."

(31) "Magistrate" shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force:¶

"Magistrate."

(32)** "master," used with reference to a ship, shall mean any person (except a pilot or harbour-master) having for the time being control or charge of the ship:

"Master" (of a ship).

(33) "month" shall mean a month reckoned according to the British calendar:

"Month."

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* As to growing crops and timber so far as they are affected by the Indian Registration Act (III. of 1877), see s. 3 of that Act.

† Compare the Interpretation Act, 1889 (52 & 53 Vict., c. 63), s. 18 (5).

‡ Compare the Local Authorities Loan Act (XI. of 1879).

§ There are at present eleven Local Governments in British India, namely:—The Governors of Madras and Bombay in Council; the Lieutenant-Governors of Bengal, the N.-W. P. and Oudh, the Punjab, and Burma; and the Chief Commissioners of the Central Provinces, Assam, Ajmere-Merwara, Coorg, and British Baluchistan. The Commissioner in Sindh exercises by delegation certain powers of a Local Government.—See Act V. of 1868 (Commissioner in Sindh).

‖ Stats. 24 & 25 Vict., c. 67, and 55 & 56 Vict., c. 14, respectively.

¶ The Code now in force is Act V. of 1898.

** See s. 742 of the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

"moveable property."

(34) "moveable property"* shall mean property of every description, except immoveable property:

"North-Western Provinces and Oudh Act."

(35) "North-Western Provinces and Oudh Act" shall mean an Act made by the Lieutenant-Governor of the North-Western Provinces and Oudh in Council under the Indian Councils Acts, 1861† and 1892:†

"oath."

(36) "oath" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing:

"Offence."

(37)‡ "offence" shall mean any act or omission made punishable by any law for the time being in force:

"Part."

(38) "Part" shall mean a Part of the Act or Regulation in which the word occurs:

"Person."

(39) "person" shall include any company or association or body of individuals, whether incorporated or not:

"Political Agent."

(40)§ "Political Agent" shall include—

(a) the principal officer representing the Government in any territory or place beyond the limits of British India and

(b) any officer of the Government of India or of any Local Government appointed by the Government of India or the Local Government to exercise all or any of the powers of a Political Agent for any place not forming part of British India under the law for the time being in force relating to foreign jurisdiction and extradition:

"Presidency-town."

(41)‖ "Presidency-town" shall mean the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras, or Bombay, as the case may be:

"Privy Council."

(42)¶ "Privy Council" shall mean the Lords and others for the time being of Her Majesty's Most Honourable Privy Council:

"Province."

(43)** "Province" shall mean the territories for the time being administered by any Local Government:

"Public nuisance."

(44)†† "public nuisance" shall mean a public nuisance as defined in the Indian Penal Code:

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* For a comprehensive definition of the word "property," see s. 168 of the Bankruptcy Act, 1883 (46 & 47 Vict., c. 52).

† Stats. 24 & 25 Vict., c. 67, and 55 & 56 Vict., c. 14, respectively.

‡ See a similar definition in s. 4 (*o*) of the Code of Criminal Procedure (Act V. of 1898).

§ See s. 3 of the Foreign Jurisdiction and Extradition Act (XXI. of 1879).

‖ See s. 4 (*k*) of the repealed Code of Criminal Procedure (Act X. of 1882), and compare s. 3 (25) of the Madras General Clauses Act (Mad. Act I. of 1891).

¶ Compare s. 12 (5) of the Interpretation Act, 1889 (52 & 53 Vict., c. 63).

** Compare s. 4 (*n*) of the repealed Code of Criminal Procedure (Act X. of 1882).

†† As to procedure in the case of public nuisances, see the Code of Criminal Procedure (Act V. of 1898), Ch. X.

(45)* "registered," used with reference to a document, shall mean registered in British India under the law for the time being in force for the registration of documents: 1887, Act 10.

"Registered."

(46) "Regulation" shall mean a Regulation made under the Government of India Act, 1870:†

"Regulation."

(47) "rule" shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment:‡

"Rule."

(48) "schedule" shall mean a schedule to the Act or Regulation in which the word occurs:

"Schedule."

(49) "Scheduled District" shall mean a "Scheduled District" as defined in the Scheduled Districts Act, 1874:§

"Scheduled District."

(50) "section" shall mean a section of the Act or Regulation in which the word occurs:

"Section."

(51)‖ "ship" shall include every description of vessel used in navigation not exclusively propelled by oars:

"Ship."

(52)¶ "sign," with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include "mark," with its grammatical variations and cognate expressions:

"Sign."

(53) "son," in the case of any one whose personal law permits adoption, shall include an adopted son:

"Son."

(54) "sub-section" shall mean a sub-section of the section in which the word occurs:

"Sub-section."

(55)** "swear," with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing:

"Swear."

(56)†† "vessel" shall include any ship or boat or any other description of vessel used in navigation:

"Vessel."

(57)‡‡ "will" shall include a codicil and every writing making a voluntary posthumous disposition of property:

"Will."

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* Compare the Madras General Clauses Act (Mad. Act I. of 1891), s. 3 (*11*). As to the law now in force, see the Indian Registration Act (III. of 1877).

† Stat. 33 Vict., c. 3.

‡ The provisions of ss. 20 to 24, *infra*, apply to rules defined in this sub-section.

§ Act XIV. of 1874.

‖ Compare s. 742 of the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

¶ See also definition of "writing" in sub-s. (*58*), *infra*.

** See also definition of "affidavit" and "oath" *supra*, sub-ss. (3) and (*36*), respectively; and as to oaths, see the Indian Oaths Act (X. of 1873).

†† Compare s. 742 of the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60). This definition supplements the definition of ship in sub-s. (*51*), *supra*. See also definition of vessel in s. 48 of the Indian Penal Code.

‡‡ See the definition of "will" in s. 3 of the Indian Succession Act (X. of 1865).

"Writing."

(58)* expressions referring to "writing" shall be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form: and

"Year."

(59)† "year" shall mean a year reckoned according to the British calendar.

Application of foregoing definitions to previous enactments.

**4.** (1) The definitions in section 3 of the following words and expressions, that is to say, "affidavit," "barrister," "British India," "District Judge," "father," "Government of India," "Her Majesty" or "the Queen," "High Court," "immoveable property," "imprisonment," "Local Government," "Magistrate," "month," "moveable property," "oath," "person," "section," "son," "swear," "will," and "year," apply also, unless there is anything repugnant in the subject or context, to all Acts of the Governor-General in Council made after the third day of January 1868, and to all Regulations made on or after the fourteenth day of January 1887.

(2) The definitions in the said section of the following words and expressions, that is to say, "abet," "chapter," "commencement," "financial year," "local authority," "master," "offence," "Part," "public nuisance," "registered," "schedule," "ship," "sign," "sub-section," and "writing," apply also, unless there is anything repugnant in the subject or context, to all Acts of the Governor-General in Council and Regulations made on or after the fourteenth day of January 1887.

*General Rules of Construction.*

Coming into operation of enactments.

**5.** (1) Where any Act of the Governor-General in Council is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent of the Governor-General.

(2) Where any Act of the Governor-General in Council is reserved under the Indian Councils Act, 1861.‡ section 20, for the signification of Her Majesty's pleasure thereon, then, if no later date is expressed, it shall come into operation, if assented to by Her Majesty, on the day on which the assent of Her Majesty is duly proclaimed.

(3)§ Unless the contrary is expressed, an Act of the Governor-General in Council or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

Effect of repeal.

**6.**‖ Where this Act, or any Act of the Governor-General in Council or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

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* Compare s. 20 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63).

† As to "financial year," see sub-s (19), *supra*.

‡ Stat. 24 & 25 Vict., c. 67.

§ Compare s. 36 (2) of the Interpretation Act, 1889 (52 & 53 Vict., c. 63).

As to power to make rules between the passing and commencement of an Act which does not come into force at once, see s. 22, *infra*.

‖ Compare s 38 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63).

(*b*) affect the previous operation of any enactment so repealed, or anything duly done or suffered thereunder; or

(*c*) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or

(*d*) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or

(*e*) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy, may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment, may be imposed as if the repealing Act or Regulation had not been passed.

Revival of repealed enactments.

**7.*** (*1*) In any Act of the Governor-General in Council or Regulation made after the commencement of this Act, it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.

(*2*) This section applies also to all Acts of the Governor-General in Council made after the third day of January 1868, and to all Regulations made on or after the fourteenth day of January 1887.

Construction of references to repealed enactments.

**8.†** Where this Act, or any Act of the Governor-General in Council or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

Commencement and termination of time.

**9.** (*1*) In any Act of the Governor-General in Council or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from," and, for the purpose of including the last in a series of days or any other period of time, to use the word "to."

(*2*) This section applies also to all Acts of the Governor-General in Council made after the third day of January 1868, and to all Regulations made on or after the fourteenth day of January 1887.

Computation of time.

**10.‡** (*1*) Where, by any Act of the Governor-General in Council or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877, applies.

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* Compare s. 11 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63).

† Compare s. 38 (*1*) of the Interpretation Act, 1889 (52 & 53 Vict., c. 63); see a similar provision in s. 3 of the Code of Criminal Procedure (Act V. of 1898).

‡ See the Madras General Clauses Act (Mad. Act I. of 1891), s. 11.

1897. Act 10.

(2) This section applies also to all Acts of the Governor-General in Council and Regulations made on or after the fourteenth day of January 1887.

Measurement of distances.

**11.*** In the measurement of any distance, for the purposes of any Act of the Governor-General in Council or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

Duty to be taken *pro ratâ* in enactments.

**12.** Where, by any enactment† now in force or hereafter to be in force, any duty of customs or excise, or in the nature thereof, is leviable on any given quantity, by weight, measure, or values of any goods or merchandise, then a like duty is leviable according to the same rate on any greater or less quantity.

Gender and number.

**13.** In all Acts of the Governor-General in Council and Regulations, unless there is anything repugnant in the subject or context,—

(1) words importing the masculine gender shall be taken to include females; and

(2) words in the singular shall include the plural, and *vice versa*.

*Powers and Functionaries.*

Powers conferred on the Government to be exercisable from time to time.

**14.** (1) Where, by any Act of the Governor-General in Council or Regulation made after the commencement of this Act, any power is conferred on the Government, then that power may be exercised from time to time as occasion requires.

(2) This section applies also to all Acts of the Governor-General in Council and Regulations made on or after the fourteenth day of January 1887.

Power to appoint to include power to appoint *ex officio*.

**15.** Where, by any Act of the Governor-General in Council or Regulation, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act, may be made either by name or by virtue of office.‡

Power to appoint to include power to suspend or dismiss.

**16.** Where, by any Act of the Governor-General in Council or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having power to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power.§

Substitution of functionaries.

**17.** (1) In any Act of the Governor-General in Council or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.

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* Compare s. 34 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63).

† As to definition of "enactment," see s. 3, sub-s. (17), *supra*.

‡ See similar provision in s. 39 of the Code of Criminal Procedure (Act V. of 1898).

§ See as to this provision the Statement of Objects and Reasons, quoted *supra*, p. 212.

(2) This section applies also to all Acts of the Governor-General in Council made after the third day of January 1868, and to all Regulations made on or after the fourteenth day of January 1887.

Successors.

**18.** (1) In any Act of the Governor-General in Council or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.

(2) This section applies also to all Acts of the Governor-General in Council made after the third day of January 1868, and to all Regulations made on or after the fourteenth day of January 1887.

Official chiefs and subordinates.

**19.** (1) In any Act of the Governor-General in Council or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.

(2) This section applies also to all Acts of the Governor-General in Council made after the third day of January 1868, and to all Regulations made on or after the fourteenth day of Januray 1887.

*Provisions as to Orders, Rules, made under Enactments.*

Construction of orders, issued under enactments.

**20.*** Where, by any Act of the Governor-General in Council or Regulation, a power to issue any order, scheme, rule, form, or bye-law, is conferred, then expressions used in the order, scheme, rule, form, or bye-law, if it is made after the commencement of this Act, shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act or Regulation conferring the power.

Power to make to include power to add to, amend, vary, or rescind, orders, rules, or bye-laws.

**21.**† Where, by any Act of the Governor-General in Council or Regulation, a power to make orders, rules, or bye-laws, is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary, or rescind any orders, rules, or bye-laws so made.

Making of rules or bye-laws, and issuing of orders between passing and commencement of enactment.

**22.**‡ Where, by any Act of the Governor-General in Council or Regulation which is not to come into force immediately on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation, or with respect to the establishment of any Court or office, or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after the passing of the Act or Regulation; but rules, bye-laws, or orders so made or issued, shall not take effect till the commencement of the Act or Regulation.

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* Compare s. 31 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63), and s. 10 of the Madras General Clauses Act (Mad. Act I. of 1891).

† Compare s. 32 (3) of the Interpretation Act, 1889 (52 & 53 Vict., c. 63).

‡ Compare s. 37 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63).

1897. Act 10.

**23.** Where, by any Act of the Governor-General in Council or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:—

Provisions applicable to making of rules or bye-laws after previous publication.

(1) the authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;

(2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Governor-General in Council or the Local Government prescribes;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) the authority having power to make the rules or bye-laws, and where the rules or bye-laws are to be made with the sanction, approval, or concurrence of another authority, that authority also shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;

(5) the publication in the Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made.

**24.*** Where any Act of the Governor-General in Council or Regulation is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any order, scheme, rule, form, or bye-law issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been issued under the provisions so re-enacted, unless and until it is superseded by any order, scheme, rule, form, or bye-law issued under the provisions so re-enacted.

Continuation of orders, issued under enactments repealed and re-enacted.

*Miscellaneous.*

**25.** Sections 63 to 70 of the Indian Penal Code, and the provisions of the Code of Criminal Procedure† for the time being in force in relation to the issue and the execution of warrants for the levy of fines, shall apply to all fines imposed under any Act, Regulation, rule, or bye-law, unless the Act, Regulation, rule, or bye-law contains an express provision to the contrary.

Recovery of fines.

**26.** Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.‡

Provision as to offences punishable under two or more enactments.

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* Compare s. 18 of the Madras General Clauses Act (Mad. Act I. of 1891). Similar provisions occur frequently in Indian Acts, see *e.g.*, s. 2 of the Foreign Jurisdiction and Extradition Act (XXI. of 1879).

† See now s. 386 *et seq.* of the Code of Criminal Procedure (Act V. of 1898).

‡ As to definition of "offence" see *supra*, sub-s. (37).

**27.*** Where any Act of the Governor-General in Council or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve," or either of the expressions "give" or "send," or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre paying, and posting, by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Meaning of service by post.

**28.†** (*1*) In any Act of the Governor-General in Council or Regulation, and in any rule, bye-law, instrument, or document made under, or with reference to, any such Act or Regulation, any enactment may be cited by reference to the title or short title (if any) conferred thereon, or by reference to the number and year thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.

Citation of enactments.

(*2*) In this Act and in any Act of the Governor-General in Council or Regulation made after the commencement of this Act, a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section, or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

**29.‡** The provisions of this Act respecting the construction of Acts, Regulations, rules, or bye-laws made after the commencement of this Act, shall not affect the construction of any Act, Regulation, rule, or bye-law made before the commencement of this Act, although the Act, Regulation, rule, or bye-law is continued or amended by an Act, Regulation, rule, or bye-law made after the commencement of this Act.

Saving for previous enactments, rules, and bye-laws.

## THE SCHEDULE.

### ENACTMENTS REPEALED.

(*See section 2.*)

| Year. | No. | Title or subject. | Extent of repeal. |
|---|---|---|---|
| 1868 | I. | The General Clauses Act, 1868. | The whole. |
| 1872 | I. | The Indian Evidence Act, 1872. | So much as relates to Act I. of 1868. |
| 1887 | I. | The General Clauses Act, 1887. | The whole. |
| 1891 | XII. | The Repealing and Amending Act, 1891. | So much as relates to Act I. of 1868. |

* Compare s. 26 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63).

† Compare s. 35 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63). Short titles have been conferred on the unrepealed General Acts of the Governor-General in Council which had previously no short titles. See the Indian Short Titles Act (XIV. of 1897).

‡ Compare s. 40 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63).

# ACT NO. XIII. OF 1899.

## THE GLANDERS AND FARCY ACT, 1899.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*Received the assent of the Governor-General on the 20th March 1899.*

*An Act to consolidate and amend the Law relating to Glanders and Farcy.*

WHEREAS it is expedient to consolidate and amend the Law relating to glanders and farcy; It is hereby enacted as follows:—

Short title, extent, and commencement.

**1.** (*1*) This Act may be called the Glanders and Farcy Act, 1899.

(*2*) It extends to the whole of British India; and

(*3*) It shall come into force at once.

Definition of "diseased."

**2.** (*1*) In this Act, unless there is anything repugnant in the subject or context, "diseased" means affected with glanders or farcy or any other dangerous epidemic disease among horses which the Governor-General in Council may, by notification in the *Gazette of India*, specify in this behalf.

(*2*) The provisions of this Act relating to horses shall apply also to asses and mules.

Application of Act to local areas by Local Government.

**3.** The Local Government may, by notification in the local official Gazette, apply this Act, or any provision of this Act, to any local area, to be specified in such notification, within the province.

Local Government to appoint Inspectors.

**4.** (*1*) When this Act has been so applied to a local area, the Local Government may, by notification in the local official Gazette, appoint such persons as it thinks fit to be Inspectors under this Act, and to exercise and perform, within the whole of the local area, or such portions thereof as it may prescribe, the powers conferred and the duties imposed by this Act on such officers.

(*2*) Every person so appointed shall be deemed to be a public servant within the meaning of the Indian Penal Code.*

Power of entry and search.

**5.** Within the local limits for which he is so appointed, any such Inspector as aforesaid may, subject to such rules as the Local Government may make in this behalf, enter and search any field, building, or other place for the purpose of ascertaining whether there is therein any horse which is diseased.

Power of seizure.

**6.** Within such limits as aforesaid, the Inspector may seize any horse which he has reason to believe to be diseased.

Horse to be examined by Veterinary Practitioner.

**7.** (*1*) On any such seizure as aforesaid, the Inspector shall cause the horse seized to be examined as soon as possible by such Veterinary Practitioner as the Local Government may appoint in this behalf:

* Act XLV. of 1860.

1899. Act 13.

Provided that, when the Inspector is also a Veterinary Practitioner so appointed, he may make the examination himself.

(2) For the purposes of the examination, the Veterinary Practitioner may submit the horse to any test or tests which the Local Government may prescribe.

Horse to be destroyed if found diseased: otherwise restored.

8. (1) If the Veterinary Practitioner certifies in writing that the horse is diseased, the Inspector shall cause the same to be immediately destroyed:

Provided that, in the case of any disease other than glanders or farcy, horses certified to be diseased as aforesaid may, subject to any rules which the Local Government may make in this behalf, be either destroyed, or otherwise treated or dealt with as the Veterinary Practitioner may deem necessary.

(2) If, after completing the examination, the Veterinary Practitioner does not certify that the horse is diseased, the Inspector shall at once deliver the same to the person entitled to the possession thereof.

When horse diseased, place where it has been to be disinfected, &c.

9. (1) When any diseased horse has been in any building, shed, or other enclosed place, or in any open lines, the Inspector may issue a notice to the owner of the building, shed, place, or lines, or to the person in charge thereof, directing him to have the same disinfected, and the internal fittings thereof, or such other things found therein or near thereto as the Local Government may by rule prescribe, destroyed.

(2) On the failure or neglect of such owner or other person as aforesaid to comply with the notice within a reasonable time, the Inspector shall cause the building, shed, place, or lines to be disinfected, and the fittings or other things to be destroyed, and the expense (if any) thereby incurred may be recovered from the owner or other person as if it were a fine.

Owner or person in charge of diseased horse to give notice.

10. The owner or any person in charge of a diseased horse shall give immediate information of the horse being diseased to the Inspector or to such authority as the Local Government may appoint in this behalf.

Prohibition against removal, without license, of horse which has been with diseased horse.

11. No person in charge of any horse which has been in the same field, building, or place as, or in contact with, a diseased horse, shall remove such horse except in good faith for the purpose of preventing infection, or under a license to be granted by the Inspector, and subject to the conditions of the license.

Vexatious entries, searches, and seizures.

12. (1) Whoever, being an Inspector appointed under this Act, vexatiously and unnecessarily enters or searches any field, building, or other place, or seizes or detains any horse on the pretence that it is diseased, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(2) No prosecution under this section shall be instituted after the expiry of three months from the date on which the offence has been committed.

Penalty for refusing to comply with notice under section 9 or for removing horse contrary to section 11.

13. Whoever refuses or neglects to comply with any notice issued by the Inspector under section 9, or removes any horse in contravention of section 11, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

**14.** (*e*) The Local Government may make rules to carry out the purposes and objects of this Act.

Power to make rules.

(*z*) In particular and without prejudice to the generality of the foregoing power, such rules as aforesaid may—

(*a*) regulate entries, searches, and seizures by Inspectors under this Act;

(*b*) regulate the use of tests and the isolation of horses subjected thereto, and provide for recovering the expense of detaining, isolating, and testing horses from the owners or persons in charge thereof as if it were a fine;

(*c*) regulate the destruction or treatment, as the case may be, of horses certified under section 8 to be diseased, and the disposal of the carcases of diseased horses;

(*d*) regulate the disinfecting of buildings and places in which diseased horses have been, and prescribe what things found therein or near thereto shall be destroyed; and

(*e*) regulate the grant of licenses under section 11, and the conditions on which those licenses shall be granted.

(*y*) All rules under this section shall be published in the local official Gazette, and, on such publication, shall have effect as if enacted by this Act.

(*z*) In making any rule under this section, the Local Government may direct that a breach of it shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

**15.** Any Veterinary Practitioner may be appointed by the Local Government to be both Inspector and Veterinary Practitioner for all or any of the purposes of this Act, or of any rule thereunder.

Appointment of some person to be both Inspector and Veterinary Practitioner.

**16.** No suit, prosecution, or other legal proceeding, shall lie against any person for anything which is, in good faith, done or intended to be done under this Act.

Protection to persons acting under Act.

**17.** The enactments mentioned in the schedule are hereby repealed to the extent specified in the fourth column thereof.

Repeal.

## THE SCHEDULE.

ENACTMENTS REPEALED.

(*See section 17.*)

| Year. | No. | Short Title. | Extent of Repeal. |
|---|---|---|---|
| 1879 | XX. | The Glanders and Farcy Act, 1879. | The whole Act. |
| 1891 | XII. | The Repealing and Amending Act, 1891. | So much as relates to Act XX. of 1879. |
| 1896 | XV. | The Glanders and Farcy Act (1879) Amendment Act, 1896. | The whole Act. |
| 1897 | XIV. | The Indian Short Titles Act, 1897. | So much as relates to Act XV. of 1896. |

# ACT NO. XVIII. OF 1879.

## THE LEGAL PRACTITIONERS ACT, 1879.

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# ACT NO. XVIII. OF 1879.*

## THE LEGAL PRACTITIONERS ACT, 1879.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*Received the assent of the Governor-General on the 29th October 1879.*

*An Act to consolidate and amend the Law relating to Legal Practitioners.*

WHEREAS it is expedient to consolidate and amend the law relating to legal practitioners in the Lower Provinces of Bengal, the North-Western Provinces, the Punjab, Oudh, the Central Provinces, and Assam, and to empower each of the Local Governments of the rest of British India to extend, to the territories administered by it, such portions of this Act as such Government may think fit; It is hereby enacted as follows:—

Preamble.

### CHAPTER I.

PRELIMINARY.

Short title. Commencement.

**1.** This Act may be called the Legal Practitioners Act, 1879, and shall come into force on the first day of January 1880.

Local extent.

This section and section 2 extend to the whole of British India.

The rest of this Act extends, in the first instance, only to the territories respectively administered by the Lieutenant-Governors of the Lower Provinces of Bengal, the North-Western Provinces, and the Punjab, and the Chief Commissioners of Oudh, the Central Provinces, and Assam. But any other Local Government may, from time to time, by notification in the official Gazette, extend† all or any of the provisions of the rest of this Act to the whole or any part of the territories under its administration.

Repeal of enactments.

**2.** On and from the first day of January 1880, the enactments mentioned in the First Schedule hereto annexed shall be repealed to the extent specified therein.

Saving of rules, &c.

All rules and appointments made, penalties prescribed, fees fixed, persons admitted, names enrolled, certificates issued, sanctions given, and orders passed under any enactment here-

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* For the Statement of Objects and Reasons, see Gazette of India, 1878, Pt. V., p. 381; for the Reports of the Select Committee, see *ibid*, 1879, Pt. V., pp. 51 and 841; for Proceedings in Council, see *ibid*, 1878, Supplement, pp. 1658 and 1693; *ibid*, 1879, Supplement, pp. 79, 1066, and 1375.

Act XVIII. of 1879 has been declared in force in Angul and the Khondmals by the Angul District Regulation (I. of 1894), s. 3; and by notification under s. 3 (*a*) of the Scheduled Districts Act (XIV. of 1874), in the Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum.—See Gazette of India, 1881, Pt. I., p. 504. [The District of Lohardaga included at this time the District of Palamau, which was separated in 1894.]

† Under this power the Act has been extended, subject to certain omissions, and so far only as it relates to Judicial Courts, Civil and Criminal, to the Madras Presidency, except the Scheduled Districts, from 1st April 1882.—See Fort St. George Gazette, 1881, Pt. I., pp. 491 and 707. Ss. 3 and 4 of the Act have been extended to the Regulation Districts of the Bombay Presidency (see Bombay Government Gazette, 1885, Pt. I., p. 290).

Ch. I., s. 40, Sch. II., and so much of Chs. III., V., VI., and VII. as relates to pleaders, have been extended to Coorg.—See Mysore Gazette, 1879, Pt. I., p. 355.

1879. Act 18.

by repealed, shall be deemed to be respectively made, prescribed, fixed, admitted, enrolled, issued, given, and passed under this Act.

References to repealed enactments.

All references made to any enactment hereby repealed, in any Act or Regulation passed, or notification published, shall be read as if made to the corresponding provisions of this Act.

Interpretation-clause.

**3.** In this Act, unless there be something repugnant in the subject or context,—

"Judge." means the presiding judicial officer in every Civil and Criminal Court, by whatever title he is designated:

"Subordinate Court." means all Courts subordinate to the High Court, including Courts of Small Causes established under Act No. IX. of 1850* or Act No. XI. of 1865:†

"Revenue-office." includes all Courts (other than Civil Courts) trying suits under any Act for the time being in force relating to landholders and their tenants or agents:

"Legal practitioner." means an advocate, vakil, or attorney of any High Court, a pleader, mukhtar, or revenue-agent:

"Tout." means a person who procures the employment in any legal business of any legal practitioner in consideration of any remuneration moving from such practitioner, or proposes to a legal practitioner to procure his employment in any legal business in consideration of such remuneration.‡

## CHAPTER II.

### OF ADVOCATES, VAKILS, AND ATTORNEYS.

Advocates and vakils.

**4.** Every person now or hereafter entered as an advocate or vakil on the roll of any High Court under the Letters Patent constituting such Court, or "under section 41 of this Act,"§ shall be entitled to practise in all the Courts subordinate to the Court on the roll of which he is entered, and in all revenue-offices situate within the local limits of the appellate jurisdiction of such Court, subject, nevertheless, to the rules in force relating to the language in which the Court or office is to be addressed by pleaders or revenue-agents; and any person so entered, who ordinarily practises in the Court on the roll of which he is entered, or some Court subordinate thereto, shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court on whose roll he is not entered, or, with the permission of the Court, in any High Court on whose roll he is not entered, and in any revenue-office:

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* See now the Presidency Small Cause Courts Act (XV. of 1882).

† See now the Provincial Small Cause Courts Act (IX. of 1887).

‡ The definition of "tout" has been added by the Legal Practitioners Act (XI. of 1896), s. 1.

§ The words and figures quoted have been substituted for the words, "as an advocate on the roll of the Chief Court of the Punjab," by the Legal Practitioners Act (IX. of 1884), s. 2.

Provided that no such vakil shall be entitled to practise under this section before a Judge of the High Court, Division Court, or High Court exercising original jurisdiction in a presidency-town.

Attorneys of High Court.

**5.** Every person now or hereafter entered as an attorney on the roll of any High Court shall be entitled to practise in all the Courts subordinate to such High Court, and in all revenue-offices situate within the local limits of the appellate jurisdiction of such High Court; and every person so entered, who ordinarily practises in the Court on the roll of which he is so entered, or some Court subordinate thereto, shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court established by Royal Charter on the roll of which he is not entered, and in any revenue-office.

The High Court of the province in which an attorney practises under this section may, from time to time, make rules declaring what shall be deemed to be the functions, powers, and duties of an attorney so practising.

## CHAPTER III.

### OF PLEADERS AND MUKHTARS.

Power to make rules as to qualifications, &c., of pleaders and mukhtars.

**6.** The High Court may, from time to time, make rules* consistent with this Act as to the following matters (namely)—

(*a*) the qualifications, admission, and certificates of proper persons to be pleaders of the subordinate Courts, and of the revenue-offices situate within the local limits of its appellate jurisdiction, and, in the case of a High Court not established by Royal Charter, of such Court;

(*b*) the qualifications, admission, and certificates of proper persons to be mukhtars of the subordinate Courts, and in the case of a High Court not established by Royal Charter, of such Court;

(*c*) the fees to be paid for the examination and admission of such persons and

(*d*) the suspension and dismissal of such pleaders and mukhtars.

Publication of rules.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law:

Provided that, in the case of rules made by a High Court not established by Royal Charter, such rules have been previously approved by the Local Government.

Certificates to pleaders and mukhtars.

**7.** On the admission, under section 6, of any person as a pleader or mukhtar, the High Court shall cause a certificate signed by such officer as the Court, from time to

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* For rules made under this section by—

(*1*) Judicial Commissioner, Central Provinces, see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 30;

(*2*) High Court, Madras, see Madras List of Local Rules and Orders, Vol. I., Ed. 1898, pp. 150 and 151;

(*3*) High Court, North-Western Provinces, see North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, pp. 75 and 76;

(*4*) Judicial Commissioner, Oudh, see North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 76.

1879. Act 18.

time, appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in the Courts, and, in the case of a pleader, also the revenue-offices, specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall, subject to any rules* consistent with this Act which may, from time to time, be made by the High Court in this behalf, be entitled to have his certificate renewed by the Judge of the District Court within the local limits of whose jurisdiction he then ordinarily practises, or by such officer as the High Court, from time to time, appoints in this behalf.

On every such renewal, the certificate then in possession of such pleader or mukhtar shall be cancelled and retained by such Judge or officer.

Every certificate so renewed shall be signed by such Judge or officer, and shall continue in force up to the end of the current year.

Every Judge or officer so renewing a certificate shall notify such renewal to the High Court.

Pleaders on enrolment may practise in Courts and revenue-offices.

**8.** Every pleader holding a certificate issued under section 7 may apply to be enrolled in any Court or revenue-office mentioned therein, and situate within the local limits of the appellate jurisdiction of the High Court by which he has been admitted; and, subject to such rules† consistent with this Act as the High Court or the Chief Controlling Revenue Authority may, from time to time, make in this behalf, the presiding Judge or officer shall enrol him accordingly; and thereupon he may appear, plead, and act in such Court or office, and in any Court or revenue-office subordinate thereto.

Mukhtars on enrolment may practise in Courts.

**9.** Every mukhtar holding a certificate issued under section 7 may apply to be enrolled in any Civil or Criminal Court mentioned therein, and situate within the same limits; and, subject to such rules as the High Court may, from time to time, make in this behalf, the presiding Judge shall enrol him accordingly, and thereupon he may practise as a mukhtar in any such Civil Court and any Court subordinate thereto, and may (subject to the provisions of the Code of Criminal Procedure‡) appear, plead, and act in any such Criminal Court, and any Court subordinate thereto.

No person to practise as pleader or mukhtar unless qualified.

**10.** Except as provided by this Act, or any other enactment for the time being in force, no person shall practise as a pleader or mukhtar in any Court not established by Royal Charter unless he holds a certificate issued under section 7, and has been enrolled in such Court, or in some Court to which it is subordinate:

Revenue-agents may appear, plead, and act in Munsif's Courts in suits under the Bengal Act VIII. of 1869.

Provided that persons who have been admitted as revenue-agents before the first day of January 1880, and hold certificates, as such, under this Act in the territories administered by the Lieutenant-Governor of Bengal, may be enrolled in manner provided by section 9 in any

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* For rules regarding renewal of certificates made by—
(1) Judicial Commissioner, Central Provinces, see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 30;
(2) High Court, Madras, see the Rules quoted in the footnote on page 233 *supra*, which were also made under s. 7.

† For rules made by the High Court at Madras, see those quoted in the footnote on p. 233, *supra*, which were also made under s. 8.

‡ See now the Code of Criminal Procedure (Act V. of 1898).

Munsif's Court in the said territories, and, on being so enrolled, may appear, plead, and act in such Court in suits under Bengal Act No. VIII. of 1869* (*to amend the Procedure in Suits between Landlord and Tenant*), or under any other Act for the time being in force regulating the procedure in suits between landholders and their tenants and agents. 1879. Act 18.

Power to declare functions of mukhtars.

**11.** Notwithstanding anything contained in the Code of Civil Procedure,† the High Court may, from time to time, make rules declaring what shall be deemed to be the functions, powers, and duties of mukhtars practising in the subordinate Courts, and in the case of a High Court not established by Royal Charter, in such Court.

Suspension and dismissal of pleaders and mukhtars convicted of criminal offence.

**12.** The High Court may suspend or dismiss any pleader or mukhtar holding a certificate issued under section 7 who is convicted of any criminal offence implying a defect of character, which unfits him to be a pleader or mukhtar, as the case may be.

Suspension and dismissal of pleaders and mukhtars guilty of unprofessional conduct.

**13.**‡ The High Court may also, after such inquiry as it thinks fit, suspend or dismiss any pleader or mukhtar holding a certificate as aforesaid—

(*a*) who takes instructions in any case except from the party on whose behalf he is retained, or some person who is the recognized agent of such party within the meaning of the Code of Civil Procedure,† or some servant, relative, or friend authorized by the party to give such instructions, or

(*b*) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or

(*c*) who tenders, gives, or consents to the retention, out of any fee paid or payable to him for his services, of any gratification for procuring or having procured the employment, in any legal business, of himself or any other pleader or mukhtar, or

(*d*) who, directly or indirectly, procures, or attempts to procure, the employment of himself as such pleader or mukhtar through, or by the intervention of, any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given, or

(*e*) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36, or

(*f*) for any other reasonable cause.

Procedure when charge of unprofessional conduct is brought in subordinate Court or revenue-office.

**14.** If any such pleader or mukhtar practising in any subordinate Court, or in any revenue-office, is charged in such Court or office with taking instructions except as aforesaid, or with any such misconduct as aforesaid, the presiding officer shall send him a copy of the charge, and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

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* See now the Bengal Tenancy Act (VIII. of 1885).

† See now the Code of Civil Procedure (Act XIV. of 1882).

‡ This section has been substituted for the original by the Legal Practitioners Act XI. of 1896), s. 2.

1879. Act 18.

Such copy and notice shall be served upon the pleader or mukhtar at least fifteen days before the day so appointed.

On such day, or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall receive and record all evidence properly produced in support of the charge, or by the pleader or mukhtar, and shall proceed to adjudicate on the charge.

If such officer finds the charge established, and considers that the pleader or mukhtar should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court; and the High Court may acquit, suspend, or dismiss the pleader or mukhtar.

*Suspension pending investigation.*

Any District Judge or, with his sanction, any Judge subordinate to him, "any Judge of a Court of Small Causes of a Presidency-town,"* any District Magistrate or, with his sanction, any Magistrate subordinate to him, and any Revenue Authority not inferior to a Collector, or, with the Collector's sanction, any Revenue Officer subordinate to him, may, pending the investigation and the orders of the High Court, suspend from practice any pleader or mukhtar charged before him or it under this section.

Every report made to the High Court under this section shall,—

(*a*) when made by any Civil Judge subordinate to the District Judge, be made through such Judge;

(*b*) when made by a Magistrate subordinate to the Magistrate of the District,† be made through the Magistrate of the District† and the Sessions Judge;

(*c*) when made by the Magistrate of the District,† be made through the Sessions Judge;

(*d*) when made by any Revenue Officer subordinate to the Chief Controlling Revenue Authority, be made through such Revenue Authorities as the Chief Controlling Revenue Authority may, from time to time, direct.

Every such report shall be accompanied by the opinion of each Judge, Magistrate, or Revenue Authority through whom or which it is made.

**Power to call for record in case of acquittal under section 14.**

**15.** The High Court, in any case in which a pleader or mukhtar has been acquitted under section 14 otherwise than by an order of the High Court, may call for the record, and pass such order thereon as it thinks fit.

**Power to make rules for mukhtars on appellate side of High Court.**

**16.** *Notwithstanding anything contained in any Letters Patent, or in the Code of Civil Procedure,‡ section 37, clause (a),* any High Court established by Royal Charter may, from time to time, make rules consistent with this Act as *to the following matters (namely)*—

(*a*) the qualifications and admission of proper persons to be mukhtars practising on the appellate side of such Court;

(*b*) the fees to be paid for the examination and admission of such persons;

(*c*) the security which they may be required to give for their honesty and good conduct;

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* The words quoted have been inserted by the Legal Practitioners Act (IX. of 1884), s. 4.

† To be read as District Magistrate.—See the present Code of Criminal Procedure (Act V. of 1898), s. 3 (*a*).

‡ See now the Code of Civil Procedure (Act XIV. of 1882).

(*d*) the suspension and dismissal of such mukhtars; and

(*e*) declaring what shall be deemed to be their functions, powers, and duties;

and may prescribe and impose fines for the infringement of such rules not exceeding in any case five hundred rupees; and such fines, when imposed, may be recovered as if they had been imposed in the exercise of the High Court's ordinary original criminal jurisdiction.

## CHAPTER IV.

### OF REVENUE-AGENTS.*

Power to make rules as to qualifications, &c., of revenue-agents.

**17.** The Chief Controlling Revenue Authority may, from time to time, make rules* consistent with this Act as to the following matters (namely)—

(*a*) the qualifications, admission, and certificates of proper persons to be revenue-agents;

(*b*) the fees to be paid for the examination and admission of such persons;

(*c*) the suspension and dismissal of such revenue-agents; and

(*d*) declaring what shall be deemed to be their functions, powers, and duties.

Publication of rules.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

Certificates to revenue-agents.

**18.** On the admission of any person as a revenue-agent under section 17, the Chief Controlling Revenue Authority shall cause a certificate, signed by such officer as such authority, from time to time, appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in such revenue-offices as may be specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall be entitled to have his certificate renewed by the Secretary of the Chief Controlling Revenue Authority, or by any other officer authorized by such authority in that behalf.

On every such renewal, the certificate then in the possession of such revenue-agent shall be cancelled and retained by such Secretary or other officer.

Every certificate so renewed shall be signed by such Secretary or other officer, and shall continue in force to the end of the current year.

*Every officer so renewing a certificate shall notify the renewal to the Chief* Controlling Revenue Authority.

Enrolment of revenue-agent.

**19.** Every revenue-agent holding a certificate issued under section 18 may apply to be enrolled in any revenue-office mentioned therein, and situate within the limits of the territory under the Chief Controlling Revenue Authority; and, subject to such

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* Revenue-agents in Oudh may appear, plead, and act in suits under the Oudh Rent Act (XIX. of 1868).—See Act XVIII. of 1876, s. 25, and the third clause of s. 2 of this Act.

For rules made under this section as to revenue agents in—

(*t*) Assam, see the Assam Manual of Local Rules and Orders, Ed. 1893, pp. 153-158.

(*s*) North Western Provinces, see North-Western Provinces List of Local Rules and Orders, Ed. 1894, p. 76.

1879 — Act 18.

rules as the Chief Controlling Revenue Authority may, from time to time, make in this behalf, the officer presiding in such office shall enrol him accordingly, and thereupon he may practise as a revenue agent in such office, and in any revenue-office subordinate thereto.

No person to act as agent in revenue-offices unless qualified.

**20.** Except as provided by this Act or any other enactment for the time being in force, no person, other than a pleader duly qualified under the provisions hereinbefore contained, shall practise as a revenue agent in any revenue-office, unless he holds a certificate issued under section 18, and has been enrolled in such office or some other office to which it is subordinate:

Provided that any person duly authorized in this behalf may, with the sanction of the Chief Controlling Revenue Authority, or of an officer empowered by the Local Government in this behalf, transact all or any business in which his principal may be concerned in any revenue-office.

The sanction mentioned in this section may be general or special, and may at any time be revoked or suspended by the authority or officer granting the same.

Dismissal of revenue-agent convicted of criminal offence.

**21.** The Chief Controlling Revenue Authority may suspend or dismiss any revenue-agent holding a certificate issued under this Act who is convicted of any criminal offence implying a defect of character which unfits him to be a revenue-agent.

Suspension and dismissal of revenue-agents guilty of unprofessional conduct.

**22.*** The Chief Controlling Revenue Authority may also, after such enquiry as it thinks fit, suspend or dismiss any revenue-agent holding a certificate as aforesaid—

(*a*) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or

(*b*) who tenders, gives, or consents to the retention, out of any fee paid or payable to him for his services, of any gratification for procuring, or having procured, the employment in any legal business, of himself or any other revenue-agent, or

(*c*) who, directly or indirectly, procures, or attempts to procure, the employment of himself as such revenue-agent through, or by the intervention of, any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given, or

(*d*) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36, or

(*e*) for any other reasonable cause.

Procedure when revenue-agent is so charged in subordinate office.

**23.** If any revenue-agent holding a certificate issued under this Act is charged with any such conduct in any office subordinate to the Chief Controlling Revenue Authority, or in the Court of any Munsif, the officer at the head of such office, or such Munsif, as the case may be, shall send him a copy of the charge, and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the person charged at least fifteen days before the day so appointed. On such day, or on any other day to

* S. 22 has been substituted for the original by the Legal Practitioners Act (XI. of 1896), s. 3.

which the enquiry may be adjourned, the officer or Munsif shall receive all evidence properly produced in support of the charge, or by the person charged, and shall proceed to adjudicate on the charge.

If the officer or Munsif finds the charge established, and considers that the person charged should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and report the same to the Chief Controlling Revenue Authority; and such authority shall proceed to acquit, suspend, or dismiss him.

Any revenue-officer not inferior to a Collector, and, with the Collector's sanction, any revenue-officer subordinate to him, or any Munsif in his district, may, pending the investigation and the orders of the Chief Controlling Revenue Authority, suspend from practice any revenue-agent charged before him under this section.

Where any officer acting under this section is subordinate to the Commissioner of a Division, he shall transmit the report through such Commissioner, who shall forward with the same an expression of his own opinion on the case.

Power to Chief Controlling Revenue Authority to call for record.

**24.** The Chief Controlling Revenue Authority, in any case in which a revenue-agent has been acquitted under section 23 otherwise than by an order of the Chief Controlling Revenue Authority, may call for the record, and pass such order thereon as seems fit.

## CHAPTER V.

### OF CERTIFICATES.

Fee for certificates.

**25** Every certificate, whether original or renewed, issued under this Act, shall be written upon stamped paper of the value prescribed therefor in the second schedule hereto annexed, "and of such description as the Local Government may, from time to time, prescribe: "*

Provided that a certificate issued on or after the first day of July in any year may be written on stamped paper of half the value so prescribed.

Dismissed practitioners to surrender certificates.

**26.** When any pleader, mukhtar, or revenue-agent, is suspended or dismissed under this Act, he shall forthwith deliver up his certificate to the Court or officer at the head of the office before or in which he was practising at the time he was so suspended or dismissed, or to any Court or officer to which the High Court or Chief Controlling Revenue Authority (as the case may be) orders him to deliver the same.

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* In s. 25, the words quoted have been inserted by the Legal Practitioners Act (IX. of 1884), s. 5. For instance of rule prescribing the stamp-paper to be used for certificates, see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 78.

1879.

Act 18.

## CHAPTER VI.

### OF THE REMUNERATION OF PLEADERS, MUKHTARS, AND REVENUE-AGENTS.

High Court and Chief Controlling Revenue Authority to fix fees on civil and revenue proceedings.

**27.** The High Court shall, from time to time, fix and regulate the fees* payable by any party in respect of the fees of his adversary's advocate, pleader, vakil, mukhtar, or attorney upon all proceedings (*a*) on the appellate side of such Court, (*b*) in the case of a High Court not established by Royal Charter on its original side, and (*c*) in subordinate Courts, "and in respect of the fees of his adversary's revenue-agent appearing, pleading, or acting under section 10."†

The Chief Controlling Revenue Authority shall, from time to time, fix and regulate the fees‡ payable upon all proceedings in the revenue-offices by any party in respect of the fees of his adversary's advocate, pleader, vakil, attorney, mukhtar, or revenue-agent.

Tables of the fees so fixed shall be published in the local official Gazette

Exception as to agents mentioned in section 20.

Nothing in this section applies to the agents mentioned in the proviso to section 20.

Agreements with clients.

**28.** No agreement entered into by any pleader, mukhtar, or revenue-agent with any person retaining or employing him, respecting the amount and manner of payment for the whole or any part of any past or future services, fees, charges, or disbursements in respect of business done or to be done by such pleader, mukhtar, or revenue-agent, shall be valid, unless it is made in writing, signed by such person, and is, within fifteen days from the day on which it is executed, filed in the District Court, or in some Court in which some portion of the business in respect of which it has been executed has been or is to be done.

Power to modify or cancel agreements.

**29.** Where a suit is brought to enforce any such agreement, if the agreement is not proved to be fair and reasonable, the Court may reduce the amount payable thereunder, or order it to be cancelled, and the costs, fees, charges, and disbursements in respect of the business done, to be ascertained in the same manner as if no such agreement had been made.

Agreements to exclude further claims.

**30.** Such an agreement shall exclude any further claim of the pleader, mukhtar, or revenue-agent beyond the terms of the agreement with respect to any services, fees, charges, or disbursements in relation to the conduct and completion of the business in

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* For rules as to pleaders' fees made by—

(*1*) Judicial Commissioner, Central Provinces, see the Central Provinces List of Local Rules and Orders, Ed. 1896, p. 79;

(*2*) High Court, Madras, see the rules quoted in the footnote on p. 233, *supra*, which were also framed under this section;

(*3*) High Court, North-Western Provinces, see North-Western Provinces List of Local Rules and Orders, Ed. 1894, p. 78;

(*4*) Judicial Commissioner, Oudh (pleaders in Civil Courts), see North-Western Provinces List of Local Rules and Orders, Ed. 1894, p. 78.

† To s. 27, the words quoted have been added by the Legal Practitioners Act (IX. of 1884), s. 6.

‡ For rules as to fees in revenue-proceedings in—

(*1*) Central Provinces, see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 80.

(*2*) North-Western Provinces and Oudh, see North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, pp. 76 and 77.

respect of which the agreement is made, except such services, fees, charges, or disbursements, if any, as are expressly excepted by the agreement.

**Reservation of responsibility for negligence.**

**31.** A provision in any such agreement that the pleader, mukhtar, or revenue-agent, shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as such pleader, mukhtar, or revenue-agent, shall be wholly void.

## CHAPTER VII.

### PENALTIES:

**On persons illegally practising as pleaders, mukhtars, or revenue-agents.**

**32.** Any person who practises in any Court or revenue-office in contravention of the provisions of section 10 or section 20 shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate authorizing him so to practise in such Court or office, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

He shall also be incapable of maintaining any suit for, or enforcing any lien with respect to, any fee or reward for, or with respect to, anything done, or any disbursement made, by him as pleader, mukhtar, or revenue-agent whilst he has been contravening the provisions of either of such sections.

**On suspended or dismissed pleader, &c., failing to deliver certificate.**

**33.** Any pleader, mukhtar, or revenue-agent failing to deliver up his certificate as required by section 26, shall be liable, by order of the Court, authority, or officer, to which or to whom, or according to whose orders, the delivery should be made, to a fine not exceeding two hundred rupees, and, in default of payment, to imprisonment in the civil jail for a term which may extend to three months.

**On suspended or dismissed practitioner practising during suspension or after dismissal.**

**34.** Any pleader, mukhtar, or revenue-agent, who, under the provisions of this Act, has been suspended or dismissed, and who, during such suspension or after such dismissal, practises as a pleader, mukhtar, or revenue-agent in any Court or revenue-office, shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding five hundred rupees, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

**Revision of fines.**

**35.** Every order under section 32, 33, or 34, shall be subject to revision by the High Court where the order has been passed by a subordinate Court, and by the Chief Controlling Revenue Authority where the order has been passed by an officer subordinate to such authority.

**Power to frame and publish lists of touts.**

**36.*** (*1*) Every High Court, District Judge, Sessions Judge, District Magistrate, and Presidency Magistrate, every Revenue-officer not being below the rank of a Collector of a District, and the Chief Judge of every Presidency Small Cause Court (each

* S. 36 has been substituted for the original section (relating to penalty for receiving or giving commission) by the Legal Practitioners Act (XI. of 1896), s. 4.

1879. Act 18. as regards their or his own Court and the Courts, if any, subordinate thereto), may frame and publish lists of persons, proved to their or his satisfaction, by evidence of general repute or otherwise, habitually to act as touts, and may, from time to time, alter and amend such lists.

(2) No person's name shall be included in any such list until he shall have had an opportunity of showing cause against such inclusion.

(3) A copy of every such list shall be kept hung up in every Court to which the same relates.

(4) The Court or Judge may, by general or special order, exclude from the precincts of the Court any person whose name is included in any such list.

(5) Every person whose name is included in any such list shall be deemed to be proclaimed as a tout within the meaning of section 13, clause (*e*), and section 22, clause (*d*).

## CHAPTER VIII.

### MISCELLANEOUS.

Local Government to appoint examiners.

**37.** To facilitate the ascertainment of the qualifications mentioned in sections 6 and 17 respectively, the Local Government shall, from time to time, appoint persons to be examiners for the purposes aforesaid, and may, from time to time, make regulations for conducting such examinations.

Exemption of High Court practitioners from certain parts of Act.

**38.** Except as provided by sections 4, 5, 16, 27, 32, and 36, nothing in this act applies to advocates, vakils, and attorneys admitted and enrolled by any High Court under the Letters Patent by which such Court is constituted, or to mukhtars practising in such Court, or to advocates enrolled "under section 41 of this Act."*

Suspension or dismissal of person holding mukhtar and revenue-agent's certificates.

**39.** When any person who holds a certificate as a mukhtar under section 7 and a certificate as a revenue-agent under section 18 is suspended or dismissed in one of such capacities he shall be deemed to be suspended or dismissed as the case may be, also in the other.

Pleaders, &c., not to be suspended or dismissed without being heard.

**40.** Notwithstanding anything hereinbefore contained, no pleader, mukhtar, or revenue-agent, shall be suspended or dismissed under this Act, unless he has been allowed an opportunity of defending himself before the authority suspending or dismissing him.

Power for certain High Courts to enrol advocates.

**41.**† (*1*) A High Court not established by Royal Charter may, from time to time, with the previous sanction of the Local Government, make rules as to the qualifications and admission of proper persons to be advocates of the Court, and, subject to such rules, may enrol such and so many advocates as it thinks fit.

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* In s. 38, the words quoted have been substituted for the words, "by the Chief Court of the Punjab," by the Legal Practitioners Act (IX. of 1884), s. 7.

† S. 41 has been substituted by the Legal Practitioners Act (IX. of 1884), s. 8, for the original s. 41 (relating to advocates of the Punjab Chief Court).

(*e*) Every advocate so enrolled shall be entitled to appear for the suitors of the Court, and to plead or to act, or to plead and act, for those suitors, according as the Court may by its rules determine, and subject to those rules. 1879. Act 18.

(*f*) The High Court may dismiss any advocate so enrolled, or suspend him from practice:

(*g*) Provided that an advocate shall not be dismissed or suspended under this section unless he has been allowed an opportunity of defending himself before the High Court which enrolled him, and, except in the case of the Chief Court of the Punjab "and the Chief Court of Lower Burma,"* unless the order of the High Court dismissing or suspending him has been confirmed by the Local Government.

**42.**† Act I. of 1846 (*for amending the law regarding the appointment and remuneration of pleaders in the Courts of the East India Company*) and Act XX. of 1853 (*to amend the law relating to pleaders in the Courts of the East India Company*) are repealed.

Repeal of Acts I. of 1846 and XX. of 1853.

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## FIRST SCHEDULE.

### ENACTMENTS REPEALED.

(*See section 2.*)

| Number and Date of Enactments. | Title. | Extent of Repeal. |
|---|---|---|
| Act XX. of 1865. | To amend the law relating to Pleaders and Mukhtars. | The whole. |
| Act XXIX. of 1865. | To amend the Pleaders, Mukhtars, and Revenue-agents Act, 1865. | So much as has not been repealed. |
| Act IX. of 1866. | To extend to the Sadr Court of the North-Western Provinces certain provisions of the Pleaders, Mukhtars, and Revenue-agents Act, 1865, and of Act No. XXIX. of 1865. | The whole. |
| Act IV. of 1876. | To authorize Revenue-agents to practise in certain suits in the Munsifs' Courts of the Lower Provinces of Bengal. | The whole. |
| Act XVII. of 1877. | The Punjab Courts Act, 1877. | Sections 42, 43, 44, and 45. |

* In s. 41, sub-s. (*g*), the words quoted have been inserted by the Lower Burma Courts Act (VI. of 1900), Sch. I., Pt. I.

† S. 42 has been added by the Legal Practitioners Act (IX. of 1884), s. 9.

## SECOND SCHEDULE.

VALUE OF STAMPS FOR CERTIFICATES—

(*See section 25.*)

I.

For a certificate authorizing the holder to practise as a Pleader—

(*a*) in the High Court and any subordinate Court—Rupees fifty:

(*b*) in any Court of Small Causes in a Presidency-town—Rupees twenty-five:

(*c*) in all other subordinate Courts—Rupees twenty-five:

(*d*) in the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners, and Tahsildars, in Courts of Small Causes outside the Presidency-towns, and in all Criminal Courts subordinate to the High Court—Rupees fifteen:

(*e*) in the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—Rupees five.

II.

For a certificate authorizing the holder to practise as a Mukhtar—

(*f*) in the High Court and any subordinate Court—Rupees twenty-five:

(*g*) in any Court of Small Causes in a Presidency-town—Rupees fifteen:

(*h*) in all other subordinate Courts—Rupees fifteen:

(*i*) in the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners, and Tahsildars, in Courts of Small Causes outside the Presidency-towns, and in all Criminal Courts subordinate to the High Court—Rupees ten:

(*j*) in the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—Rupees five.

III.

For a certificate authorizing the holder to practise as a Revenue-agent—

(*k*) in the office of the Chief Controlling Revenue Authority, and in any revenue-office subordinate to such Authority—Rupees fifteen:

(*l*) in the office of a Commissioner, and in any revenue-office subordinate to a Commissioner—Rupees ten:

(*m*) in the office of a Collector, and in any revenue-office subordinate to a Collector—Rupees five.

A MAGISTRATE has no power to dismiss a mukhtar generally, unless he be convicted of an offence involving moral turpitude or infamy.—QUEEN *v.* SHAM CHAND CHOWDRY, 1 W. R. 34. [Kemp and Glover, JJ. Dec. 5, 1864.]

EVIDENCE which does not support a conviction on a criminal charge cannot justify a removal from a profession, the present case being that of a mukhtar.—NIL KUNT BISWAS, MUKHTAR, REFERENCE IN THE CASE OF, 9 W. R. 29. [Jackson, J. Mar. 7, 1868.]

CASE in which the High Court declined on the facts to strike a pleader off the rolls for using improper expressions during the argument of a case before a Zila Judge, who recommended, after observing the requirements of s. 16, Act XX. of 1865, that such punishment should be awarded. The Zila Judge should have called the pleader to order, and required him to apologize.—MR. R. CRUISE, PLEADER OF THE JUDGE'S COURT OF PURNEAH, 14 W. R. 53. [Loch and Hobhouse, JJ. Sep. 13, 1870.]

WHERE an officer is acting in two capacities, *viz.*, as Assistant Collector and Assistant Magistrate, he should not, in his capacity of Magistrate, convict a person of an offence committed before him as Collector; therefore he has no authority as Magistrate to fine a person under s. 34, Act XX. of 1865, for practising in his Court as Collector without a certificate.—IN THE MATTER OF RAMDYAL SINGH, 5 B. L. R. Ap. 89. [Loch and Markby, JJ. Nov. 9, 1870.]

THE procedure under s. 16 of the Pleaders and Mukhtars Act, 1865, refers only to cases of professional misconduct; the words "any such misconduct as aforesaid," being connected with the words "grossly improper conduct in the discharge of his professional duty." A mukhtar may be suspended or dismissed for any reasonable cause, the words "for other reasonable cause" in s. 15 referring to cases of other than professional misconduct. When a mukhtar is alleged to have committed some impropriety for which he could not be criminally prosecuted, and which does not come under the denomination of professional misconduct, the High Court may institute inquiries *suo motu*, and if it thinks that any reasonable cause other than professional has been established, may suspend or dismiss the mukhtar without the necessity of either written charge or notice, so long as the mukhtar had every facility for knowing what he was charged with, and for making his answer. — GOLAB KHAN, MUKHTAR, PETITIONER, 16 W. R. 15; 6 B. L. R. Ap. 83; 7 B. L. R. A. Cr. 179. [Kemp and Glover, JJ. June 19, 1871.]

CASE of a mukhtar who was reinstated by the High Court in his practice after suspension by reason of his having been convicted in two cases, the circumstances of these cases not showing that the mukhtar was guilty of any moral turpitude, or that he was unfit to act in the Criminal Courts as a mukhtar.—KOYLASH NATH CHOWDHRY, MUKHTAR, IN THE MATTER OF, 16 W. R. 41. [Ainslie and Paul, JJ. Aug. 26, 1871.]

WHERE a Magistrate suspended a mukhtar for three months for making a wilfully false statement, it was held that the Magistrate had no power to suspend the mukhtar under Act XX. of 1865, and his suspension was set aside. — *In re* BANCHANIDHI MAHANTY, 17 W. R. 6. [Kemp and Jackson, JJ. Jan 6, 1872.]

THE writing of a petition for a party who presents it in Court is not acting as a mukhtar *within the meaning of s. 11*, Act XX. of 1865; and the writer is not liable to punishment under s. 13 for practising as a mukhtar without a certificate.—*In re* KALI CHARAN CHUND, 9 B. L. R. Ap. 18; 18 W. R. 27. [Kemp and Glover, JJ. July 5, 1872.]

THE word "act" in s. 5 of the Pleaders and Mukhtars Act (XX. of 1865) means the doing something as the agent of the principal party which shall be recognized or taken notice of by the Court as the act of that principal. There is nothing in the words of the Act, or in the spirit, to prevent a person as private agent from going between the prisoner, or the duly authorized vakil upon whom the real responsibility of the defence rests.—FUZZLE ALI, PETITIONER, 19 W. R. 8. [Phear and Ainslie, JJ. Jan. 15, 1873.]

A MAGISTRATE has no power to suspend a mukhtar under Act XX. of 1865.—ROOPO BEWAH *v.* KEKAROO, 21 W. R. 41. [Kemp and Ainslie, JJ. Feb. 17, 1874.]

A PLEADER or mukhtar practising in contravention of the provisions of s. 10 of Act XVIII. of 1879 is punishable under s. 32 of that Act only by the Court before which he so practised.—IN THE MATTER OF THE PETITION OF GANGA DAYAL, I. L. R., 4 All. 375. [Oldfield, J. Mar. 25, 1882.]

WHERE three persons, of whom one was a pleader, were tried together and convicted under s. 181 of the Penal Code of having made false statements on solemn affirmation about the same matter in the course of an inquiry into the conduct of the pleader under the provisions of the Legal Practitioners Act, *held* that the conviction of the pleader

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was bad, as his statement was improperly taken from him on solemn affirmation. *Held* also that the trial of the three prisoners together was a grave error of procedure vitiating the trial. *Held* further that, an inquiry under the Legal Practitioners Act being a judicial proceeding, false statements on solemn affirmation made by the witnesses therein should be charged and tried separately under s. 193 of the Penal Code.—SUBBA *v.* QUEEN, I. L. R., 6 Mad. 252. [Innes and Kernan, JJ. Feb. 23, 1883.]

DEPOSITIONS of witnesses, or confessions taken at a police-investigation, are not, as far as their subject-matter is concerned, any more the property of the police than the property of the prisoners, and a pleader is not guilty of misconduct of any kind in making use of such documents for the benefit of his client, when delivered to him by the client, however improperly the client may have become possessed of such documents, provided the pleader is neither party nor privy to their obtainment. The power of *interim* suspension given under s. 14 (cl. 5) of Act XVIII. of 1879, when read with s. 40 of the same Act, can only be exercised after the pleader has been heard in his defence and pending the investigation and orders of the High Court.—IN THE MATTER OF THE PETITION OF KRISTO LAL NAG I L R., 10 Cal. 256. [Garth, C.J., and McDonell, J. Dec. 12, 1883.]

A DISTRICT Judge reported to the High Court for orders the case of a pleader who had been convicted of cheating under s. 417 of the Penal Code, and who, in the opinion of the District Judge, was unfit to be allowed to practise. Upon the hearing of the case, Counsel was permitted to go behind the conviction, in order to show that the acts of the pleader did not amount at law to the offence of cheating.—IN THE MATTER OF DURGA CHURN, PLEADER, I. L. R., 7 All. 290. [Petheram, C.J., and Oldfield, Brodhurst, Mahmood, and Duthoit, JJ. Jan. 17, 1885.] Partly overruled by *In the Matter of Rajendro Nath Mukerjee*, 3 C. W. N. 736.

ACT XVIII. of 1879 is an amending, as well as a consolidating Act, and one of the respects in which it amended the old law was the conferring upon the High Court power "to make rules declaring what shall be deemed to be the functions, powers, and duties of the mukhtars practising in the subordinate Courts. When a person other than a duly certificated and enrolled mukhtar, constantly and as a means of livelihood, performs any of the functions or powers, which the rule framed by the High Court, in accordance with the provisions of the Legal Practitioners Act, says, are the functions and powers of a mukhtar, he practises as a mukhtar, and is liable to a penalty under s. 32 of the Act. The words "any person" in s. 32 embrace pure outsiders as well as duly-qualified and enrolled mukhtars who have failed to take out their certificate. G N, though not a certificated mukhtar, was in the habit of appointing and instructing pleaders in the Civil Courts on account of certain persons who paid him a regular monthly salary for so doing. In a proceeding against him under the Legal Practitioners Act, G N made this statement: "I receive a letter from the mofussil from a person and act for him, he sending the vakalatnama with his letter. I receive monthly wages from each of the persons who employ me. Each of the employers I have mentioned belongs to a distinct family, and lives in a separate village." *Held* that G N was neither a private servant, nor a recognized agent, of any of his employers within the meaning of s. 37 of the Civil Procedure Code, and was liable to a penalty, under s. 32 of the Legal Practitioners Act, for having practised as a mukhtar. *Held* also that, having regard to the Court in which G N practised, the words in s. 32, "to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate authorising him so to practise in such Court," were equivalent to the words, "to a fine not exceeding Rs. 250"—*In re* GIRHAR NARAIN: TUSSUDUQ HOSSAIN *v.* GIRHAR NARAIN, I. L. R., 14 Cal. 556. [Mitter, Prinsep, Wilson, Tottenham, and Norris, JJ. May 23, 1887.]

A VAKIL practising in the High Court was convicted by a Court of Session of the offence punishable under s. 471 of the Penal Code, and the conviction was affirmed by the High Court on appeal. The vakil was subsequently called upon to show cause why he should not, in consequence of such conviction, be struck off the roll of vakils of the Court. On appearance in answer to this rule, it was held that the vakil was not entitled to question the propriety in law or in fact of the conviction, but that it was open to him to show, if he could, that his conduct in the matter in respect of which he had been convicted was not such as to render him an unfit person to be retained on the roll of vakils of the Court.—*In re* RAJENDRO NATH MUKERJEE, I. L. R., 18 All. 174. [Edge, Knox, Blair, Banerjee, Burkitt, and Aikman, JJ Jan. 3, 1895.]

A VAKIL of the High Court signed and sent a letter to another vakil of that Court, who practised in District Courts subordinate thereto. The purport of this, which

was one of several printed forms prepared for circulation to vakils practising in districts, was to the effect that the vakil, to whom it was addressed, could easily send his clients' cases, both civil and criminal, to the writer, who would conduct them in that Court. And—"as a remuneration"—the fees paid by the clients would be shared between the writer and the vakil who had sent the cases. The Judicial Committee concurred substantially in the conclusions of the High Court that this was an incitement within s. 116 (abetment) of the Indian Penal Code to commit an offence made penal by s. 36 (which was a special law within s. 41 of that Code) of Act XVIII. of 1879, the Legal Practitioners Act. This misconduct had been aggravated by the appellant's having denied to the Vakils' Association, North-Western Provinces, and caused evidence to be called to negative his having signed the printed letter, which he had signed. Thus, there was "reasonable cause," within s 8 of the Letters Patent of March 17th, 1866, establishing the High Court, for his suspension, to which, for four years from the date of that Court's order, his punishment was reduced.—*In re* PARBATI CHARAN CHATTERJEE, I. L. R., 17 All. 498. [Watson, Morris, and Couch, JJ. June 20, 1895.]

HELD that, in the case of an order passed under s 36 of Act XVIII of 1879 the High Court could only interfere in the exercise of the powers of superintendence conferred upon it by s. 15 of the Indian High Courts Act, 1861, and that it would not interfere even then, where the sole ground upon which its interference was asked for was that the decision of the District Judge was against the weight of the evidence.—*In re* MADHO RAM, I. L. R., 21 All. 181. [Strachey and Knox, JJ. Jan 6, 1899.]

THE appointment of a pleader to act as a Magistrate is not forbidden by s. 557 or any other provision of the Code of Criminal Procedure (Act V. of 1898). After the Criminal Procedure Code of 1898 had come into force, a practising pleader was appointed to act as a Presidency Magistrate. On his appointment he gave up practising, and was not practising at the time the accused was tried and convicted by him of theft. The accused applied to the High Court in revision, to quash the conviction, on the ground that the appointment of the Magistrate contravened the provisions of s 557 of the Code of Criminal Procedure. *Held* that s. 557 of the Code does not deal with appointments, and had no application to the present case, as the Magistrate was not practising at the time the accused was tried and convicted.—*In re* JIVANJI ADAMJI, I. L. R., 23 Bom. 490. [Parsons, C.J., and Ranade, J. Oct. 5, 1898.]

WHERE a vakil was convicted of forgery and sentenced to two years' rigorous imprisonment, and subsequently notice was served on him to show cause why he should not be removed from the roll of vakils and his certificate cancelled, it was held that the propriety in law or in fact of the conviction could not be questioned in such proceedings. *In the Matter of Doorga Churn* (I. L. R., 7 All. 290) overruled. The conviction of forgery followed by a sentence of two years' rigorous imprisonment was sufficient without further inquiry to justify the Court in removing the appellant from the roll of vakils, and cancelling his certificate. *In re Brounsall* (2 Cow., p. 829). *Semble.*—The Court has a discretion to look at the evidence given at the trial to see what was the nature of the offence, and would not, as a matter of course, strike him off the rolls because he had been convicted. *In re Weare* (L. R 2 Q. B. 439) and *Ex parte the Incorporated Law Society* (61 L. T. 842) referred to.—*In re* RAJENDRO NÀTH MUKERJI, 3 C. W. N 736. [Hobhouse, Macnaghten, and Couch, JJ. June 17, 1899.]

A VAKIL of the High Court was convicted, under s. 471 of the Indian Penal Code, of fraudulently using as genuine a document which he knew to be forged. This was affirmed on appeal, when the punishment to which he had been sentenced was reduced to two years. The High Court, while not allowing the propriety of the conviction and sentence to be questioned, had considered whether his culpability was such as to disqualify him for his profession and had decided in the affirmative, removing him from the roll under para. 8 of the Letters Patent, 1866. *Held* that, in the present case, the conviction, followed by the sentence, was sufficient, without further inquiry, to justify the High Court in making that order. The appellant could not be allowed to have an indirect appeal against the judgment of the Sessions Judge confirmed by the High Court. The judgment of Lord Mansfield in *Ex parte Brounsall* (1778, 2 Cowper's Rep 829) referred to as well explaining the disqualification of a member of the legal profession that attends such a conviction and sentence. *In re Weare* (1893, L. R., 2 Q. B. 439), where the Court of Appeal looked to see what was the nature of the offence, and would not, as a matter of course, strike a solicitor off the roll because he had been convicted, distinguished from the present case. *In re Durga Charan* (1885, I. L. R., 7 All. 290)

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dealt with under s. 12 of Act XVIII. of 1879, referred to as a case where the nature of the offence admitted of further inquiry and also distinguished. In regard to the finality of the judgment of the High Court in deciding the appeal from the conviction and sentence, *In re the Petition of Macrea* (1891, L. R., 20 I. A. 90; I. L. R., 13 All. 310), was referred to.—IN THE MATTER OF RAJENDRO NATH MUKERJI, I. L. R., 22 All. 49. [Hobhouse, Macnaghten, and Couch, JJ. April 27, June 21, 1899.]

# ACT NO. XXXVI. OF 1858.

## THE INDIAN LUNATIC ASYLUMS ACT, 1858.*

RECEIVED THE G.-G.'S ASSENT ON THE 14TH SEPTEMBER 1858.

*An Act relating to Lunatic Asylums.*

WHEREAS it is expedient to provide for the reception and detention of lunatics in asylums established for that purpose; It is enacted as follows:—

Preamble.

**1.** The Executive Government of any presidency or place, with the sanction of the Governor-General of India in Council, may establish asylums for the reception and deten-

Lunatic asylums may be established by Government,

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* This short title has been given to the Act by the Indian Short Titles Act (XIV. of 1897).

This Act is founded, to some extent, on 16 & 17 Vict. c. 96 (*Lunatics*). It has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by s 3 of the Laws Local Extent Act (XV. of 1874).

It has been declared in force in Upper Burma generally (except the Shan States) by the Upper Burma Laws Act (XX. of 1886), s. 6; in Angul and the Khondmals by the Angul District Regulation (I. of 1894), s. 3; in British Baluchistan by the British Baluchistan Laws Regulation (I. of 1890), s. 3, and in the Agency Territories by the Baluchistan Agency Laws Law, 1890; in the Arakan Hill District by the Arakan Hill District Laws Regulation (IX. of 1874), s. 3; in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III. of 1872), s 3, as amended by the Santhal Parganas Laws Regulation (III. of 1886).

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely:—

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|---|---|---|
| Sindh ... ... ... | | See Gazette of India, 1878, Pt. I., p. 482. |
| The Taluqs of Bhádrachálam and Rakapilli and the Rampa Country... | Ditto | 1879, Pt. I., p. 630. |
| West Jalpáiguri, the Western Dvárs, the Western Hills of Dárjiling, and the Damson Sub-division of the Dárjiling District ... | Ditto | 1881, Pt. I., p. 74. |
| The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum... ... | Ditto | 1881, Pt. I., p. 504. |
| The Porahat Estate in the Singbhum District ... ... | Ditto | 1897, Pt. I., p. 1059. |
| The Scheduled portion of the Mirzápur District ... ... | Ditto | 1879, Pt. I., p. 383. |
| Jaunsar Báwar ... ... | Ditto | 1879, Pt. I., p. 382. |
| The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khan, and Dera Gházi Khan ... | Ditto | 1886, Pt. I., p. 48. |
| The District of Lahaul ... ... | Ditto | 1886, Pt. I., p. 301. |
| The Scheduled Districts of the Central Provinces ... ... | Ditto | 1879, Pt. I., p. 771. |
| The Districts of Kámrup, Naugong, Darrang, Sibságar, Lakhimpur, Goálpára (including the Eastern Dvárs), and Cachar (excluding the North Cachar Hills) ... | Ditto | 1878, Pt. I., p. 533. |
| The District of Sylhet ... ... | Ditto | 1879, Pt. I., p. 631. |
| The Gáro Hills, the Khási and Jaintiá Hills, the Nága Hills, the North Cachar Hills in the Cachar District, and the Eastern Dvárs in the Goálpára District ... ... | Ditto | 1897, Pt. I., p. 299. |

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tion of lunatics at such places within the limits of the said Government as may be deemed proper.*

Or may be licensed.

Any such Executive Government may also, if it think fit, grant licenses to any private persons for the establishment of such asylums within the said limits, and may withdraw such licenses.

Management of asylums.

**2.** The management of every lunatic asylum, and the care and custody of its inmates, shall be regulated according to such rules† as shall, from time to time, be sanctioned by the Executive Government.

Appointment of visitors.

The Executive Government shall appoint for every asylum not less than three visitors, one of whom at least shall be a medical officer. The inspector of jails (where such office exists) shall be a visitor *ex-officio* of all the asylums within the circle of his inspection.

Monthly inspection by visitors.

**3.** Two or more of the visitors, one of whom shall be a medical officer, shall, once at the least in every month, together inspect every part of the asylum or asylums of which they are visitors, and see and examine, as far as circumstances will permit, every lunatic therein, and the order and certificate for the admission of every lunatic admitted since the last visitation of the visitors; and shall enter in a book to be kept for that purpose any remarks which they may deem proper in regard to the management and condition of the asylum and the lunatics therein.

Wandering and dangerous lunatics to be sent to the Magistrate.

**4.** It shall be the duty of every darogah or district police-officer to apprehend, and send to the Magistrate, all persons found wandering at large within his district who are deemed to be lunatics, and all persons believed to be dangerous by reason of lunacy.

Certificate and order for reception in Asylum.

Whenever any such person as aforesaid is brought before a Magistrate, the Magistrate, with the assistance of a medical officer, shall examine such person; and if the medical officer shall sign a certificate in the form A in the schedule to this Act, and the Magistrate shall be satisfied, on personal examination or other proof, that such person is a lunatic, and a proper person to be detained under care and

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It has been extended, by notification under s. 5 of the last-mentioned Act, to the following Scheduled Districts, namely :—

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|---|---|---|---|
| Kumáon and Garhwál ... | ... | See Gazette of India, | 1876, Pt. I, p. 606. |
| The North-Western Provinces Tarái | | Ditto | 1876, Pt. I, p. 505. |
| Ajmere and Merwára ... | ... | Ditto | 1878, Pt. I, p. 380. |

* For instance of an order under this section and under s. 4, see North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 13.

† For rules made under s. 2, for—

(1) N.-W. P and Oudh, see N.-W. P. and Oudh Gazette, 1890, Pt. I., p 341.

(2) Bombay, see Bombay Lists of Local Rules and Orders, Vol. I., Ed. 1896, pp. 19 to 24.

(3) Madras, see Madras Lists of Local Rules and Orders, Ed. 1894, p. 6.

(4) Burma, see Notifications noted at p. 6 of the Burma Laws List, 1897, Pt. II., (2).

(5) Assam, see Notifications noted at p. iv. of the Assam List of Local Rules and Orders, Ed. 1893.

(6) Central Provinces, see the Central Provinces List of Local Rules and Orders Ed. 1896, p. 3, *et seq.*

treatment, he shall make an order for such lunatic to be received into the asylum* established for the division in which the Magistrate's jurisdiction is situate, or, if such lunatic is not a native of the country, and the circumstances of the case so require, into a lunatic asylum at the presidency; and shall send the lunatic in suitable custody to the asylum mentioned in such order:

When lunatic may be committed to the care of his friends or relatives,

Provided that, if any friend or relative of any lunatic, who is believed to be dangerous, shall undertake in writing, to the satisfaction of the Magistrate, that such lunatic shall be properly taken care of, and shall be prevented from doing injury to himself or others, the Magistrate, instead of sending him to an asylum, may make him over to the care of such friend or relative:

or sent to licensed asylum.

Provided also that, if any such friend or relative shall desire that the lunatic may be sent to a licensed asylum instead of the public asylum of the division, and shall engage in writing to the satisfaction of the Magistrate to pay the expenses which may be incurred for the lodging, maintenance, medicine, clothing, and care of the lunatic in such asylum, the Magistrate may send the lunatic to the licensed asylum mentioned in the engagement.

In case of neglect or cruel treatment, Magistrate may order person bound to maintain lunatic, to provide for his proper treatment.

**5.** If it shall appear to the Magistrate, on the report of a police-officer or the information of any other person, that any person within the limits of his jurisdiction, deemed to be a lunatic, is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the charge of him, the Magistrate may send for the supposed lunatic, and summon such relative or other person as has or ought to have the charge of him; and if such relative or other person be legally bound to maintain the supposed lunatic, the Magistrate may make an order for such lunatic being properly cared for and treated, and, if such relative or other person shall wilfully neglect to comply with the said order, may commit him to jail for a period not exceeding one month.

If no person bound to maintain him, Magistrate may make an order for his reception in asylum.

If there be no person legally bound to maintain the supposed lunatic, or, if the Magistrate think fit so to do, he may proceed as prescribed in the last preceding section, and, upon being satisfied in manner aforesaid that the person deemed to be a lunatic is a lunatic, and a proper person to be detained under care and treatment, may make an order for his reception into such asylum as aforesaid.

Darogah to report neglect.

It shall be the duty of every darogah or district police-officer to report to the Magistrate every such case of neglect or cruel treatment as aforesaid which may come to his knowledge.

Commissioner of Police, &c., to act in the presidency-towns.

**6.**† All acts which the Magistrate is authorized or required to do by the two last preceding sections may be done in the presidency-towns by the Commissioner of Police: and all duties which a darogah or district police-officer is authorized or required to perform may be performed in any of the said towns by an officer of the police-force not below the rank of inspector.

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* For instances of an order issued under s. 4 and s. 1, see N.-W. P. and Oudh List of Local Rules and Orders, Ed. 1894, p. 13, and Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. 24.

† Certain formal words referring to the Straits Settlements, which were repealed by the Repealing Act (XVI. of 1874), have here been omitted. See also s. 7.

1858. Act 36.

**6A.*** (*1*) Where a person found wandering at large who is deemed to be a lunatic, or where a person believed to be dangerous by reason of lunacy is apprehended and sent to the Magistrate or Commissioner of Police, or where, on report or information that a person deemed to be a lunatic is not under proper care and control, or is cruelly treated or neglected, the Magistrate or the Commissioner of Police sends for him and then determines to proceed as prescribed in section 4 of this Act, the Magistrate or the Commissioner of Police, on the request of the medical officer, may, by order in writing, authorize the detention of the supposed lunatic for such time, not exceeding ten days, as, in the opinion of the Magistrate or the Commissioner of Police, may be necessary to enable the medical officer to form an opinion on the question whether or not the supposed lunatic is a person with respect to whom a certificate in the form A in the schedule to this Act ought to be signed.

Detention of supposed lunatics under observation.

(*2*) If the medical officer certifies further detention than has been authorized under sub-section (*1*) to be necessary to enable him to form his opinion on that question, the Magistrate or the Commissioner of Police may from time to time, by order in writing, authorize such further detention as he deems to be necessary:

Provided that a supposed lunatic shall not be detained for the purpose of this section for a longer time than fourteen days from the date on which the first order authorizing his detention for that purpose is made.

(*3*) The Executive Government may, from time to time, make rules† as to the place of detention, and the care and treatment, of supposed lunatics detained under this section.

**7.** Except as otherwise hereinbefore provided, no person shall be received into a lunatic asylum in any presidency-town‡ without an order under the hand of some person in the form B in the schedule to this Act, together with such statement of particulars as is contained in the said form B; nor, unless such person has been found lunatic by inquisition or under an enquiry directed by an order of one of the Courts of Judicature established by Royal Charter, without the medical certficate, containing the particulars in form A in the schedule to this Act, of two persons, each of whom shall be a physician or surgeon, and one of whom shall be a presidency surgeon or a surgeon in the employment of the Government.

Order and certificate for reception into presidency asylum.

When such order is presented, the visitors or manager of the asylum, before admitting the lunatic into the asylum, may require the friends of the said lunatic to engage to pay expenses which may be incurred for the lodging, maintenance, clothing, medicine, and care of the lunatic, unless it shall appear to the said visitors that they have not sufficient means of doing so.

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* S. 6A has been inserted by the Indian Lunatic Asylums Act (1858) Amendment Act (XVIII. of 1886), s. 1.

† For rules under s. 6A in the—

(*1*) North-Western Provinces and Oudh, see North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 13

(*2*) Bombay, see Bombay List of Local Rules and Orders Vol. I., Ed. 1896, p. 24.

(*3*) Madras, see Madras List of Local Rules and Orders, Ed. 1894, p. 6.

(*4*) Burma, see Burma Rules Manual, Ed. 1897, p. 6.

(*5*) Assam, see Assam List of Local Rules and Orders, Ed. 1893, p. 2.

‡ Certain formal words referring to the Straits Settlements, which were repealed by the Repealing Act (XVI. of 1874), have here been omitted.

**8.** *Clause 1.*—In places other than those specified in the last preceding section, no person shall be received into a lunatic asylum, except as otherwise hereinbefore provided, without an order of the Civil Court.

Reception in mofussil asylum.

*Clause 2.*—When any person has been adjudged to be a lunatic, and a guardian for such lunatic has been appointed by the Court of Wards or the Collector, or by the Civil Court, if such guardian shall desire that the lunatic be admitted into a lunatic asylum, he shall make application to the Civil Court, and the Judge, with the assistance of a medical officer, shall examine such lunatic, and if the medical officer shall sign a certificate in the form A in the schedule to this Act, and the Judge shall be satisfied that the lunatic is a proper person to be detained under care and treatment in a lunatic asylum, he shall make an order for such person to be received into the asylum established for the division in which his jurisdiction is situate, or, if he think fit, into any licensed asylum mentioned in the application.

Application for order to be made by guardian, if guardian appointed.

*Clause 3.*—If any relative or friend of any person, for whom a guardian has not been appointed by the Court of Wards or the Collector, or by the Civil Court, desires that such person may be admitted into a lunatic asylum, he may make application to the Civil Court, and the Judge, if he see sufficient reason for so doing shall enquire into the fact of lunacy in the same manner as if an application had been made to the Civil Court under the provisions of section 3 of Act XXXV. of 1858, entitled "*An Act to make better provision for the care of the estates of lunatics not subject to the jurisdiction of the Supreme Courts of Judicature;*" and if the lunacy be established, the Judge may then proceed in the manner prescribed in the second clause of this section.

Application where no guardian appointed.

*Clause 4.*—Whenever the Judge shall make an order for the reception of any person into a lunatic asylum, he shall, at the same time, make an order for the payment of the expenses to be incurred for the lodging, maintenance, clothing, medicine, and care of such person; and such expenses shall be recovered by the Judge on the application of the visitors or manager of such asylum: Provided, however, that, if it shall appear to the satisfaction of the Judge that the lunatic has not sufficient property, and that no person legally bound to maintain the said lunatic has sufficient means for the payment of such expenses, he shall certify the same in the order for the reception of the lunatic into the asylum, instead of making such order for the payment of expenses as aforesaid.

Order for payment of expenses.

Proviso.

**9.** "Subject to the provisions of any enactment for the time being in force,"* it shall be lawful for three of the visitors of any asylum, of whom one shall be a medical officer, by writing under their hands, to order the discharge of any person detained in such asylum. When such order is given, if the person is detained under the order of any public officer, notice of the order of discharge shall be immediately communicated to such officer.†

Order of discharge from asylum.

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* The words quoted have been prefixed by the Indian Lunatic Asylums Act (1858) Amendment Act (XVIII. of 1886), s. 2.

† The provisions of s. 9 have been applied to prisoners in lunatic asylums.—See s 31, Prisoners Act (V. of 1871), which has been repealed (except s. 15) by the new Prisoners Act (III. of 1900).

1858. Act 36.

**10.** When any relative or friend of a lunatic detained in any asylum under the provisions of section 4, section 5, or section 6 of this Act, is desirous that such lunatic shall be delivered over to his care and custody, he shall make application to the Magistrate or Commissioner of Police under whose order the lunatic is detained, and the Magistrate or Commissioner of Police, if he think fit, after communication with the visitors, or with one of them being a medical officer, and upon the undertaking in writing of such relative or friend to the satisfaction of the said Magistrate or Commissioner that such lunatic shall be properly taken care of, and shall be prevented from doing injury to himself or others, shall make an order for the discharge of such lunatic, and such lunatic shall thereupon be discharged.

Order of discharge on undertaking of relative for due treatment of the lunatic.

**11.** [*Inspector of Jails may order removal from one public asylum to another*] *Repealed by the Indian Lunatic Asylums Act (1858) Amendment Act (XX. of 1889).*

**12.** If, after the reception of any lunatic into any asylum, it appear that the order or the medical certificate or certificates upon which he was received is or are defective or incorrect, the same may, at any time afterwards, be amended by the person or persons signing the same with the sanction of two or more of the visitors of the said asylum, one of whom shall be a medical officer.

Amendment of order or certificate.

**13.** Every person received into a lunatic asylum under any such order as is required by this Act, accompanied by the requisite medical certificate, may be detained therein until he be removed or discharged as authorized by this Act, and in case of escape may, by virtue of such order, be re-taken by the manager of such asylum, or any officer or servant belonging thereto, or any other person authorized in that behalf by the said manager, or any police-officer, and conveyed to, and received and detained in, such asylum.

Order and certificate to justify detention and re-capture after escape.

**14.** When any lunatic is sent to a licensed asylum by order of a Magistrate or Commissioner of Police under section 4, section 5, or section 6 of this Act, and when a lunatic is admitted into such asylum under section 7, or an order for the reception of a lunatic is made under section 8, and no engagement has been taken from the friends of the lunatic, or order made by the Judge for the payment of expenses under the said section 7 or section 8 respectively, the expense of the lodging, maintenance, clothing, medicine, and care of such lunatic, shall be paid by the Government to the manager of such asylum.

Government when to pay for lunatic's maintenance.

**15.** The Magistrate or Commissioner of Police by whom any lunatic has been sent to a lunatic asylum, if it appear to such Magistrate or Commissioner that such lunatic has an estate applicable to his maintenance and more than sufficient to maintain his family, or that any person is legally bound to maintain, and has the means of maintaining, such lunatic, may apply to the chief Civil Court of original jurisdiction within the local jurisdiction of which the estate of the lunatic may be situate, or the person legally bound to maintain him may reside; and such Court shall enquire into the matter in a summary way, and, on being satisfied that such lunatic has an estate applicable to his maintenance, or that any person is legally bound to maintain, and has the means of maintaining, such lunatic, shall make an order for the recovery of the charges of the lodging, maintenance, clothing, medicine, and care of such lunatic out of such estate or from such person.

Order for payment of cost of lunatic's maintenance.

Such order shall be enforced in the same manner, and shall be of the same force and effect, and subject to the same appeal, as any judgment or order made by the said Court in a regular suit in respect of the property or person therein mentioned.

Enforcement, &c., of order.

Any personal property which may be in the possession of a lunatic found wandering at large may be sold by the Magistrate, and the proceeds thereof (or such part of the same as may be necessary) applied towards the payment of the charges of the lodging and maintenance of the lunatic, and of any other expenses incurred on his behalf.

Property in possession of vagrant-lunatic.

**16.** The liability of any relative or person to maintain any lunatic shall not be taken away or affected by any provision contained in this Act.

Relatives' liability to maintain lunatic.

**17.** Nothing contained in this Act shall be taken to interfere with the power of any of the Courts of Judicature established by Royal Charter over any person found to be lunatic by inquisition or under the provisions of Act XXXIV. of 1858, entitled "*An Act to regulate proceedings in Lunacy in the Courts of Judicature established by Royal Charter*," or with the rights of any committee of the person or estate of such lunatic.* * * * *

Saving of powers of Supreme Courts.

Provision for provinces having insufficient or no asylums.

**17A.**† In either of the following cases, namely:—

(*a*) when an Executive Government has not established within its limits a public asylum for the reception and detention of lunatics,‡

(*b*) when it appears to the Governor-General in Council that a public asylum established within such limits is not conveniently situated with respect to any part of the territories administered by such Government, or does not afford sufficient or, in the case of any class of lunatics, suitable accommodation,

the Governor-General in Council may, from time to time, appoint an asylum in any part of British India beyond the limits of such Government to be an asylum to which any Magistrate or Judge exercising jurisdiction within those limits may send lunatics, or any class of lunatics, as to an asylum established under this Act for the division in which his jurisdiction is situate.

Use of provincial asylums as presidency asylums for purposes of the Act.

**17B.**§ The Governor-General in Council may, from time to time, by order direct, with respect to any part of British India which is not annexed to a Presidency, or, being annexed to the Presidency of Fort William, Fort St. George, or Bombay, is situated at a greater distance than three hundred miles from Calcutta, Madras, or Bombay respectively, that any lunatic asylum in British India

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* The words and figures, "or to affect the provisions of Act IV. of 1849, entitled *An Act for the safe custody of Criminal Lunatics*," have been repealed by the Repealing Act (XVI. of 1874).

† S. 17A has been substituted by the Indian Lunatic Asylums Act (1858) Amendment Act (XX. of 1889), s. 2, for the original section as amended by Act XVIII of 1886.

‡ For order under 17A, appointing the Dacca Lunatic Asylum to be an asylum to which Deputy Commissioners of Sylhet and Cachar may send lunatics, see notification set out at p. 1 of the Assam List of Local Rules and Orders, Ed. 1893.

§ S. 17B has been inserted by the Indian Lunatic Asylums Act (1858) Amendment Act (XVIII. of 1886), s. 3.

1858. Act 36. named in the order shall be deemed for that part to be a lunatic asylum at the Presidency for the purposes of this Act.

Removal of lunatics from one asylum to another.

**17C.*** Any lunatic may be removed from any lunatic asylum established or licensed under this Act, by order of an Executive Government, to any other such asylum within the limits of such Government, and, by order of the Governor-General in Council, to any other asylum in any part of British India.

Interpretation-clause.

**18.** The word "lunatic," as used in this Act, shall mean and include every person of unsound mind, and every person being an idiot.

The word "Magistrate" shall include a person exercising the powers of a Magistrate.

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## SCHEDULE †

### FORM A.

CERTIFICATE OF MEDICAL OFFICER (*see sections 4 and 8*).

I, the undersigned (*here enter name and official designation*), hereby certify that I, on the day of , at , personally examined (*here enter name and residence of lunatic*), and that the said is a lunatic (*or* an idiot, *or* a person of unsound mind), and a proper person to be taken charge of, and detained under care and treatment, and that I have formed this opinion on the following grounds, namely :—

1. Facts indicating insanity observed by myself (*here state the facts*).

2. Other facts (if any) indicating insanity communicated to me by others (*here state the information, and from whom*).

(*Signed.*)

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### FORM B.

ORDER FOR THE RECEPTION OF A PRIVATE PATIENT (*see section 7*).

I, the undersigned hereby request you to receive *A B*, a lunatic [*or* an idiot, *or* a person of unsound mind], as a patient into your asylum. Subjoined is a statement respecting the said *A B* :—

(*Signed*) Name.

Occupation (if any).

Place of abode.

Degree of relationship (if any), or other circumstance of connection with the patient.

Dated this day of one thousand eight hundred and .

To

Superintendent of the Asylum at [*describing the asylum*].

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* S. 17C has been inserted by the Indian Lunatic Asylums Act (1858) Amendment Act (XX. of 1889), s. 2

† As to the necessity of strictly following the corresponding forms in the English Act, see *Reg.* v. *Pinder*, 24 L. J., Q. B., 148.

STATEMENT. 1858.

Act 36.

[*If any of the particulars in this statement be not known, the fact to be so stated*].

Name of patient, with Christian name at length.

Sex and age.

Married, single, or widowed.

Condition of life, and previous occupation (if any).

The religious persuasion, as far of known.

Previous place of abode.

Whether first attack.

Age (if known) on first attack.

When and where previously under care and treatment.

Duration of existing attack.

Supposed cause.

Whether subject to epilepsy.

Whether suicidal.

Whether dangerous to others.

Whether found lunatic by inquisition or enquiry under order of Court, and date of commission or order for inquisition or enquiry.

Whether any member of patient's family has been or is affected with insanity.

(*Signed*) Name.

[*Where the person signing the statement is not the person who signs the order, the following particulars concerning the person signing the statement are to be added, namely:—*]

Occupation (if any).

Place of abode.

Degree of relationship (if any), or other circumstance of connection with the patient.

# ACT NO. IV. OF 1889.*

## INDIAN MERCHANDISE MARKS ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 1ST MARCH 1889.

*An Act to amend the law relating to Fraudulent Marks on Merchandise.*

WHEREAS it is expedient to amend the law relating to fraudulent marks on merchandise; It is hereby enacted as follows:—

Title, extent, and commencement.

**1.** (*1*) This Act may be called "The Indian Merchandise Marks Act, 1889."

(*2*) It extends to the whole of British India; and† * * * * * *

(*3*) It shall come into force on the first day of April 1889.

Definitions.

**2.** In this Act, unless there is something repugnant in the subject or context,—

(*1*) "trade-mark" has the meaning assigned to that expression in section 478 of the Indian Penal Code as amended by this Act:

(*2*) "trade-description" means any description, statement, or other indication, direct or indirect,—

(*a*) as to the number, quantity, measure, gauge, or weight of any goods, or

(*b*) as to the place or country in which, or the time at which, any goods were made or produced, or

(*c*) as to the mode of manufacturing or producing any goods, or

(*d*) as to the material of which any goods are composed, or

(*e*) as to any goods being the subject of an existing patent, privilege, or copyright;

and the use of any numeral, word, or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade-description within the meaning of this Act:

(*3*) "false trade-description" means a trade-description which is untrue in a material respect as regards the goods to which it is applied, and includes every alteration of a trade-description, whether by way of addition, effacement, or otherwise, where that alteration makes the description untrue in a material respect, and the fact that a trade-description is a trade-mark or part of a trade-mark shall not prevent such trade-description being a false trade-description within the meaning of this Act:

(*4*) "goods" means anything which is the subject of trade or manufacture: and

(*5*) "name" includes any abbreviation of a name.

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* For Statement of Objects and Reasons, see Gazette of India, 1888, Pt. V., p. 109; for Report of the Select Committee, see *ibid*, 1889, Pt. V., p. 27; and for Proceedings in Council, see *ibid*, 1888, Pt. VI., pp. 111 and 136, and *ibid*, 1889, Pt. VI., p. 38.

† In s. 1 the words, "and subject to the provisions of the last section of this Act," have been repealed by the Indian Merchandise Marks and Sea Customs Acts Amendment Act (IX. of 1891).

1889. *Amendment of the Indian Penal Code.*

Act 4.

Substitution of new sections for sections 478 to 489 of the Indian Penal Code.

3. For that part of Chapter XVIII. of the Indian Penal Code which relates to Trade and Property Marks, the following shall be substituted, namely:—

"*Of Trade, Property, and Other Marks.*

Trade-mark.

"478. A mark used for denoting that goods are the manufacture or merchandise of a particular person is called a trade-mark, and for the purposes of this Code the expression 'trade-mark' includes any trade-mark which is registered in the register of trade-marks kept under the Patents, Designs, and Trade-marks Act,* 1883, and any trade-mark which, either with or without registration, is protected by law in any British possession or Foreign State to which the provisions of the one hundred and third section of the Patents, Designs, and Trade-marks Act, 1883, are, under Order in Council, for the time being applicable.

Property-mark.

"479. A mark used for denoting that moveable property belongs to a particular person is called a property-mark.

Using a false trade-mark.

"480. Whoever marks any goods, or any case, package, or other receptacle containing goods, or uses any case, package, or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not, is said to use a false trade-mark.

Using a false property-mark.

"481. Whoever marks any moveable property or goods, or any case, package, or other receptacle containing moveable property or goods, or uses any case, package, or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property-mark.

Punishment for using a false trade-mark or property-mark.

"482. Whoever uses any false trade-mark or any false property-mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Counterfeiting a trade-mark or property-mark used by another.

"483. Whoever counterfeits any trade-mark or property-mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Counterfeiting a mark used by a public servant.

"484. Whoever counterfeits any property-mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place, or that the property is of a particular quality, or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

* 46 & 47 Vic., c. 57.

"485. Whoever makes or has in his possession any die, plate, or other instrument for the purpose of counterfeiting a trade-mark or property-mark, or has in his possession a trade-mark or property-mark for the purpose of denoting that any goods are the manufacture or merchandise of a person whose manufacture or merchandise they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**Making or possession of any instrument for counterfeiting a trade-mark or property-mark.**

"486. Whoever sells, or exposes or has in possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade-mark or property-mark affixed to, or impressed upon, the same, or to or upon any case, package, or other receptacle in which such goods are contained, shall, unless he proves—

**Selling goods marked with a counterfeit trade-mark or property-mark.**

(*a*) that, having taken all reasonable precautions against committing an offence against this section, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark, and

(*b*) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(*c*) that otherwise he had acted innocently,

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

"487. Whoever makes any false mark upon any case, package, or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain, or that it does not contain goods which it does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**Making a false mark upon any receptacle containing goods.**

"488. Whoever makes use of any such false mark in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.

**Punishment for making use of any such false mark.**

"489. Whoever removes, destroys, defaces, or adds to any property-mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

**Tampering with property-mark with intent to cause injury.**

*Trade-descriptions.*

**4.** (*1*) The provisions of this Act respecting the application of a false trade-description to goods, or respecting goods to which a false trade-description is applied, shall extend to the application to goods of any such numerals, words, or marks, or arrangement or combination thereof, whether includ-

**Provisions supplemental to the definition of false trade-description.**

1889. Act 4.

ing a trade-mark or not, as are or is reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are, and to goods having such numerals, words, or marks, or arrangement or combination, applied thereto.

(2) The provisions of this Act respecting the application of a false trade-description to goods, or respecting goods to which a false trade-description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade-description, and for the purpose of this enactment the expression "false name or initials" means, as applied to any goods, any name or initials—

(a) not being a trade-mark, or part of a trade-mark, and

(b) being identical with, or a colourable imitation of, the name or initials, of a person carrying on business in connection with goods of the same description, and not having authorized the use of such name or initials.

(3) A trade description which denotes or implies that there are contained in any goods to which it is applied more yards, feet, or inches than there are contained therein standard yards, standard feet, or standard inches, is a false trade description.

Application of trade-descriptions.

5. (1) A person shall be deemed to apply a trade-description to goods who—

(a) applies it to the goods themselves, or

(b) applies it to any covering, label, reel, or other thing in or with which the goods are sold or are exposed or had in possession for sale or any purpose of trade or manufacture, or

(c) places, encloses, or annexes any goods which are sold, or are exposed or had in possession for sale or any purpose of trade or manufacture, in, with, or to any covering, label, reel, or other thing to which a trade description has been applied, or

(d) uses a trade-description in any manner reasonably calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade-description.

(2) A trade-description shall be deemed to be applied whether it is woven, impressed, or otherwise worked into or annexed or affixed to the goods or any covering, label, reel, or other thing.

(3) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, or wrapper, and the expression "label" includes any band or ticket.

Penalty for applying a false trade-description.

6. If a person applies a false trade-description to goods, he shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud, be punished with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, and in the case of a second or subsequent conviction with imprisonment which may extend to one year, or with fine, or with both.

**7.** If a person sells, or exposes, or has in possession for sale or any purpose of trade or manufacture, any goods or things to which a false trade-description is applied, he shall, unless he proves—

**Penalty for selling goods to which a false trade-description is applied.**

(*a*) that, having taken all reasonable precautions against committing an offence against this section, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade-description, and

(*b*) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(*c*) that otherwise he had acted innocently,

be punished with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, and in case of a second or subsequent conviction with imprisonment which may extend to one year, or with fine, or with both.

*Unintentional Contravention of the Law relating to Marks and Descriptions.*

**8.** Where a person is accused under section 482 of the Indian Penal Code of using a false trade-mark or property-mark by reason of his having applied a mark to any goods, property, or receptacle in the manner mentioned in section 480 or section 481 of that Code, as the case may be, or under section 6 of this Act of applying to goods any false trade-description, or under section 485 of the Indian Penal Code of making any die, plate, or other instrument for the purpose of counterfeiting a trade-mark or property-mark, and proves—

**Unintentional contravention of the law relating to marks and descriptions.**

(*a*) that in the ordinary course of his business he is employed, on behalf of other persons, to apply trade-marks or property-marks, or trade-descriptions, or, as the case may be, to make dies, plates, or other instruments for making, or being used in making, trade-marks or property-marks, and that in the case which is the subject of the charge he was so employed and was not interested in the goods or other thing by way of profit or commission dependant on the sale thereof, and

(*b*) that he took reasonable precautions against committing the offence charged, and

(*c*) that he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark or description, and

(*d*) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons on whose behalf the mark or description was applied,

he shall be acquitted.

*Forfeiture of Goods.*

**9.** (*1*) When a person is convicted under section 482 of the Indian Penal Code of using a false trade-mark, or under section 486 of that Code of selling, or exposing, or having in possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade-mark applied thereto, or under section 487 or section 488 of that Code of making, or making use of, a false mark, or under

**Forfeiture of goods.**

1889. Act 4.

section 6 or section 7 of this Act of applying a false trade-description to goods, or of selling, or exposing, or having in possession for sale or any purpose of trade or manufacture, any goods or things to which a false trade-description is applied, or is acquitted on proof of the matter or matters specified in section 486 of the Indian Penal Code or section 7 or section 8 of this Act, the Court convicting or acquitting him may direct the forfeiture to Her Majesty of all goods and things by means of, or in relation to, which the offence has been committed or, but for such proof as aforesaid, would have been committed.

(2) When a forfeiture is directed on a conviction, and an appeal lies against the conviction, an appeal shall lie against the forfeiture also.

(3) When a forfeiture is directed on an acquittal, and the goods or things to which the direction relates are of value exceeding fifty rupees, an appeal against the forfeiture may be preferred, within thirty days from the date of the direction, to the Court to which in appealable cases appeals lie from sentences of the Court which directed the forfeiture.

*Amendment of the Sea Customs Act, 1878.*

Amendment of section 18, Act VIII. of 1878.

**10.** (1) For clause (*d*) of section 18 of the Sea Customs Act, 1878, the following shall be substituted, namely:—

"(*d*) goods having applied thereto a counterfeit trade-mark within the meaning of the Indian Penal Code, or a false trade-description within the meaning of the Indian Merchandise Marks Act, 1889:

(*e*) goods made or produced beyond the limits of the United Kingdom and British India, and having applied thereto any name or trade-mark being, or purporting to be, or being a colourable imitation of, the name or trade-mark of any person who is a manufacturer, dealer, or trader in the United Kingdom or in British India, unless—

(i) the name or trade-mark is, as to every application thereof, accompanied by a definite indication of the goods having been made or produced in a place beyond the limits of the United Kingdom and British India, and

(ii) *the country in which that place is situated is*,* in that indication, indicated in letters as large and conspicuous as any letter in the name or trade-mark, and in the same language and character as the name or trade-mark:"

(2) To section 18 of the Sea Customs Act, 1878, as amended by sub-section (1), the following shall be added, namely:—

"(*f*) piece-goods such as are ordinarily sold by length or by the piece which—

(i) have not conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece, and

(ii) have been manufactured beyond the limits of India, or

* In s. 10 (ii) the words italicized were substituted for the words "that place and the country in which it is situated are," by the Indian Merchandise Marks and Sea Customs Acts Amendment Act (IX. of 1891).

(iii) having been manufactured within those limits, have been manufactured beyond the limits of British India in premises which, if they were in British India, would be a factory as defined in the Indian Factories Act, 1881.

**Addition of a section after section 19, Act VIII. of 1878.**

**11.** The following shall be added after section 19 of the Sea Customs Act, 1878, namely:—

"19A (*1*) Before detaining any such goods as are or may be specified in or under section 18 or section 19, as the case may be, or taking any further proceedings with a view to the confiscation thereof under this Act, the chief Customs-officer or other officer appointed by the Local Government in this behalf may require the regulations under this section, whether as to information, security, conditions, or other matters, to be complied with, and may satisfy himself in accordance with those regulations that the goods are such as are prohibited to be imported.

(*2*) The Governor-General in Council may make regulations, either general or special, respecting the detention and confiscation of goods, the importation of which is prohibited, and the conditions (if any) to be fulfilled before such detention and confiscation, and may, by such regulations, determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(*3*) Where there is on any goods a name which is identical with, or a colourable imitation of, the name of a place in the United Kingdom or British India, that name, unless accompanied in equally large and conspicuous letters, and in the same language and character, by the name of the country in which such place is situate, shall be treated, for the purposes of sections 18 and 19, as if it were the name of a place in the United Kingdom or British India.

(*4*) Such regulations may apply to all goods the importation of which is prohibited by section 18 or under section 19, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.

(*5*) The regulations may provide for the informant reimbursing any public officer and the Secretary of State for India in Council all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

(*6*) All regulations under this section shall be published in the Gazette of India, and in the Calcutta, Fort St. George, Bombay, and Burma Gazettes."

*Stamping of Length of Piece-goods manufactured in British India.*

**Stamping of length of piece-goods manufactured in British India.**

**12.** (*1*) Piece-goods, such as are ordinarily sold by length or by the piece which have been manufactured in premises which are a factory as defined in the Indian Factories Act, 1881, shall not be removed from those premises without having conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece.

(*2*) If any person removes or attempts to remove any such piece-goods from any such premises without the length of each piece being stamped in the manner mentioned in sub-section (*1*), every such piece, and everything used for the packing or removal thereof, shall be forfeited to Her Majesty, and such person shall be punished with fine which may extend to one thousand rupees.

Evidence of origin of goods imported by sea.

**13.** In the case of goods brought into British India by sea, evidence of the port of shipment shall, in a prosecution for an offence against this Act or section 18 of the Sea Customs Act, 1878, as amended by this Act, be *prima-facie* evidence of the place or country in which the goods were made or produced.

Costs of defence or prosecution.

**14.** (*1*) On any such prosecution as is mentioned in the last foregoing section, or on any prosecution for an offence against any of the sections of the Indian Penal Code as amended by this Act, which relate to trade, property, and other marks, the Court may order costs to be paid to the defendant by the prosecutor, or to the prosecutor by the defendant, having regard to the information given by, and the conduct of, the defendant and prosecutor respectively.

(*2*) Such costs shall, on application to the Court, be recoverable as if they were a fine.

Limitation of prosecution.

**15.** No such prosecution as is mentioned in the last foregoing section shall be commenced after the expiration of three years next after the commission of the offence, or one year after the first discovery thereof by the prosecutor, whichever expiration first happens.

Authority of the Governor-General in Council to issue instructions as to administration of this Act.

**16.** (*1*) The Governor-General in Council may, by notification in the Gazette of India and in local official Gazettes, issue instructions* for observance by Criminal Courts in giving effect to any of the provisions of this Act.

(*2*) Instructions under sub-section (*1*) may provide, among other matters, for the limits of variation, as regards number, quantity, measure, gauge, or weight, which are to be recognized by Criminal Courts as permissible in the case of any goods.

Implied warranty on sale of marked goods.

**17.** On the sale or in the contract for the sale of any goods to which a trade-mark, or mark or trade-description, has been applied, the seller shall be deemed to warrant that the mark is a genuine mark and not counterfeit or falsely used, or that the trade-description is not a false trade-description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the seller, and delivered at the time of the sale or contract to and accepted by the buyer.

Savings.

**18.** (*1*) Nothing in this Act shall exempt any person from any suit or other proceedings which might, but for anything in this Act, be brought against him.

(*2*) Nothing in this Act shall entitle any person to refuse to make a complete discovery or to answer any question or interrogatory in any suit or other proceeding, but such discovery or answer shall not be admissible in evidence against such person in any such prosecution as is mentioned in section 14.

(*3*) Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in British India, who in good faith acts in obedience to the instructions of such master, and, on de-

* For notifications containing such instructions, see Gazette of India, 1891, Pt. I, p. 626.

mand made by or on behalf of the prosecutor, has given full information as to his master and as to instructions which he has received from his master.

**19.** [*Date of commencement of this Act as regards unstamped piece-goods.*] *Repealed by the Indian Merchandise Marks and Sea Customs Acts Amendment Act (IX. of 1891).*

**19.*** For the purposes of section 12 of this Act, and clause *(f)* of section 18 of the Sea Customs Act, 1878, as amended by this Act, the Governor-General in Council may, by notification in the *Gazette of India*,† declare what classes of goods are included in the expression 'piece-goods, such as are ordinarily sold by length or by the piece.'

Definition of piece-goods.

**20.*** (*1*) The Governor-General in Council may make rules† for the purposes of this Act to provide, with respect to any goods which purport or are alleged to be of uniform number, quantity, measure, gauge, or weight, for the number of samples to be selected and tested, and for the selection of the samples.

Determination of character of goods by sampling.

(*2*) With respect to any goods for the selection and testing of samples of which provision is not made in any rules for the time being in force under sub-section (*1*), the Court or officer of customs, as the case may be, having occasion to ascertain the number, quantity, measure, gauge, or weight of the goods, shall, by order in writing, determine the number of samples to be selected and tested, and the manner in which the samples are to be selected.

(*3*) The average of the results of the testing in pursuance of rules under sub-section (*1*), or of an order under sub-section (*2*), shall be *prima-facie* evidence of the number, quantity, measure, gauge, or weight, as the case may be, of the goods.

(*4*) If a person, having any claim to, or in relation to, any goods of which samples have been selected and tested in pursuance of rules under sub-section (*1*), or of an order under sub-section (*2*), desires that any further samples of the goods be selected and tested, they shall, on his written application, and on the payment in advance by him to the Court or officer of customs, as the case may be, of such sums for defraying the cost of the further selection and testing as the Court or officer may from time to time require, be selected and tested to such extent as may be permitted by rules to be made by the Governor-General in Council in this behalf, or as, in the case of goods with respect to which provision is not made in such rules, the Court or officer of customs may determine in the circumstances to be reasonable, the samples being selected in manner prescribed under sub-section (*1*), or in sub-section (*2*), as the case may be.

(*5*) The average of the results of the testing referred to in sub-section (*3*), and of the further testing under sub-section (*4*), shall be conclusive proof of the number, quantity, measure, gauge, or weight, as the case may be, of the goods.

(*6*) Rules under this section shall be made after previous publication.

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* Ss. 19, 20, 21, and 22, have been added by the Indian Merchandise Marks and Sea Customs Acts Amendment Act (IX. of 1891); and s. 19, as originally enacted, and the heading to s. 19, namely, "Transitory Provision," have been omitted, having been repealed by the Indian Merchandise Marks and Sea Customs Acts Amendment Act (IX. of 1891).—See ss. 2 and 4 of Act IX. of 1891.

† For rules issued under sections 19 and 20, see Gazette of India, 1891, Pt. I., p. 187.

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**21.*** An officer of the Government, whose duty it is to take part in the enforcement of this Act, shall not be compelled in any Court to say whence he got any information as to the commission of any offence against this Act.

Information as to commission of offences.

**22.*** If any person, being within British India, abets the commission, without British India, of any act which, if committed in British India, would, under this Act, or under any section of that part of Chapter XVIII. of the Indian Penal Code which relates to trade, property, and other marks, be an offence, he may be tried for such abetment in any place in British India† in which he may be found, and be punished therefor with the punishment to which he would be liable if he had himself committed in that place the act which he abetted.

Punishment of abetment in India of acts done out of India.

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* Ss. 19, 20, 21, and 22, have been added by the Indian Merchandise Marks and Sea Customs Acts Amendment Act (IX. of 1891); and s. 19, as originally enacted, and the heading to s. 19, namely, "Transitory Provision," have been omitted, having been repealed by the Indian Merchandise Marks and Sea Customs Acts Amendment Act (IX. of 1891). —See ss. 2 and 4 of Act IX. of 1891.

† *Cf.* s. 108A of the Indian Penal Code.

# ACT NO. I. OF 1889.

## METAL TOKENS ACT.*

RECEIVED THE G.-G.'S ASSENT ON THE 1ST FEBRUARY 1889.

*An Act for the Protection of Coinage and other Purposes.*

Preamble.

WHEREAS it is expedient to prohibit the making, or the possession for issue, or the issue, by private persons, of pieces of metal for use as money;

And whereas it is also expedient to amend section 28 of the Indian Penal Code;

It is hereby enacted as follows:—

Title, extent, and commencement.

**1.** (*1*) This Act may be called "The Metal Tokens Act, 1889;"

(*2*) It extends to the whole of British India; and

(*3*) It shall come into force at once.

Definition.

**2.** In this Act "issue" means to put a piece of metal into circulation for the first time for use as money in British India, such piece having been made in contravention of this Act, or brought into British India by sea or by land in contravention of any notification for the time being in force under section 19 of the Sea Customs Act, 1878.

Prohibition of making by private persons of pieces of metal to be used as money.

**3.** No piece of copper or bronze, or of any other metal or mixed metal, which, whether stamped or unstamped, is intended to be used as money, shall be made except by the authority of the Governor-General in Council.

Penalty for unlawful making, issue, or possession of such pieces.

**4.** (*1*) In either of the following cases, namely—

(*a*) if any person makes, in contravention of the last foregoing section, or issues, or attempts to issue, any such piece as is mentioned in that section,

(*b*) if, after the expiration of three months from the commencement of this Act, any person has in his possession, custody, or control, any such piece as is mentioned in the last foregoing section, with intent to issue the piece,

the person shall be punished,—

(*i*) if he has not been previously convicted under this section, with imprisonment which may extend to one year, or with fine, or with both; or,

(*ii*) if he has been previously convicted under this section, with imprisonment which may extend to three years, or with fine, or with both.

(*2*) If any person is convicted of an offence under sub-section (*1*) he shall, in addition to any other punishment to which he may be sentenced, forfeit all such

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* For Statement of Objects and Reasons, see Gazette of India, 1888, Pt. V., p. 19; for Report of the Select Committee, see *ibid*, 1889, Pt. IV., p. 3; and for Debates in Council, see *ibid*, 1888, Pt. VI., pp. 40 and 81, and *ibid*, 1889, Pt. VI., pp. 3 and 9

The Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act (XIII. of 1898).

It had been previously extended there by notification under s. 5 of the Scheduled Districts Act (XIV. of 1874).—See Burma Gazette, 1893, Pt. I., p. 154.

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pieces as aforesaid, and all instruments and materials for the making of such pieces, which may have been found in his possession, custody, or control.

(3) If in the trial of any such offence the question arises whether any piece of metal or mixed metal was intended to be used or to be issued for use as money, the burden of proving that the piece was not intended to be so used or issued shall lie on the accused person.

Cognizance of offences under the last foregoing section.

**5.** (1) The offence of making, in contravention of section 3, any such piece as is mentioned in that section, shall be a cognizable offence.

(2) Notwithstanding anything in the Code of Criminal Procedure, 1882,* no other offence punishable under section 4 shall be a cognizable offence, or, beyond the limits of a presidency-town, be taken cognizance of by any Magistrate, except a District Magistrate or Sub-Divisional Magistrate, without the previous sanction of the District Magistrate or Sub-Divisional Magistrate.

Application of certain of the foregoing provisions of this Act to importation of pieces of metal for use as money.

**6.** If at any time the Governor-General in Council sees fit, by notification under section 19 of the Sea Customs Act, 1878, to prohibit or restrict the bringing by sea or by land into British India of any such pieces of metal as are mentioned in section 3, he may, by the notification, direct that any person contravening the prohibition or restriction shall be liable to the punishment to which he would be liable if he were convicted under this Act of making such pieces in British India,† instead of to the penalty mentioned in section 167 of the Sea Customs Act, 1878, and that the provisions of sub-section (3) of section 4, and sub-section (1) of section 5, or of either sub-section, in relation to the offence of making such pieces, shall notwithstanding anything in the Sea Customs Act, 1878, apply, so far as they can be made applicable, to the offence of contravening the prohibition or restriction notified under section 19 of that Act.

**7.** [*Addition to section 98, Act X., 1882.*] *Repealed by the Code of Criminal Procedure (Act V. of 1898), Sch. I.*

Prohibition of receipt by local authorities and railways as money of metal which is not coin.

**8.** (1) No piece of metal which is not coin as defined in the Indian Penal Code shall be received as money by or on behalf of any railway-administration or local authority.

(2) If any person, on behalf of a railway-administration, or on behalf of a local authority, or on behalf of the lessee of the collection of any toll or other impost leviable by a railway-administration or local authority, receives as money any piece of metal which is not such coin as aforesaid, he shall be punished with fine which may extend to ten rupees.

Amendment of section 28 of the Indian Penal Code.

**9.** For the *explanation* to section 28 of the Indian Penal Code the following shall be substituted, namely:—

"*Explanation* 1.—It is not essential to counterfeiting that the imitation should be exact.

"*Explanation* 2.—When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception, or knew it to be likely that deception would thereby be practised."

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* See now the Criminal Procedure Code (Act V. of 1898).

† For notification issued under this power, see Gazette of India, 1889, Pt. I., p. 76.

# ACT NO. X. OF 1873.*

## THE INDIAN OATHS ACT, 1873.

RECEIVED THE G.-G.'S ASSENT ON THE 8TH APRIL 1873.

*An Act to consolidate the Law relating to Judicial Oaths, and for other purposes.*

Preamble.

WHEREAS it is expedient to consolidate the law relating to judicial oaths, affirmations, and declarations, and to repeal the law relating to official oaths, affirmations, and declarations; It is hereby enacted as follows:—

### *I.—Preliminary.*

Short title.

**1.** This Act may be called "The Indian Oaths Act, 1873:"

Local extent.

It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the territories of Native Princes and States in alliance with Her Majesty.

[*Commencement.*] *Repealed by the Repealing Act (XII. of 1876).*

**2.** [*Repeal of enactments.*] *Repealed by the Repealing Act (XII. of 1873).*

Saving of certain oaths and affirmations.

**3.** Nothing herein contained applies to proceedings before Courts-martial,† or to oaths, affirmations, or declarations prescribed by any law which, under the provisions of the Indian Councils Act, 1861,‡ the Governor-General in Council has not power to repeal.

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* For the Statement of Objects and Reasons, see Gazette of India, 1873, Pt V, p. 17; for Proceedings in Council, see *ibid*, 1872, Supplement, p. 889; *ibid*, 1873, Supplement, pp. 3, 233, 235 to 246, 281, 395, and 410; *ibid*, 1873, Extra Supplement, pp. 1 to 8.

Act X. of 1873 has been declared in force in—

(1) the Santhal Parganas by the Santhál Parganas Settlement Regulation (III of 1872), s. 3, as amended by the Santhál Parganas Laws Regulation (III. of 1886);

(2) the Arakan Hill District by the Arakan Hill District Laws Regulation (IX. of 1874), s. 3;

(3) Upper Burma generally (except the Shan States) by the Upper Burma Laws Act (XX of 1886), s. 6,

(4) British Baluchistan by the British Baluchistan Laws Regulation (I. of 1890), s. 3.

(5) Angul and the Khondmals (with an exception) by the Angul District Regulation (I. of 1894), s. 3

It has further been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely:—

The Districts of Hazáribagh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum (the District of Lohárdaga then included the Palamau District, separated in 1894).—See Gazette of India, 1881, Pt. I., p. 504

The North Western Provinces Tarai.—See Gazette of India, 1876, Pt. I., p. 505.

The Scheduled Districts in Ganjam and Vizagapatam, see Fort St. George Gazette, 1898, Pt. I., p. 666, and Gazette of India, 1898, Pt I., p. 869

It has been extended, by notification under s. 5 of the same Act, to the Scheduled District of Coorg.—See Gazette of India, 1876, Pt. I., p. 417.

† See the Indian Articles of War (Act V of 1869), the Indian Volunteers Act (XX. of 1869), and the Indian Marine Act (XIV. of 1887).

‡ Stat. 24 & 25 Vict., c. 67.

*II.—Authority to administer Oaths and Affirmations.*

Authority to administer oaths and affirmations.

**4.** The following Courts and persons are authorized to administer, by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties, or in exercise of the powers, imposed or conferred upon them respectively by law:—

(*a*) All Courts and persons having, by law or consent of parties, authority to receive evidence:

(*b*) The Commanding Officer of any military station occupied by troops in the service of Her Majesty:

Provided—

(*1*) that the oath or affirmation be administered within the limits of the station, and

(*2*) that the oath or affirmation be such as a Justice of the Peace is competent to administer in British India.

*III.—Persons by whom Oaths or Affirmations must be made.*

Oaths or affirmations to be made by—

**5.** Oaths or affirmations shall be made by the following persons:—

witnesses;

(*a*) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having, by law or consent of parties, authority to examine such persons, or to receive evidence;

interpreters;

(*b*) interpreters of questions put to, and evidence given by, witnesses; and

jurors.

(*c*) jurors.

Nothing herein contained shall render it lawful to administer in a criminal proceeding an oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

Affirmation by natives, or by persons objecting to oaths.

**6.** Where the witness, interpreter, or juror is a Hindu or Muhammadan,

or has an objection to making an oath,

he shall, instead of making an oath, make an affirmation.

In every other case, the witness, interpreter, or juror shall make an oath.

*IV.—Forms of Oaths and Affirmations.*

Forms of oaths and affirmations.

**7.** All oaths and affirmations made under section 5 shall be administered according to such forms as the High Court may, from time to time, prescribe.*

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* For forms prescribed in—
Bombay, see Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. xxxii;
Burma, see Burma Laws List, Ed 1897, p. 47;
Madras, see Madras List of Local Rules and Orders, Vol I., Ed. 1898, p. 25;
N.-W. P. and Oudh, see N.-W. P. and Oudh List of Local Rules and Orders, Ed. 1894, p 42;
Central Provinces, see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 18.

And, until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now in use.

*Explanation.*—As regards oaths and affirmations administered in the Court of the Recorder of Rangoon and the Court of Small Causes of Rangoon, the Recorder of Rangoon shall be deemed to be the High Court within the meaning of this section.

Power of Court to tender certain oaths.

**8.** If any party to, or witness in, any judicial proceeding, offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

Court may ask party or witness whether he will make oath proposed by opposite party.

**9.** If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in section 8, if such oath or affirmation is made by the other party to, or by any witness in, such proceeding, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation:

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

Administration of oath if accepted.

**10.** If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or, if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed, and return it to the Court.

Evidence conclusive as against person offering to be bound.

**11.** The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

Procedure in case of refusal to make oath.

**12.** If the party or witness refuses to make the oath or solemn affirmation referred to in section 8, he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

### *V.—Miscellaneous.*

Proceedings and evidence not invalidated by omission of oath or irregularity.

**13.** No omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding, or render inadmissible any evidence whatever, in or in respect of which such omission, substitution, or irregularity took place, or shall affect the obligation of a witness to state the truth.

Persons giving evidence bound to state the truth.

**14.** Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject.*

* Compare the Indian Penal Code (Act XLV. of 1860), s. 191.

1873. Act 10. **15.** The Indian Penal Code, sections 178 and 181, shall be construed as if, after the word "oath," the words, "or affirmation," were inserted.

Amendment of Act XLV. of 1860, sections 178 and 181.

**16.** Subject to the provisions of sections 3 and 5, no person appointed to any office shall, before entering on the execution of the duties of his office, be required to make any oath, or to make or subscribe any affirmation or declaration whatever.

Official oaths abolished.

## SCHEDULE.

*[Repealed by the Repealing Act (XII. of 1873).]*

### RULINGS UNDER THE OATHS ACT.

WHERE a plaintiff before a Munsif came and petitioned the Judge, complaining that the Munsif had improperly refused to examine his witnesses, and had dismissed his suit, although informed that witnesses were in attendance and the Judge, upon examining the petitioner upon solemn affirmation, and finding the charge unproved, ordered proceedings to be taken against the petitioner for giving false evidence, *held* that the Judge had no authority to examine the petitioner upon oath in such a case, and that the oath having been made, and the evidence given, *coram non judice*, could not form the subject of a prosecution for false evidence.—QUEEN *v.* CHOTA JADUB CHUNDER BISWAS, W. R. Sp. 15. [Seton-Karr and Jackson, JJ. Mar. 2, 1864.]

A HINDU, who has become a convert to Christianity, is not under a legal obligation to speak the truth, unless his evidence be given under the sanction of an oath on the Holy Gospels, so as to justify a conviction under s. 193 of the Penal Code. A statement made by a witness in a criminal trial not upon oath or solemn affirmation is not a declaration within the meaning of s. 199 of the Penal Code, nor is the witness bound to make a declaration under s. 191.—*In re* A. VEDAMUTTU, 4 Mad. H. C. R. 185 [Scotland, C.J., and Ellis, J. Dec. 21, 1868.]

IF the jury in a Sessions trial are not sworn, is the omission one which could be covered by s. 13 of the Oaths Act (X. of 1873)?—QUEEN *v.* RAMSODOY CHUCKERBUTTY, 20 W. R. 19 [Glover, Mitter, and Pontifex, JJ. June 9, 1873.]

UNDER Act VI. of 1872, s. 5, the omission to take any oath, or any other irregularity, in the form in which it is administered, does not invalidate the proceedings. The High Court declined to interfere, under s. 296, Act X. of 1872, with the order of a Municipal Commissioner, who was the editor of a newspaper, who had, prior to the disposal of the case, made very strong remarks on the case in the newspaper of which he was editor, holding that there was nothing illegal in his order, though he would have exercised a wise discretion if he had refused to sit as one of the Commissioners in the case.—QUEEN *v.* TARINEE CHURN BOSE, 21 W. R. 31. [Kemp and Glover, JJ. Jan. 19, 1874.]

IN a non-judicial proceeding, the object of which is to discover the writer of a scandalous petition, it is not competent for the Magistrate conducting the proceeding to administer an oath. The High Court reversed a conviction for giving false evidence where an oath was administered under the above circumstances.—REG. *v.* JIBHAI VAJA, 11 Bom. H. C. R. 11. [Melvill and Nanabhai Haridas, JJ. Feb. 19, 1874.]

THE Court in this case declined to act on the evidence of a child, 9 years old, who had been examined without oath, although she was a competent witness under s. 118 of the Evidence Act (I. of 1872), inclining to the opinion that s. 13 of the Oaths Act, by which the evidence of a witness may be received in evidence, although no oath was administered, did not render the deposition of a child of 9 years, whose deposition had been taken advisedly, and not by omission, without oath or solemn affirmation, admissible as evidence.—QUEEN *v.* ANUNTO CHUCKERBUTTY, 22 W. R. 1; 14 B. L. R. 295n. [Kemp and Birch, JJ. April 20, 1874.]

THE evidence of a child of immature age—who, the Sessions Judge considered, understood the questions which were put to her, and who was therefore a competent witness under s. 118 of the Evidence Act—taken by the Sessions Judge on a simple affirmation, because she was not aware of the responsibility of an oath, was held to be admissible

as evidence under s. 13 of the Oaths Act (X. of 1873). Case of *Dwarkanath Dutt* (7 W. R. 15), which ruled that a Court, before which a second trial is held, has nothing to do with the evidence given in the former trial, except for the purpose of ascertaining whether the offence in the two trials is the same, followed. A prisoner originally charged with an offence under one section (302), and acquitted of that charge, was committed, the day following that on which she was acquitted, for trial under another section (307), without any witnesses being examined on the charge under s. 307, and without having any opportunity of cross-examining the witnesses on the first charge, with respect to the second charge. *Held* that the irregularity was one which was not covered by s. 283, Code of Criminal Procedure, and that the prisoner had been prejudiced thereby in her defence. The trial under s. 307 was accordingly quashed, and a new trial ordered.—QUEEN *v.* MUSSAMUT ITWARYA, 22 W. R. 14; 14 B. L. R. 54. Ap. 1. [Kemp and Birch, JJ. May 9, 1874.]

HELD by the majority (Jackson, J., dissenting) that the evidence of a witness, who was examined on simple affirmation under the direction of the Judge, is admissible as evidence. The word "omission" in s. 13 of the Oaths Act (X. of 1873) includes any omission, and is not limited to accidental or negligent omissions.—QUEEN *v.* SEWA BHOGTA, 23 W. R. 12; 14 B. L. R. 294. [Couch, C.J., and Kemp, Jackson, Phear, and Markby, JJ. Dec. 22, 1874.]

S. 51, ch. 6, of Act I. of 1879, enacts that, "subject to such rules as may be made by the Governor-General in Council as to the evidence which the Collector may require, allowance shall be made by the Collector for impressed stamps spoiled in the cases hereinafter mentioned," &c. According to a rule made with reference to that section, "the Collector may require every person claiming a refund under ch. 6 of the said Act, or his duly authorized agent, to make an oral deposition on oath," &c. *Held*, therefore, that the Collector himself is the officer, and no other, to whom power is given by law to make inquiries into applications for allowances for spoiled stamps, to take evidence on oath in reference thereto, and to grant or refuse such applications, and he cannot delegate his authority in the matter. *Held*, therefore, where a person had applied for a refund under ch. 6 of Act I. of 1879, and the Collector made over the application for inquiry to a Deputy Collector, that the Deputy Collector was not entitled to put the witnesses produced by the applicant on their oaths, and consequently, in reference to the statements of such witnesses, no charge under s. 181 or s. 193 of the Penal Code was sustainable. In prosecutions for giving false evidence under s. 193 of the Penal Code, the case of each person accused should be separately inquired into, and, if committed for trial, separately tried. It is wholly erroneous to include them in one joint charge. It is not of itself sufficient to warrant a conviction for giving false evidence that an accused person has made one statement on oath at one time, and a directly contradictory one at another. The charge must not only allege which of such statements is false, but the prosecutor must be prepared with confirmatory evidence independent of the other contradictory statement to establish the falsity of that which is impeached as untrue. *R.* v. *Jackson* (Lewis C. C. 6, 270), *Reg.* v. *Wheatland* (8 C. and P. 238), and *Rex* v. *Harris* (5 B and Ald 926) referred to. S. 455 of Act X. of 1872 (Criminal Procedure Code) is no authority for framing against a person accused of giving false evidence, who has made one statement on oath on one occasion, and a directly contradictory one on oath on another occasion, a charge in the "alternative," that word, as used in that section, meaning that, where the facts which can be proved make it doubtful what particular description of offence an accused person has committed, the charges may be so varied or alternated as to guard against his escaping conviction through technical difficulties. *Held*, therefore, where three persons were committed for trial jointly, charged with "having on or about the 26th September 1881, or the 18th October 1881, being legally bound upon oath to state the truth, knowingly on those days, regarding the same subject, made contradictory statements upon oath," and thereby committed an offence punishable under s. 193 of the Penal Code, and such persons were jointly tried on such charge, that such charge was bad for being single and joint against the three accused persons, instead of several and specific in regard to each of them; that it was further bad, because it did not distinctly and in terms allege which of the statements was false; that, assuming a committal upon so faulty a charge should be allowed to stand, the Court of Session should have prepared a fresh charge against each of the accused persons, specifically setting forth the statement alleged to be false, and should then have proceeded to try each of them separately; and that, there being no evidence that either of the statements made by two of such persons was false, except that it was contradicted by the other, the charge against such persons was not sustainable, there being no sufficient evidence that either of the state-

ments was false.—EMPRESS v. NIAZ ALI, I. L. R., 5 All. 17. [Stuart, C.J., and Straight, J. July 24, 1882.]

A MAN died leaving some money due to him in the hands of the telegraph authorities. P. wrote a letter to those authorities claiming the money as the sole heir of the deceased. This letter was sent to the District Judge for verification and orders. P supported his claim before the Judge by the evidence on oath of C. C's evidence being, in the opinion of the District Judge, false, the District Judge, in his capacity as Sessions Judge, tried him for giving false evidence, and convicted him of that offence. *Held* that, as the reference to the District Judge by the telegraph authorities of P's letter for verification, and the subsequent action in regard thereto, did not constitute a "judicial proceeding," and as the District Judge had not any authority to administer an oath to C, the conviction was illegal. *Held* also that the District Judge had no jurisdiction, under s. 477 of the Criminal Procedure Code, to try C.—EMPRESS *v.* CHIAT RAM, I. L. R., 6 All. 103. [Straight, J. Oct. 27, 1883.]

AT a trial on a charge of murder, one of the witnesses for the prosecution was a girl about ten years old. The Sessions Judge allowed her to be examined without administering any oath or affirmation, as it was found that she did not understand the nature of either. The prisoner's counsel objected to the admissibility of her statements, but the objection was overruled, and the prisoner was convicted of murder, and sentenced to death. *Held* per Jardine, J., that the girl's evidence was admissible. The "omission" referred to in s. 13 of the Indian Oaths Act (X. of 1873) includes any kind of omission, and is not restricted to accidental or negligent omissions. *Queen* v. *Sewa Bhogta* (14 B. L. R. 294; s.c., 23 W. R., Cr., 12) approved, and *Queen-Empress* v. *Maru* (I. L. R., 10 All. 207) dissented from.—QUEEN-EMPRESS *v.* SHAVA, I. L. R., 16 Bom. 359. [Jardine and Parsons, JJ. Dec. 21, 1891.]

A CHILD, aged about six years, was called as a witness in a Sessions Court. The Judge satisfied himself of his intellectual capacity to give evidence, but intentionally omitted to administer an affirmation on the ground that he was of too tender years to render any attempt to bind his conscience expedient or practically operative. The Judge did not examine the child for the purpose of eliciting whether he knew it was wrong not to tell the truth, or whether he knew the difference between right and wrong, but he told him to tell the truth, and permitted him to be examined as a witness. *Held* that the child should have been affirmed. *Quære.*—Whether the omission to affirm the child having been intentional on the part of the Judge, the case came within the provisions of the Oaths Act, s. 13?—QUEEN-EMPRESS *v.* VIRAPERUMAL, I. L. R., 16 Mad. 105. [Collins, C.J., and Parker, J. Oct. 17, Nov 18, and Dec. 5, 1892.]

A MAGISTRATE, acting under the Criminal Procedure Code, s. 164, has power to administer an oath, and a charge of perjury can be framed with regard to statements made before him on oath when he is so acting.—QUEEN-EMPRESS *v.* ALAGU KONE, I. L. R., 16 Mad. 421. [Collins, C.J., and Parker, J. Sep. 21, Oct. 5, 1892.]

S. 6 of the Oaths Act (X. of 1873) imperatively requires that no person shall testify as a witness except on oath or affirmation, and, notwithstanding s. 13 of the same Act, the evidence of a child of eight or nine years of age is inadmissible if it has been advisedly recorded without any oath or affirmation. *The Queen* v. *Sewa Bhogta* (14 B. L. R. 294) dissented from. The nature of judicial oaths and affirmations and the history of Indian legislation on the subject discussed. — QUEEN-EMPRESS *v.* MARU, I. L. R., 10 All. 207. [Mahmood, J. Jan. 16, 1888.]

THE competency of a person to testify as a witness is a condition precedent to the administration to him of an oath or affirmation, and is a question distinct from that of his credibility when he has been sworn or affirmed. In determining the question of competency, the Court, under s. 118 of the Evidence Act, has not to enter into inquiries as to the witness's religious belief, or as to his knowledge of the consequences of falsehood in this world or the next. It has to ascertain, in the best way it can, whether, from the extent of his intellectual capacity and understanding, he is able to give a rational account of what he has seen or heard or done on a particular occasion. If a person of tender years or of very advanced age can satisfy these requirements, his competency as a witness is established. Having regard to the language of the Oaths Act (X. of 1873), a Court has no option, when once it has elected to take the statements of a person as evidence, but to administer to such person either an oath or affirmation as the case may require. *Queen-Empress* v. *Maru* (I. L. R., 10 All. 207) referred to. In a trial for murder before the Court of Session, one of the witnesses was a boy of twelve years of age, and in answer to questions put by the Sessions Judge, he said that he worshipped Debi, and understood the difference between truth and false-

hood, that he did not know what would be the consequences here or hereafter of telling lies, but that he would tell the truth. The Sessions Judge proceeded to record the boy's statement, but without administering to him any oath or affirmation. *Held* that there was nothing in the law to sanction this procedure on the part of the Judge. The High Court required the attendance of the boy and of the accused, and, having satisfied itself of the competency of the former to depose as a witness, examined him as to his account of what had occurred.—QUEEN-EMPRESS *v.* LALA SAHAI, I. L. R., 11 All. 183. [Straight and Tyrrell, JJ. Oct 24, 1888.]

THE provisions of ss. 8-11 of the Oaths Act (X. of 1873) do not apply to criminal proceedings. The expression "party to a judicial proceeding" in s. 8 of the Act does not include either the complainant or the accused in a criminal case. In the course of a trial on a charge of assault, the complainant's pleader agreed to be bound by the evidence on oath of a material witness, provided he swore on the *Gita* (a sacred book of the Hindus). The witness took the required oath, and stated that there was no assault, but merely a taking hold of the hand. The Magistrate did not believe this witness, and proceeded with the trial. He convicted the accused on the other evidence in the case, and sentenced him to a fine of Rs. 25. *Held* that the Magistrate was not bound to decide the case on the evidence of the witness who swore the special oath.—QUEEN-EMPRESS *v.* MURARJI GOKULDAS, I. L. R., 13 Bom. 389. [Scott and Parsons, JJ. Dec. 20, 1888.]

# ACT NO. I. OF 1878.*

## THE OPIUM ACT, 1878.

RECEIVED THE G.-G.'S ASSENT ON THE 9TH JANUARY 1878.

*An Act to amend the Law relating to Opium.*

Preamble. WHEREAS it is expedient to amend the law relating to opium; It is hereby enacted as follows:—

Short title. **1.** This Act may be called "The Opium Act, 1878."

Local extent. It shall extend to such local areas† as the Governor-General in Council may, by notification in the *Gazette of India*, from time to time direct;

Commencement. And it shall come into force in each of such areas on such day as the Governor-General in Council in like manner directs in this behalf.

**2.** [*Repeal of certain Acts: Amendment of certain other Acts.*] *Repealed by the Repealing and Amending Act (XII. of 1891) and by the Repealing and Amending Act (IV. of 1894).*

Interpretation-clause. **3.** In this Act, unless there be something repugnant in the subject or context,—

"Opium." "Opium" includes also poppy-heads, preparations or admixtures of opium, and intoxicating drugs prepared from the poppy.

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* For the Statement of Objects and Reasons, see Gazette of India, 1877, Pt. V., p. 645; for Proceedings in Council, see *ibid*, Supplement, pp. 3015 and 3030: *ibid*, 1878, pp. 53 and 80.

Act I. of 1878 has been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III. of 1872), s. 3, as amended by the Santhál Parganas Laws Regulation (III. of 1886); in British Baluchistan by the Baluchistan Laws Regulation (I. of 1890), s. 3; and in Angul and the Khondmals by the Angul District Regulation (I. of 1894), s. 3.

† Act I. of 1878 has been extended, by notification in the Gazette of India under this section, to the following local areas from the date specified against each:—

(1) the N.-W. Provinces and Oudh, from 2nd February 1878 (see Gazette of India, 1878, Pt. I., p. 68);
(2) the Bombay Presidency, from 1st April 1878 (see *ib.*, p. 231);
(3) Bengal, from 21st August 1878 (see *ib.*, p. 526);
(4) Lower Burma, from 29th March 1879 (see *ib.*, 1879, Pt. I., p. 75);
(5) Assam, from 1st April 1879 (see *ib*, p. 259);
(6) the Central Provinces, from 28th June 1879 (see *ib.*, p. 441);
(7) Ajmere-Merwára, from 2nd August 1879 (see *ib.*, p. 466);
(8) the Punjab, from 1st April 1880 (see *ib.*, 1880, Pt. I., p. 16);
(9) the Madras Presidency, from 1st July 1880 (see *ib.*, p. 513);
(10) Coorg, from 1st April 1882 (see *ib*, 1882, Pt. I., p. 135); and
(11) Upper Burma (except the Shan States), from 15th September 1888 (see *ib.*, 1888, Pt. I., p. 421; Notifications Nos. 75 and 5052, dated 15th September 1888).

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"Magistrate."* means, in the presidency-towns, a Presidency Magistrate, and elsewhere a Magistrate of the first class, or (when specially empowered by the Local Government to try cases under this Act) a Magistrate of the second class:

"Import." "Import" means to bring into the territories administered by any Local Government from sea, or from foreign territory, or from a territory administered by any other Local Government.

"Export." "Export" means to take out of the territories administered by any Local Government to sea, or to any foreign territory, or to any territory administered by another Local Government.

"Transport." "Transport" means to remove from one place to another within the territories administered by the same Local Government.

Prohibition of poppy cultivation and possession, &c., of opium.

**4.** Except as permitted by this Act, or by any other enactment relating to opium for the time being in force, or by rules framed under this Act or under any such enactment, no one shall—

(*a*) cultivate the poppy;

(*b*) manufacture opium;

(*c*) possess opium;

(*d*) transport opium;

(*e*) import or export opium; or

(*f*) sell opium.

Power to make rules to permit such matters.

**5.** The Local Government, with the previous sanction of the Governor-General in Council, may, from time to time, by notification in the local Gazette, make rules,† consistent with this Act, to permit, absolutely or subject to the payment of duty or to any other conditions, and to regulate within the whole or any specified part of the territories administered by such Government, all or any of the following matters:—

(*a*) the cultivation of the poppy;

(*b*) the manufacture of opium;

(*c*) the possession of opium;

(*d*) the transport of opium;

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* *Cf.* definition in the last clause of s. 3 of the new Code of Criminal Procedure (Act V. of 1898).

† For rules made under this section for—

(1) Ajmere-Merwara, see Gazette of India, 1898, Pt. II., p. 563;
(2) Assam, see Notification No 3-R., dated 23rd January 1879, Assam Excise Manual;
(3) British Baluchistan, see Gazette of India, 1898, Pt. II., p. 124;
(4) Bengal, see Calcutta Gazette, 1898, Pt. I., p. 195;
(5) Bombay, see Bombay List of Local Rules and Orders, pp. li to liii, Vol. I., Ed. 1896, and Bombay Government Gazette, 1897, Pt. I., p. 1084;
(6) Burma, see Burma Excise Manual, Ed. 1895;
(7) The Central Provinces, see Central Provinces Gazette, 1898, Pt. III., p. 86;
(8) Coorg, see Coorg District Gazette, Extraordinary, dated 15th February 1898, p. 2;
(9) Madras, see Madras List of Local Rules and Orders, Vol. I., Ed. 1898, p. 180;
(10) The North-Western Provinces and Oudh, see North-Western Provinces and Oudh Gazette, 1898, Pt. I., p 562.

(*e*) the importation or exportation of opium; and

(*f*) the sale of opium, and the farm of duties leviable on the sale of opium by retail:

Provided that no duty shall be levied under any such rule on any opium imported, and on which a duty is imposed by or under the law relating to sea-customs* for the time being in force, or under section 6.

Duty on opium imported by land.

**6.** The Governor-General in Council may, from time to time, by notification in the *Gazette of India*,† impose such duty as he thinks fit on opium or on any kind of opium imported by land into British India or into any specified part thereof, and may alter or abolish any duty so imposed.

Warehousing opium.

**7.** The Governor-General in Council may, by order notified in the *Gazette of India*,—

(*a*) authorize any Local Government to establish warehouses‡ for opium legally imported into, or intended to be exported from, the territories administered by such Local Government, and

(*b*) cancel any such order.

So long as such order remains in force, the Local Government may, by notification published in the official Gazette,—

(*c*) declare any place to be a warehouse for all or any opium legally imported, whether before or after the payment of any duty leviable thereon, into the territories administered by such Government, or into any specified part thereof, or intended to be exported thence, and

(*d*) cancel any such declaration.

An order under clause (*b*) shall cancel all previous declarations under clause (*c*) of this section relating to places in the territories to which such order refers.

So long as such declaration remains in force, the owner of all such opium shall be bound to deposit it in such warehouse.

Power to make rules relating to warehouses.

**8.** The Local Government, with the previous sanction of the Governor-General in Council, may, from time to time, by notification in the local Gazette, make rules, consistent with this Act, to regulate the safe custody of opium warehoused under section 7; the levy of fees for such warehousing; the removal of such opium for sale or exportation; and the manner in which it shall be disposed of, if any duty or fees leviable on it be not paid within twelve months from the date of warehousing the same.

Penalty for illegal cultivation of poppy, &c.

**9.** Any person who, in contravention of this Act, or of rules made and notified under section 5 or section 8,—

(*a*) cultivates the poppy, or

(*b*) manufactures opium, or

(*c*) possesses opium, or

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* See the Sea Customs Act (VIII. of 1878), Ch. VIII.

† For notifications issued under s. 6, see Gazette of India, Pt. I., 1894, p. 657; 1895, p. 834; and 1896, pp. 146 and 570.

‡ For notification authorizing the Government of Bombay to establish a warehouse under this section, see List of Bombay Local Rules and Orders, Vol. I., Ed. 1896, p. lvi.

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(*d*) transports opium, or

(*e*) imports or exports opium, or

(*f*) sells opium, or

(*g*) omits to warehouse opium, or removes or does any act in respect of warehoused opium,

and any person who otherwise contravenes any such rule,

shall, on conviction before a Magistrate, be punished, for each such offence, with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both;

and, where a fine is imposed, the convicting Magistrate shall direct the offender to be imprisoned in default of payment of the fine for a term which may extend to six months, and such imprisonment shall be in excess of any other imprisonment to which he may have been sentenced.

Presumption in prosecution under section 9.

**10.** In prosecutions under section 9, it shall be presumed, until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act.

Confiscation of opium.

**11.** In any case in which an offence under section 9 has been committed—

(*a*) the poppy so cultivated;

(*b*) the opium in respect of which any offence under the same section has been committed;

(*c*) where, in the case of an offence under clause (*d*) or (*e*) of the same section, the offender is transporting, importing, or exporting, any opium exceeding the quantity (if any) which he is permitted to transport, import, or export, as the case may be, the whole of the opium which he is transporting, importing, or exporting;

(*d*) where, in the case of an offence under clause (*f*) of the same section, the offender has in his possession any opium other than the opium in respect of which the offence has been committed, the whole of such other opium,

shall be liable to confiscation.

The vessels, packages, and coverings in which any opium liable to confiscation under this section is found, and the other contents (if any) of the vessel or package in which such opium may be concealed, and the animals and conveyances used in carrying it, shall likewise be liable to confiscation.

Order of confiscation by whom to be made.

**12.** When the offender is convicted, or when the person charged with an offence in respect of any opium is acquitted, but the Magistrate decides that the opium is liable to confiscation, such confiscation may be ordered by the Magistrate.

Whenever confiscation is authorized by this Act, the officer ordering it may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation, such fine as the officer thinks fit.

When an offence against this Act has been committed, but the offender is not known or cannot be found, or when opium not in the possession of any person cannot be satisfactorily accounted for, the case shall be enquired into and determined by the Collector of the District or Deputy Commissioner, or by any other officer authorized by the Local Government in this behalf, either personally or in right of his office, who may order such confiscation: Provided that no such

order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated, or without hearing the persons (if any) claiming any right thereto, and the evidence (if any) which they produce in support of their claims.

Power to make rules regarding—

**18.** The Local Government may, with the previous sanction of the Governor-General in Council, from time to time, by notification in the local Gazette, make rules,* consistent with this Act, to regulate—

disposal of things confiscated.

(*a*) the disposal of all things confiscated under this Act; and

and rewards.

(*b*) the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act.

Power to enter, arrest, and seize, on information that opium is unlawfully kept in any enclosed place.

**14.** Any officer of any of the departments of Excise, Police, Customs, Salt, Opium, or Revenue, superior in rank to a peon or constable, who may, in right of his office, be authorized by the Local Government in this behalf, and who has reason to believe, from personal knowledge or from information given by any person and taken down in writing, that opium liable to confiscation under this Act is manufactured, kept, or concealed in any building, vessel, or enclosed place, may, between sunrise and sunset,—

(*a*) enter into any such building, vessel, or place;

(*b*) in case of resistance, break open any door, and remove any other obstacle to such entry;

(*c*) seize such opium, and all materials used in the manufacture thereof, and any other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium; and

(*d*) detain and search, and, if he think proper, arrest any person whom he has reason to believe to be guilty of any offence relating to such opium under this or any other law for the time being in force.

Power to seize opium in open places.

**15.** Any officer of any of the said departments may—

(*a*) seize, in any open place or in transit, any opium or other thing, which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium,

(*b*) detain and search any person whom he has reason to believe to be guilty of any offence against this or any other such law, and if such person has opium in his possession arrest him and any other persons in his company.

Power to detain, search, and arrest.

Searches how made.

**16.** All searches under section 14 or section 15 shall be made in accordance with the provisions of the Code of Criminal Procedure.†

Officers to assist each other.

**17.** The officers of the several departments mentioned in section 14 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

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* See List of Rules noted under s 5, *supra*, p. 280, which were made also under the powers conferred by this section.

† See now the Code of Criminal Procedure (Act V. of 1898).

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Vexatious entries, searches, seizures, and arrests.

**18.** Any officer of any of the said departments, who, without reasonable ground of suspicion, enters or searches, or causes to be entered or searched, any building, vessel, or place,

or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any opium or other thing liable to confiscation under this Act,

or vexatiously and unnecessarily detains, searches, or arrests any person,

shall, for every such offence, be punished with fine not exceeding five hundred rupees.

Issue of warrants.

**19.** The Collector of the District, Deputy Commissioner, or other officer authorized by the Local Government in this behalf, either personally or in right of his office, or a Magistrate, may issue his warrant for the arrest of any person whom he has reason to believe to have committed an offence relating to opium, or for the search, whether by day or night, of any building or vessel or place in which he has reason to believe opium liable to confiscation to be kept or concealed.

All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure.*

Disposal of person arrested or thing seized.

**20.** Every person arrested, and thing seized, under section 14 or section 15, shall be forwarded without delay to the officer in charge of the nearest police-station; and every person arrested and thing seized under section 19 shall be forwarded without delay to the officer by whom the warrant was issued.

Every officer to whom any person or thing is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or thing.

Report of arrests and seizures.

**21.** Whenever any officer makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

Procedure in case of illegal poppy-cultivation.

**22.** In the case of alleged illegal cultivation of the poppy, the crop shall not be removed, but shall, pending the disposal of the case, be attached by an officer superior in rank to a peon or constable, who may, in right of his office, be authorized by the Local Government in this behalf; and such officer shall require the cultivator to give bail in a reasonable amount (to be fixed by such officer) for his appearance before the Magistrate by whom the case is to be disposed of, and such cultivator shall not be arrested unless within a reasonable time he fails to give such bail:

Provided that, wherever Act No. XIII. of 1857 *(An Act to consolidate and amend the law relating to the cultivation of the Poppy and the manufacture of Opium in the Presidency of Fort William in Bengal)*, or any part thereof, is in force, nothing in this section shall apply to such cultivation.

Recovery of arrears of fees, duties, &c.

**23.** Any arrear of any fee or duty imposed under this Act, or any rule made hereunder,

and any arrear due from any farmer of opium-revenue,

* See now the Code of Criminal Procedure (Act V. of 1898).

may be recovered from the person primarily liable to pay the same to the Government, or from his surety (if any) as if it were an arrear of land-revenue.

**Farmer may apply to Collector or other officer to recover amount due to him by licensee.**

**24.** When any amount is due to a farmer of opium-revenue from his licensee in respect of a license, such farmer may make an application to the Collector of the district, Deputy Commissioner, or other officer authorized by the Local Government in this behalf, praying such officer to recover such amount on behalf of the applicant; and, on receiving such application, such Collector, Deputy Commissioner, or other officer, may, in his discretion, recover such amount as if it were an arrear of land-revenue,* and shall pay any amount so recovered to the applicant:

Provided that the execution of any process issued by such Collector, Deputy Commissioner,† or other officer for the recovery of such amount, shall be stayed if the licensee institutes a suit in the Civil Court to try the demand of the farmer, and furnishes security to the satisfaction of such officer for the payment of the amount which such Court may adjudge to be due from him to such farmer:

Provided also that nothing contained in this section, or done thereunder, shall affect the right of any farmer of opium-revenue to recover by suit in the Civil Court or otherwise any amount due to him from such licensee.

**Recovery of penalties due under bond.**

**25.** When any person, in compliance with any rule made hereunder, gives a bond for the performance of any duty or act, such duty or act shall be deemed to be a public duty, or an act in which the public are interested, as the case may be, within the meaning of the Indian Contract Act, 1872, section 74; and upon breach of the condition of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land-revenue.*

## SCHEDULE.

ENACTMENT REPEALED.

*[Repealed by the Repealing and Amending Act (XII. of 1891).]*

RULINGS UNDER THE OPIUM ACT.

WHERE more than one person is convicted, under s. 4 of Reg. XXI. of 1827, of keeping smuggled opium, each of the convicts is liable to the whole penalty therein imposed, *viz.*, the forfeiture of double the value of the opium, and double the amount of the duty leviable thereon. The decision of the late Sadr Faujdari Adalat reported in Vol. III. of Morris's S F.A. Reports, p 673, overruled.—REG. *v* VAKHATCHAND, 1 Bom. H. C. R. 50. [Newton, Westropp, and Erskine, JJ. Sep. 30, 1863.]

A CONVICTION and sentence by a Magistrate, F. P., under Reg XXI of 1827, s. 10, cl. 4, annulled for want of jurisdiction; the "Zila" (*i.e.*, District) Magistrate only being empowered by the Regulation to enforce the penalty.—REG. *v* GANIA BIN BABPU, 3 Bom. H. C. R. 50. [Couch, C.J., and Warden, J. Nov. 1, 1866.]

A CONVICTION and sentence by a Full-power Magistrate for breach of the rules for the retail sale of opium, under Reg. XXI.

* See the Revenue Recovery Act (I. of 1890).

† The words "Deputy Commissioner" have been substituted for the words "Deputy Collector" by the Repealing and Amending Act (XII. of 1891), Sch. II.

of 1827, s. 10, annulled for want of jurisdiction, as "the Zila Magistrate" alone was empowered to enforce the penalty.—REG. *v.* SADU VALAD PAVADI, 3 Bom. H. C. R. 39. [Couch, C.J., and Newton and Warden, JJ. Dec. 5, 1866.]

UNDER s. 43, Act XXI. of 1856, only persons holding licenses, and not their servants, are subject to the penalty specified in the section.—QUEEN *v.* RAM KISHEN, 8 W. R. 4. [Jackson and Hobhouse, JJ. June 3, 1867.]

WHERE several persons knowingly harbour, keep, or conceal a parcel of smuggled opium, one penalty of double the value of such opium, and of double the amount of duty leviable upon it only, is recoverable under Reg. XXI. of 1827, s. 4. *Reg.* v. *Vakhatchand* (1 Bom. H. C. R. 50) overruled. *Reg.* v. *Rajgur Veneegur* (3 Morris's Faujdari Rep. 673) approved.—REG. *v.* SHOWDAR GHENAR, 7 Bom H. C. R. 39. [Couch, C.J., and Warden, Westropp, Gibbs, and Melvill, JJ. June 13, 1870.]

THE offence of possessing above a quarter of a Surat *ser* of opium not shown to have been legally obtained is exclusively cognizable by District Magistrates. *Reg.* v. *Narayan valad Natha and others* (Criminal Reference No. 209 of 1869) overruled.—REG. *v.* HIRA JIVA, 7 Bom. H. C. R. 59. [Gibbs and Melvill, JJ. July 14, 1870.]

THE offence of unlawfully being in possession of smuggled opium is an offence exclusively cognizable by a Magistrate of a district or of a division of a district as representing the Zila Magistrate referred to in Reg. XXI. of 1827, s. 7. No other Magistrate or Court has now jurisdiction to hold a preliminary inquiry into, or to try a person accused of, such an offence. *Reg.* v. *Hira Jiva* (7 Bom. H. C. R., Cr. Ca., 59) approved, and the Court's reply, No. 1231 of the 19th August 1867, to the Khandesh Sessions Judge's reference No. 702 of 1867, dissented from.—REG. *v.* LAKHU VALAD SAKRU, 8 Bom. H. C. R. 118. [Gibbs and West, JJ. Aug. 29, 1871.]

THE distribution of a penalty adjudged by a Magistrate under s. 26, Act XIII. of 1857, is no part of his judgment, and therefore not a matter over which the High Court could exercise control under s. 404 of the Code of Criminal Procedure. *Quære.*—Whether a person who does not come forward in person as an informer, and take the responsibilities together with the profits of his information, is entitled to any part of the penalties recovered.—QUEEN *v.* RAMDYAL SINGH, 16 W. R. 55; 8 B. L. R. Ap. 7. [Ainslie and Paul, JJ. Oct. 9, 1871.]

ACCORDING to s. 38, Act XXI. of 1856, no conviction can be had under s. 58 against a person whose license has not been recalled.—REFERENCE IN THE CASE OF RAMDASS, 16 W. R. 59. [Jackson and Glover, JJ. Nov. 23, 1871.]

ALTHOUGH the effect of s. 21 of the Code of Criminal Procedure is to give exclusive original jurisdiction to the Magistrate of the district in the trial of cases under s. 7 of Reg. XXI. of 1827 for abetting the smuggling of opium, that section (21) does not exclude the appellate jurisdiction vested in the Court of Session by s. 409 of the Code.—REG. *v.* SADU DADABHAI, 9 Bom. H. C. R. 166. [Gibbs and Melvill, JJ. Feb. 29, 1872.]

THE District Magistrate (whose Court is the proper tribunal for the trial of an offence relating to the smuggling of opium) has, under s. 21 of the Code of Criminal Procedure, power to inflict any fine provided by Reg. XXI. of 1827 for such offence, even though the fine may exceed Rs. 1,000. The arrest of a person accused of the above offence without a warrant is generally illegal, except under the circumstances specified in s. 108 of the Code of Criminal Procedure.—REG. *v.* NARAYAN GANGARAM, 9 Bom. H. C. R 343. [Lloyd and Kemball, JJ. July 11, 1872.]

WHERE a person sells liquor in contravention of, and under colour of a license which stands, not in his own name, but in that of the person for whom he is the recognized agent, he cannot be allowed to evade the provisions of s. 43 of Act XXI. of 1856 by setting up that it is not a license to himself.—ISHUR CHUNDER SHAHA, PETITIONER, 19 W. R. 34. [Couch, C.J., and Glover, J. Feb. 18, 1873.]

WHERE opium was found in the possession of a person who was a servant of the accused, and who alleged that he obtained it from the wife of the accused, and that the wife had purchased it from an opium-cultivator, it was held that the accused could not be convicted under s. 53 of Act XXI. of 1856, as it had not been shown that the purchase by his wife was authorized by the accused, and therefore her possession of the opium or that of the servant could not be considered the possession of the accused.—QUEEN *v.* GUNESH MANA, 20 W. R. 54. [Couch, C.J., and Glover, J. July 26, 1873.]

ACT XXI. of 1856 (the Opium Act) has not been repealed, so far as it relates to the Lower Provinces of Bengal, by Act X. of 1871.—QUEEN *v.* KHETTER NATH SHAHA, 22 W. R. 31. [Jackson and McDonell, JJ. June 23, 1874.]

RULINGS UNDER THE OPIUM ACT—*contd.* 1878. Act 1.

ON a conviction, under Act XXI. of 1856, of having in possession opium not supplied from the Government stores, the Magistrate tried the case summarily under s. 222, Code of Criminal Procedure, and passed a sentence of fine, or imprisonment, and confiscation of the opium. *Held* that the case could not be tried summarily, the additional sentence of confiscation not coming under s. 148, Code of Criminal Procedure.—QUEEN v. JODOONATH SHAHA, 23 W. R. 33. [Glover and Mitter, JJ. Feb. 6, 1875.]

WHERE a sale of an excess quantity of ganja took place, and the man effecting the sale pleaded that he was only a servant, while the owner contended that he did not conduct the shop, and gave no authority to his servant to sell ganja in excess of his license, *held* that the owner of the shop was responsible for the offence committed, and liable to the fine which had been imposed on him. —QUEEN v. SRISTIDHUR SHAHA, 25 W. R. 42. [Kemp and Glover, JJ. May 3, 1876.]

CONTRARY to the conditions of his master's opium-license, the servant sold a preparation of opium between sunset and sunrise. The master was not present, and there was no evidence to show that he had directly or otherwise authorized the illegal sale. *Held* that the master was not liable to a penalty under s. 9 of Act I. of 1878.—IN THE MATTER OF BHOOBUN CHUNDER SHAW, 11 C. L. R. 464 [Maclean and O'Kinealy, JJ. Nov. 24, 1882.]

A, WHO held a certificate under Act VII. of 1878 (the Excise Act) from the Deputy Commissioner of Police that he was entitled to a license from the Collector to sell muddut upon the conditions set forth therein, obtained such a license from the Collector under Act I. of 1878 (the Opium Act) upon the conditions mentioned. No license was granted by the Deputy Commissioner of Police, it not being usual for licenses to be granted by the Police, where a license had been issued by the Collector upon a certificate from the Deputy Commissioner. A was charged, under s. 40 of Act IV. of 1866 as amended by Act II. (B.C.) of 1876 with a breach of the conditions, not of the license, but of the certificate, the act complained of having been committed by A's servant. *Held* that the sale of muddut is regulated by Act I. of 1878, and therefore no license from the Commissioner of Police for the sale of muddut was requisite under ss. 36 and 37 of Act IV. of 1866. *Held*, further, that s. 39 of Act IV. of 1866 applied to the case, and that, under that section, a license from the Deputy Commissioner of Police was necessary for the sale of muddut, and accordingly that A, although he had obtained a certificate from the Deputy Commissioner of Police, entitling him to a license under Act I. of 1878, was liable to punishment by reason of his not having, under s. 39 of Act IV. of 1866, also obtained a certificate from the Deputy Commissioner. See *In re Bhoobun Chunder Shaw* (11 C. L. R. 464).—IN THE MATTER OF R. DAVIS v. KOYLAS CHUNDER GHOSE, 13 C. L. R. 336. [Prinsep and O'Kinealy, JJ. Sep. 7, 1883.]

ONE having a license for the possession of opium as a medical practitioner limited to eight pollums (one seer) of opium, sent his servant to buy from a licensed dealer at Sholavaram, and bring to Madras, four pollums (half seer) of opium. He was convicted of the offence of transporting opium without a license *Held* the conviction was right.—QUEEN-EMPRESS v RAMANUJAM, I. L. R., 13 Mad. 191. [Collins, C.J., and Handley, J. Dec. 13, 1889.]

A MAGISTRATE in charge of the excise and opium administration of a district is not "personally interested" in the observance of the provisions of Act I. of 1878. He is, therefore, not precluded from exercising jurisdiction in respect of offences against the above-mentioned Act.—IN THE MATTER OF THE PETITION OF GANESHI, I. L. R., 15 All. 192. [Edge, C.J., and Tyrrell, Knox, Blair, Burkitt, and Aikman, JJ. Mar. 10, 1893.]

HELD that, inasmuch as a conviction of an offence punishable under Act I. of 1878 must be by a Magistrate, a Magistrate taking cognizance of such an offence has no power to commit to the Court of Session. *Indrobeer Thaba* (1 W. R. Cr. R. 5) and *Reg.* v. *Donoghue* (5 Mad. H. C. R. 277) referred to.—QUEEN-EMPRESS v. SCHADE, I. L. R., 19 All. 465. [Edge, C.J., and Blair, J. May 7, 1897.]

A PERSON who, under a license granted to him, may sell opium by retail in accordance with the conditions specified in his license, does not, by keeping an incorrect or false account, regarding the sale of opium, of a shop of which he is a licensed vendor of opium, make himself liable for any breach of any of those conditions to a penalty under s. 9 of the Opium Act, unless there is any specific rule, which is not shewn to exist in this case, declaring that any such breach would render him liable; but his license may be cancelled.—UMESH CHANDRA GHOSH v. QUEEN-EMPRESS, 3 C. W. N. 365. [Prinsep and Stanley, JJ. Mar. 8, 1899.]

S. 5 of the Opium Act (I. of 1878) declares that the Local Government, with the previous sanction of the Governor-General in Council, may make rules consistent with the Act regulating the sale of opium. Under this section, rules were issued by the Govern-

1878. RULINGS UNDER THE OPIUM ACT—*concld.*

Act 1.

ment of Bengal with the previous sanction of the Governor-General in Council on the 21st February 1898, rule 15 (1) of which declares that a person to whom a license has been granted may sell opium by retail in accordance with the conditions specified in the license. The conditions of the license for retail sale of opium are contained in Form No. 1 made under rule 15. Under article 13 of this form, the holder of the license is to keep a daily correct account showing the quantity of opium received and sold, and other details. Article 18 sets out that on infringement of any of the conditions contained in the form or imposed by the Opium Act the license may be cancelled. The petitioner, a licensed vendor of opium, was convicted of having kept incorrect accounts in contravention of the rules made under s. 5 of the Opium Act, and having thereby committed an offence punishable under s. 9 of that Act. He was sentenced to pay a fine of Rs. 200, and in default of payment to undergo rigorous imprisonment for four months. *Held* that the conviction and sentence must be set aside, there being nothing in any of the rules made under s. 5 of the Act which would make the preparation of an incorrect account punishable under s. 9.—UMESH CHUNDER GHOSE *v.* QUEEN-EMPRESS, I. L. R., 26 Cal. 571. [Prinsep and Stanley, JJ. March 8, 1899.]

# ACT NO. XXIV. OF 1855.

## THE PENAL SERVITUDE ACT, 1855.*

RECEIVED THE G.-G.'S ASSENT ON THE 13TH AUGUST 1855.

*An Act to substitute Penal Servitude for the Punishment of Transportation in respect of European and American Convicts. . . . .†*

Preamble.

WHEREAS, by reason of the difficulty of providing a place to which Europeans or Americans can, with safety to their health, be sent for the purpose of undergoing sentences of transportation or of imprisonment for long terms, it has become expedient to substitute other punishment for that of transportation . . . . .;‡ It is enacted as follows:—

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* This is the short title which is given to this Act by the Indian Short Titles Act (XIV. of 1897).

Act XXIV. of 1855 has been declared to be in force in the whole of British India, except as regards the Scheduled Districts, by the Laws Local Extent Act (XV. of 1874), s. 3.

It has been declared in force in—

(1) British Baluchistan, by the British Baluchistan Laws Regulation (I. of 1890), s. 3:

(2) The Santhal Parganas, by the Santhal Parganas Settlement Regulation (III. of 1872), s. 3, as amended by the Santhal Parganas Laws Regulation (III. of 1880):

(3) Upper Burma generally (except the Shan States), by the Upper Burma Laws Act (XX of 1886), s. 6.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely—

| | | |
|---|---|---|
| (1) Sindh ... ... ... | See Gazette of India, | 1880, Pt I., p. 672. |
| (2) Aden ... ... ... | Ditto | 1879, Pt. I., p 434. |
| (3) Western Jalpáiguri and the Western Dvárs ... ... | Ditto | 1881, Pt. I., p. 74. |
| (4) The Districts of Hazáribágh, Lohardaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhan in the District of Singbhum ... ... ... | Ditto | 1881, Pt. I., p. 504. |
| (5) The Scheduled Portion of the Mirzapur District ... ... | Ditto | 1879, Pt. I., p. 383. |
| (6) Jaunsar Báwar ... ... | Ditto | 1879, Pt. I., p 352. |
| (7) The Districts of Házara, Peshawar, Kohat, Bannu, Dera Ismail Khan, and Dera Gházi Khan. | Ditto | 1886, Pt. I., p. 48. |
| (8) The Scheduled Districts of the Central Provinces ... ... | Ditto | 1879, Pt. I., p. 771. |
| (9) The District of Sylhet ... | Ditto | 1879, Pt. I., p. 631. |
| (10) The rest of Assam (except the North Lushai Hills) ... | Ditto | 1897, Pt. I., p. 299. |
| (11) The Porahat Estate in the Singbhum District ... ... | Ditto | 1897, Pt. I., p. 1059. |

It has been declared, by notification under s. 3 (*b*) of the last-mentioned Act, not to be in force in the Scheduled District of Lahaul.—See Gazette of India, 1886, Pt. I., p. 301.

† Here the words, "and to amend the law relating to the removal of such convicts," have been repealed by the Repealing and Amending Act (XII. of 1891).

‡ Here the words, "and to amend the law relating to the removal of European and American convicts for the purpose of imprisonment," have been repealed by the Repealing and Amending Act (XII. of 1891).

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No European or American to be sentenced to transportation.

1. * No European or American shall be liable to be sentenced, or ordered, by any Court within the territories* under the Government of * India * to be transported.

Terms of penal servitude instead of the present terms of transportation.

2. Any person who, but for the passing of this Act, would, by any law now in force, or which may hereafter be in force in any part of the said territories, be liable to be sentenced or ordered, by any such Court, to be transported, shall, if a European or American, be liable to be sentenced or ordered to be kept in penal servitude for such term as hereinafter mentioned.

The terms of penal servitude to be awarded by any sentence or order, instead of the term of transportation to which any such offender would, but for the passing of this Act, be liable, shall be as follows (that is to say):—

Instead of transportation for seven years, or for a term not exceeding seven years, penal servitude for the term of four years.

Instead of any term of transportation exceeding seven years, and not exceeding ten years, penal servitude for any term not less than four and not exceeding six years.

Instead of any term of transportation exceeding ten years, and not exceeding fifteen years, penal servitude for any term not less than six and not exceeding eight years.

Instead of any term of transportation exceeding fifteen years, penal servitude for any term not less than six and not exceeding ten years.

Instead of transportation for the term of life, penal servitude for the term of life.

And in every case where, at the discretion of the Court, one of any two or more of the terms of transportation hereinbefore mentioned might have been awarded, the Court shall have the like discretion to award one of the two or more terms of penal servitude hereinbefore mentioned in relation to such terms of transportation.

Discretion of Courts as to alternative punishments.

3. Provided always that nothing herein contained shall interfere with or affect the authority or discretion of any Court in respect of any punishment which such Court may now award or pass on any offender other than transportation; but, where such other punishment may be awarded at the discretion of the Court instead of transportation or in addition thereto, the same may be awarded instead of, or (as the case may be) in addition to, the punishment substituted for transportation by this Act.

Effect of pardon granted upon condition of penal servitude.

4. If any offender sentenced by any Court within the said territories to the punishment of death shall have mercy extended to him, upon condition of his being kept in penal servitude for life or for any term of years, all the provisions of this Act shall be applicable to such offender in the same manner as if he had been lawfully sentenced under this Act to the term of penal servitude specified in the condition.

5 [*Power to substitute penal servitude for transportation*] *Repealed by the Prisoners Act (V. of 1871).*

* The first six formal words, the words "the East" and "Company," and the words "in the possession and," in s. 1, have been repealed respectively by the Repealing Act (XVI. of 1874) and by the Repealing Act XII of 1876).

**6.** [*Mode of dealing with person under sentence of penal servitude.*] *Repealed by the Prisoners Act (V. of 1871).*

**7.** [*Application of enactments respecting transportation and imprisonment with hard labour.*] *Repealed by the Prisoners Act (V. of 1871).*

**8.** [*Removal of convicts under sentence of imprisonment from one prison to another.*] *Repealed by the Presidency Jails Act (XII. of 1867).*

**9, 10, 11, 12.** [*Licenses to convicts under sentence of penal servitude to be at large.*] *Repealed by the Prisoners Act (V. of 1871).*

Act not to affect the provisions of certain English Statutes.

**13.** Nothing in this Act is intended to alter or affect the provisions of the 12 & 13 Victoria, chapter 43.* or any Act of Parliament passed in the United Kingdom of Great Britain and Ireland since the 28th of August 1833, or which may hereafter be passed.

Sentence when proof that a person is a European or an American.

**14.** Any sentence or order upon any person describing him as a European or American shall be deemed, for the purposes of this Act, to be conclusive of the fact that such person is a European or American within the meaning of this Act.

Interpretation-clause.

**15.** The word "European," as used in this Act, shall be understood to include any person usually designated a European British subject.† Words in the singular number or the masculine gender shall be understood to include several persons as well as one person, and females as well as males, unless there be something in the context repugnant to such construction.

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* "An Act for punishing mutiny and desertion of officers and soldiers in the service of the East India Company, and for regulating in such service the payment of regimental debts and the distribution of effects of officers and soldiers dying in the service."—Repealed by 23 and 21 Vic., c. 66 (Mutiny, East India).

† See definition of 'European British subject' in s. 4, cl. (i) of the Code of Criminal Procedure (Act V. of 1898).

# ACT NO. V. OF 1861.

## THE POLICE ACT, 1861.

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# ACT NO. V. OF 1861.

## THE POLICE ACT, 1861.*

RECEIVED THE G.-G.'S ASSENT ON THE 22ND MARCH 1861.

*An Act for the Regulation of Police.*

Preamble.

WHEREAS it is expedient to re-organize the police, and to make it a more efficient instrument for the prevention and detection of crime; It is enacted as follows:—

Interpretation-clause.

**1.**† The following words and expressions in this Act shall have the meaning assigned to them, unless there be something in the subject or context repugnant to such construction, that is to say:—

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* This short title has been given to Act V. of 1861 by the Indian Short Titles Act (XIV. of 1897).

Act IV. of 1861 has been applied to—

Upper Burma generally (except the Shan States) by the Upper Burma Laws Act (XX. of 1886), s. 6. As to its extension to Upper Burma as amended by subsequent enactments under s. 46, see notes to that section *infra*, p. 307. It has been extended to the Shan States except Khamti Long and Mong Mit, by the Shan States Laws and Criminal Justice Order, 1895 (see Burma Gazette, 1895 and 1896, Pt. I., pp. 262, 542, and 128, respectively). The enactments in force in Upper Burma, except those in Mandalay only, and therefore this Act, have been extended to the State of Mong Mit (Momeik), with its dependency Mong Lang (see Burma Gazette, 1896 Pt. I., p 252);

to the Santhal Parganas by the Santhal Parganas Settlement Regulation (III. of 1872), s. 3, as amended by the Santhal Parganas Laws Regulation (III. of 1886);

to the Arakan Hill District by the Arakan Hill District Laws Regulation (IX. of 1874), s. 3,

to British Baluchistan by the British Baluchistan Laws Regulation (I. of 1890), s. 3;

to Angul and the Khondmals by the Angul District Regulation (I. of 1894), s 3.

As to application of the Act to the Districts of Peshawar, Kohat, Hazara, Bannu, Dera Ismail Khan, and Dera Ghazi Khan see s. 49 of the Panjab Frontier Crimes Regulation (IV. of 1887).

The Act has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely, the Districts of Hazaribagh, Lohardaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum (see Gazette of India, 1881, Pt. I, p. 504); the Porahat Estate in the Singbhum District (see Gazette of India, 1897, Pt. I, p. 1059).

It has been extended, by notification under s. 5 of the same Act, to the Kumaon and Garhwal Districts (see Gazette of India, 1891, Pt. I., p. 185), and (with the exception of ss. 1, 3, 5, 6, 8, 11, 21, 28, 33, 41, 43, 46, and 47) to the Scheduled District of Coorg (see Gazette of India, 1898, Pt. I., pp 88 and 323).

It has been applied to the Baluchistan Agency Territories by the Baluchistan Agency Territories Laws Law, 1890.

As to special enactments in force in Madras, Bombay, and the Lower Provinces of Bengal, and extensions of the Act under the power conferred by s. 46, see notes to that section.

As to special enactments for Military, Frontier, or Rural Police in force in certain parts of British India, see note to s. 8

As to the relaxation of the provisions of the Police Act (V. of 1861), which restrict the employment of police officers to the presidency, province, or place of the police-establishment of which they are members, see the Police Act (III. of 1888), *infra*, p. 311.

Compare also s 3 (*z*) of the new Code of Criminal Procedure (Act V. of 1898).

† S 1 has been extended to Calcutta with modifications —See Ben. Act I. of 1898. The other sections so extended are 15, 15A, 16, 46 (*z*) They will be found, printed in small type, at the end of this Act.

The words "Magistrate of the district"* shall mean the chief officer charged with the executive administration of a district, and exercising the powers of a Magistrate, by whatever designation the chief officer charged with such executive administration is styled:

The word "Magistrate" shall include all persons within the general police-district exercising all or any of the powers of a Magistrate:

The word "police" shall include all persons who shall be enrolled under this Act:

The words "general police-district" shall embrace any presidency, province, or place, or any part of any presidency, province, or place, in which this Act shall be ordered to take effect:*

The words "District Superintendent"† and "District Superintendent of Police" shall include any Assistant District Superintendent or other person appointed by general or special order of the Local Government to perform all or any of the duties of a District Superintendent of Police under this Act in any district:

The word "property" shall include any moveable property, money, or valuable security:

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number:

Words importing the masculine gender shall include females:

The word "person" shall include a Company or Corporation:

The word "month" shall mean a calendar month:

The word "cattle" shall, besides horned cattle, include elephants, camels, horses, asses, mules, sheep, goats, and swine.‡

Constitution of the force.

**2.**§ The entire police establishment under a Local Government shall, for the purposes of this Act, be deemed to be one police-force‖ and shall be formally enrolled; and shall consist of such number of officers and men, and shall be constituted in such manner, and the members of such force shall receive such pay as shall, from time to time, be ordered by the Local Government, subject to the sanction of the Governor-General of India in Council.

Superintendence in the Local Government.

**3.** The superintendence of the police throughout a general police-district shall vest in, and, subject to the general control of the Governor-General of India in Council, shall be exercised by, the Local Government¶ to which such district is subordinate; and, ex-

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* Under s. 2 of the Police Act (III. of 1888), the Governor General in Council, notwithstanding this provision, may create a general police-district consisting of parts of two or more presidencies, provinces, or places.

† This definition of "District Superintendent" and "District Superintendent of Police" has been inserted by the Police Act (1861) Amendment Act (VIII of 1895), s. 1.

‡ Compare the definition of "cattle" in s. 3 of the Cattle Trespass Act (I. of 1871)

§ S. 2, so far as it relates to the provinces under the administration of the Lieutenant-Governor of Bengal has been repealed by the Bengal Police Act (VII. of 1869).

‖ The police-force employed in cantonments is part of the general police-force under the Local Government.—See the Cantonments Act (XIII. of 1889), s. 12

¶ Under s. 1 of the Chief Commissioner's Powers Act (XXXII. of 1867), the powers of a Local Government under the Police Act (V. of 1861) have been delegated to the Chief Commissioners of Oudh, the Central Provinces, and British (now Lower) Burma.—See Gazette of India, 1868, p. 358, and 1869, p. 18.

As to Assam, see Notification No. 313, dated 12th September 1894, set out at p. 3 of the Assam Manual of Local Rules and Orders, Ed 1893

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cept as authorized under the provisions of this Act, no person, officer, or Court, shall be empowered by the Local Government to appoint, supersede, or control any police functionary.

Inspector-General of Police, &c.

**4.** The administration of the police throughout a general police-district shall be vested in an officer to be styled the Inspector-General of Police, and in such Deputy Inspectors-General and Assistant Inspectors-General as to the Local Government shall seem fit.*

The administration of the police throughout the local jurisdiction of the Magistrate† of the district shall, under the general control and direction of such Magistrate, be vested in a District Superintendent and such Assistant District Superintendents as the Local Government shall consider necessary.

The Inspector-General and other officers above-mentioned shall, from time to time, be appointed by the Local Government, and may be removed by the same authority.

Powers of Inspector-General.
Exercise of powers.

**5.** The Inspector-General of Police shall have the full powers of a Magistrate throughout the general police-district, but shall exercise those powers subject to such limitation as may, from time to time, be imposed by the Local Government.

**6.** [*Magisterial powers of police-officers.*] *Repealed by the Code of Criminal Procedure (Act. X. of 1882).*

Appointment, dismissal, &c., of inferior officers.

**7.**‡ The appointment of all police-officers other than those mentioned in section 4 of this Act shall, under such rules§ as the Local Government shall, from time to time, sanction, rest with the Inspector-General, Deputy Inspectors-General, Assistant Inspectors-General, and District Superintendents of Police, who may, under such rules as aforesaid, at any time dismiss, suspend, or reduce any police-officer whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same;

"or may award any one or more of the following punishments to any police-officer who shall discharge his duty in a careless or negligent manner, or who, by any act of his own, shall render himself unfit for the discharge thereof, namely:—

"(*a*) fine to any amount not exceeding one month's pay;

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* In the town of Calcutta the administration of the police vests in the "Commissioner of Police" [see s. 4 of Bengal Act IV. of 1866 (Calcutta Police)], and, in the suburbs, the Inspector General of Police for Bengal is precluded from exercising any of the powers and authorities vested in him by this Act.—See s. 9 of Bengal Act IV. of 1884 (Howrah and Suburban Municipal Police).

† For rules and orders regarding powers of Magistrates and Commissioners in the North-Western Provinces and Oudh, see the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894. See also the Police Manual, s. 11.

‡ A person appointed to the Burma police-force under this section is a military police-officer within the meaning of the Burma Military Police Act (XV. of 1887).—See s 3 (*1*) of that Act.

As to the disciplinary powers of a Commandant or Second-in-Command of Military Police in Burma over police-officers appointed under this section, see s. 12, *ibid*.

§ For rules regarding the police-force in the Central Provinces, see Notification No. 3595, Central Provinces List of Local Rules and Orders, Ed. 1896. See also the Police Manual, Vol. I.

For rules and orders regarding powers of Commissioners and Magistrates in the North-Western Provinces and Oudh, see North Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894. See also the Police Manual, s. 11.

"(*b*) confinement to quarters for a term not exceeding fifteen days, with or without punishment drill, extra guard, fatigue, or other duty;

"(*c*) deprivation of good-conduct pay;

"(*d*) removal from any office of distinction or special emolument."*

**Certificates to police officers.**

**8.** Every police-officer so appointed shall receive, on his appointment, a certificate in the form annexed to this Act, under the seal of the Inspector-General or such other officer as the Inspector-General shall appoint, by virtue of which the person holding such certificate shall be vested with the powers, functions, and privileges of a police-officer.†

**Surrender of certificate.**

"Such certificate shall cease to have effect whenever the person named in it ceases for any reason to be a police-officer, and, on his ceasing to be such an officer, shall be forthwith surrendered by him to any officer empowered to receive the same.

"A police-officer shall not, by reason of being suspended from office, cease to be a police-officer. During the term of such suspension, the powers, functions, and privileges vested in him as a police-officer shall be in abeyance; but he shall continue subject to the same responsibilities, discipline, and penalties, and to the same authorities, as if he had not been suspended."‡

**Police officer not to resign without leave or two months' notice.**

**9.** No police-officer shall be at liberty to withdraw himself from the duties of his office, unless expressly allowed to do so by the District Superintendent, or by some other officer authorized to grant such permission, or, without leave of the District Superintendent, to resign his office, unless he shall have given to his superior officer notice in writing, for a period of not less than two months, of his intention to resign.

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* In s. 7, the portion quoted has been substituted for the words, "or fine any police-officer to any amount not exceeding one month's pay who shall discharge his duty in a careless or negligent manner, or who, by any act of his own, shall render himself unfit for the discharge thereof" by the Police Act (1861) Amendment Act (VIII. of 1895), s. 2.

† As to enrolment, maintenance, and discipline of—

(1) the Military Police force employed in—

(*a*) the Andaman and Nicobar Islands, see the Andaman and Nicobar Islands Military Police Regulation (II. of 1888);

(*b*) Assam, see the Assam Military Police Regulation (IV. of 1890);

(*c*) Burma, see the Burma Military Police Act (XV. of 1887):

(2) the Chittagong Hill Tracts Frontier Police, see the Chittagong Hill Tracts Frontier Police Regulation (III. of 1881);

(3) the Rural Police in the Districts of Cachar and Sylhet, see the Sylhet and Cachar Rural Police Regulation (I. of 1883);

(4) the Punjab Frontier Police-officers, see the Punjab Frontier Police officers Regulation (VII. of 1893):

(5) the Calcutta and Suburban Police, see Bengal Act IV. of 1866 (Calcutta Police) and Bengal Act II. of 1866 (Calcutta Suburban Police):

(6) the Police-establishment in municipal areas in the North-Western Provinces and Oudh, see the N.-W. P. and Oudh Municipalities Act (XV. of 1883), ss. 49 to 53;

(7) the Police-establishment in municipal areas in the Punjab, see the Punjab Municipal Act (XX. of 1891), ss. 79 to 84.

‡ In s. 8, the last two paragraphs quoted have been substituted for the original paragraph by the Police Act (1861) Amendment Act (VIII. of 1895), s. 3. That paragraph ran as follows:—

"Such certificate shall cease to have effect whenever the person named in it is suspended or dismissed or otherwise removed from employment in the police-force and shall be immediately surrendered to the superior officer of such person, or to some other officer empowered to receive the same."

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**10.** No police-officer shall engage in any employment or office whatever, other than his duties under this Act, unless expressly permitted to do so in writing by the Inspector-General.

Police-officers not to engage in other employment.

**11.** [*Police Superannuation Fund.*] *Repealed by the Repealing Act (XVI. of 1874).*

**12.** The Inspector-General of Police may, from time to time, subject to the approval of the Local Government, frame such orders and rules* as he shall deem expedient, relative to the organization, classification, and distribution of the police-force; the places at which the members of the force shall reside, and the particular services to be performed by them; their inspection, the description of arms, accoutrements, and other necessaries to be furnished to them; the collecting and communicating by them of intelligence and information; and all such other orders and rules relative to the police-force as the Inspector-General shall, from time to time, deem expedient for preventing abuse or neglect of duty, and for rendering such force efficient in the discharge of its duties.

Power of Inspector General to make rules.

**13.** It shall be lawful for the Inspector-General of Police, or any Deputy Inspector-General or Assistant Inspector-General, or for the District Superintendent, subject to the general direction of the Magistrate of the district, on the application of any person showing the necessity thereof, to depute any additional number of police-officers to keep the peace at any place within the general police-district, and for such time as shall be deemed proper. Such force shall be exclusively under the orders of the District Superintendent, and shall be at the charge of the person making the application:

Additional police-officers employed at cost of individuals.

Provided that it shall be lawful for the person on whose application such deputation shall have been made, on giving one month's notice in writing to the Inspector-General, Deputy Inspector-General, or Assistant Inspector-General, or to the District Superintendent to require that the police-officers so deputed shall be withdrawn; and such person shall be relieved from the charge of such additional force from the expiration of such notice.

**14.** Whenever any railway, canal, or other public work, or any manufactory or commercial concern, shall be carried on, or be in operation, in any part of the country, and it shall appear to the Inspector-General that the employment of an additional police-force in such place is rendered necessary by the behaviour, or reasonable apprehension of the behaviour, of the persons employed upon such work, manufactory, or concern, it shall be lawful for the Inspector-General, with the consent of the Local Government, to depute such additional force to such place, and to employ the same so long as such necessity shall continue; and to make orders, from time to time, upon the person having the control or custody of the funds used in carrying on such work, manufactory, or concern, for

Appointment of additional force in the neighbourhood of railway and other works.

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* For rules and orders with regard to the organization, inspection, discipline, equipment, allocation, and duties of the Police in the North Western Provinces and Oudh, see the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 15; see also the Police Manual, Ed. 1890, sr. I to X.

For rules for the administration of the police in Burma, see the Burma Rules Manual, Ed. 1897, pp. 10 to 17.

For general rules under this section in the Central Provinces, see Notification No. 3505, at p. 4 of the Central Provinces List of Local Rules and Orders, Ed. 1896: see also the Police Manual, Vol. I

the payment of the extra force so rendered necessary, and such person shall thereupon cause payment to be made accordingly.

**Quartering of additional police in disturbed or dangerous districts.**

**15.*** (*1*) It shall be lawful for the Local Government, by proclamation to be notified in the official Gazette, and in such other manner as the Local Government shall direct, to declare that any area subject to its authority has been found to be in a disturbed or dangerous state, or that, from the conduct of the inhabitants of such area, or of any class or section of them, it is expedient to increase the number of police.

(*2*) It shall thereupon be lawful for the Inspector-General of Police, or other officer authorized by the Local Government in this behalf, with the sanction of the Local Government, to employ any police-force in addition to the ordinary fixed complement to be quartered in the area specified in such proclamation as aforesaid.

(*3*) Subject to the provisions of sub-section (*5*) of this section, the cost of such additional police-force shall be borne by the inhabitants of such area described in the proclamation.

(*4*) The Magistrate of the district, after such enquiry as he may deem necessary, shall apportion such cost among the inhabitants who are, as aforesaid, liable to bear the same, and who shall not have been exempted under the next succeeding sub-section. Such apportionment shall be made according to the Magistrate's judgment of the respective means within such area of such inhabitants.

(*5*) It shall be lawful for the Local Government, by order, to exempt any persons, or class or section of such inhabitants, from liability to bear any portion of such cost.

(*6*) Every proclamation issued under sub-section (*1*) of this section shall state the period for which it is to remain in force; but it may be withdrawn at any time, or continued from time to time for a further period or periods as the Local Government may in each case think fit to direct.

*Explanation.*—For the purposes of this section, "inhabitants" shall include persons who themselves, or by their agents or servants, occupy or hold land or other immoveable property within such area, and landlords who themselves, or by their agents or servants, collect rents direct from ryots or occupiers in such area, notwithstanding that they do not actually reside therein.

**Awarding compensation to sufferers from misconduct of inhabitants, or persons interested in land.**

**15A.**† (*1*) If, in any area in regard to which any proclamation notified under the last preceding section is in force, death, or grievous hurt, or loss of, or damage to, property, has been caused by, or has ensued from, the misconduct of the inhabitants of such area or any class or section of them, it shall be lawful for any person, being an inhabitant of such area, who claims to have suffered injury from such misconduct, to make, within one month from the date of the injury, or such shorter period as may be prescribed, an application for compensation to the Magistrate of the district, or of the sub division of a district, within which such area is situated.‡

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* S. 15 has been substituted for the original s. 15 by the Police Act (1861) Amendment Act (VIII. of 1895), s. 4, and has been extended to Calcutta with modifications.—See Ben. Act I. of 1898.

† S 15A has been inserted by the Police Act (1861) Amendment Act (VIII of 1895), s. 5, and has been extended to Calcutta with modifications.—See Ben. Act I. of 1898.

‡ As to rules regulating proceedings in Burma under this section, see note (*1*) to section 46 (*2*) (*b*), *infra*, p 308

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(2) It shall thereupon be lawful for the Magistrate of the district, with the sanction of the Local Government, after such enquiry as he may deem necessary, and whether any additional police-force has or has not been quartered in such area under the last preceding section, to—

(a) declare the persons to whom injury has been caused by, or has ensued from, such misconduct,

(b) fix the amount of compensation to be paid to such persons and the manner in which it is to be distributed among them, and

(c) assess the proportion in which the same shall be paid by the inhabitants of such area other than the applicant who shall not have been exempted from liability to pay under the next succeeding sub-section:

Provided that the Magistrate shall not make any declaration or assessment under this sub-section, unless he is of opinion that such injury as aforesaid has arisen from a riot or unlawful assembly within such area, and that the person who suffered the injury was himself free from blame in respect of the occurrences which led to such injury.

(3) It shall be lawful for the Local Government, by order, to exempt any persons, or class or section of such inhabitants, from liability to pay any portion of such compensation.

(4) Every declaration or assessment made or order passed by the Magistrate of the district under sub-section (2) shall be subject to revision by the Commissioner of the Division or the Local Government, but, save as aforesaid, shall be final

(5) No civil suit shall be maintainable in respect of any injury for which compensation has been awarded under this section.

(6) *Explanation.*—In this section the word "inhabitants" shall have the same meaning as in the last preceding section.

Recovery of moneys payable under sections 13, 14, 15, and 15A, and disposal of same when recovered.

**16*** (1) All moneys payable under sections 13, 14, 15, and 15A, shall be recoverable by the Magistrate of the district in the manner provided by sections 386 and 387 of the Code of Criminal Procedure, 1882, for the recovery of fines, or by suit in any competent Court.

(2) All moneys paid or recovered under sections 13, 14, and 15, shall be credited to a fund to be called "The General Police Fund," and shall be applied to the maintenance of the police-force under such orders as the Local Government shall pass.

(3) All moneys paid or recovered under section 15A shall be paid by the Magistrate of the district to the persons to whom, and in the proportions in which, the same are payable under that section.

Special police-officers.

**17.** When it shall appear that any unlawful assembly or riot, or disturbance of the peace, has taken place, or may be reasonably apprehended, and that the police-force ordinarily employed for preserving the peace is not sufficient for its preservation, and for the protection of the inhabitants, and the security of property in the place where such unlawful assembly or riot, or disturbance of the peace, has occurred, or is appre-

* S. 16 has been substituted for the original s. 16 by the Police Act (1861) Amendment Act (VIII. of 1895), s. 6, and has been extended to Calcutta with modifications.—See Ben. Act I. of 1898.

handed, it shall be lawful for any police-officer, not below the rank of inspector, to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such police-officer may require to act as special police officers for such time and within such limits as he shall deem necessary; and the Magistrate to whom such application is made shall, unless he see cause to the contrary, comply with the application.

Powers of special police-officers.

**18.** Every special police-officer so appointed shall have the same powers, privileges, and protection, and shall be liable to perform the same duties, and shall be amenable to the same penalties, and be subordinate to the same authorities, as the ordinary officers of police.

Refusal to serve as special police-officers.

**19.** If any person, being appointed a special police-officer as aforesaid, shall without sufficient excuse, neglect or refuse to serve as such, or to obey such lawful order or direction as may be given to him for the performance of his duties, he shall be liable, upon conviction before a Magistrate, to a fine not exceeding fifty rupees for every such neglect, refusal, or disobedience.

Authority to be exercised by police-officers.

**20.*** Police-officers enrolled under this Act shall not exercise any authority, except the authority provided for a police officer under this Act and any Act which shall hereafter be passed for regulating criminal procedure.†

Village police-officers.

**21.** Nothing in this Act shall affect any hereditary or other village police-officer, unless such officer shall be enrolled as a police-officer under this Act. When so enrolled, such officer shall be bound by the provisions of the last preceding section. No hereditary or other village police-officer shall be enrolled without his consent and the consent of those who have the right of nomination.

Police chaukidars in the Presidency of Fort William.

If any police officer appointed under Act XX of 1856 (*to make better provision for the appointment and maintenance of police chaukidars in Cities, Towns, Stations, Suburbs, and Bazars in the Presidency of Fort William in Bengal*) is employed out of the district for which he shall have been appointed under that Act, he shall not be paid out of the rates levied under the said Act for that district.

Police-officers always on duty, and may be employed in any part of district.

**22.** Every police-officer shall, for all purposes in this Act contained, be considered to be always on duty, and may at any time be employed as a police officer in any part of the general police-district.

Duties of police-officers.

**23.** It shall be the duty of every police-officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisances; to detect and bring offenders to justice, and to apprehend all

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* For some cases in which the application of s 20 has been restricted see the Assam Police officers Regulation (II. of 1883), ss. 2 and 3; the Burma Military Police Act (XV. of 1887) s. 11, p 68; and the Lower Burma Courts Act (XI. of 1889) s 101.

The section has been declared not to apply to any Assistant District Superintendent of Police whose duties are exercised in connection with the unenrolled border police force —See s. 2 of the Punjab Frontier Police officers Regulation (VII. of 1893), Gazette of India, 1893, Pt. I., p. 285.

† See now Act V. of 1898

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persons whom he is legally authorized to apprehend, and for whose apprehension sufficient ground exists; and it shall be lawful for every police-officer, for any of the purposes mentioned in this section, without a warrant, to enter and inspect any drinking shop, gaming-house, or other place of resort of loose and disorderly characters.

Police-officers may lay information, &c.

**24.** It shall be lawful for any police-officer to lay any information before a Magistrate, and to apply for a summons, warrant, search-warrant, or such other legal process as may by law issue against any person committing an offence. * * *

Police-officers to take charge of unclaimed property, and be subject to Magistrate's orders as to disposal.

**25.** It shall be the duty of every police-officer to take charge of all unclaimed property, and to furnish an inventory thereof to the Magistrate of the district.

The police-officers shall be guided as to the disposal of such property by such orders as they shall receive from the Magistrate of the district.

Magistrate may detain property, and issue proclamation.

**26.** (*1*) The Magistrate of the district may detain the property, and issue a proclamation, specifying the articles of which it consists, and requiring any person who has any claim thereto to appear and establish his right to the same within six months from the date of such proclamation.

(*2*)† The provisions of section 525 of the Code of Criminal Procedure, 1882, shall be applicable to property referred to in this section.

Confiscation of property if no claimant appears.

**27.**‡ (*1*) If no person shall, within the period allowed, claim such property or the proceeds thereof, if sold, it may if not already sold under sub-section (*2*) of the last preceding section, be sold under the orders of the Magistrate of the district.

(*2*) The sale-proceeds of property sold under the preceding sub-section and the proceeds of property sold under section 26, to which no claim has been established, shall be at the disposal of Government.

Persons refusing to deliver up certificate, &c., on ceasing to be police-officers.

**28** Every person having ceased to be an enrolled police officer under this Act, who shall not forthwith deliver up his certificate, and the clothing, accoutrements, appointments, and other necessaries which shall have been supplied to him for the execution of his duty, shall be liable, on conviction before a Magistrate, to a penalty not exceeding two hundred rupees or to imprisonment, with or without hard labour, for a period not exceeding six months, or to both.

Penalties for neglect of duty, &c

**29.** Every police-officer who shall be guilty of any violation of duty, or wilful breach or neglect of any rule or regulation, or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous notice for the period of two months; * or who, being absent on

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* The words, "and to prosecute such person up to final judgment," have been repealed by the Code of Criminal Procedure (Act X. of 1882).

† This sub-section has been added by the Police Act (1861) Amendment Act (VIII. of 1895), s. 7. Read now the Code of Criminal Procedure (Act V of 1898).

‡ This section has been substituted for the original section by the Police Act (1861) Amendment Act (VIII. of 1895), s. 8. That section ran as follows:—

"If no person shall, within the period allowed, claim such property, it may be sold under the orders of the Magistrate of the district, and the proceeds shall be at the disposal of Government."

leave, shall fail, without reasonable cause, to report himself for duty on the expiration of such leave;"* or who shall engage, without authority, in any employment other than his police duty; or who shall be guilty of cowardice; or who shall offer any unwarrantable personal violence to any person in his custody, shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment, with or without hard labour, for a period not exceeding three months, or to both.

Regulation of public assemblies and processions, and licensing of same.

**30.**† (*1*) The District Superintendent or Assistant District Superintendent of Police may, as occasion requires, direct the conduct of all assemblies and processions on the public roads, or in the public streets or thoroughfares, and prescribe the routes by which, and the times at which, such processions may pass.

(*2*) He may also, on being satisfied that it is intended by any persons or class of persons to convene or collect an assembly in any such road, street, or thoroughfare, or to form a procession which would, in the judgment of the Magistrate of the district, or of the sub-division of a district, if uncontrolled, be likely to cause a breach of the peace, require, by general or special notice, that the persons convening or collecting such assembly, or directing or promoting such procession, shall apply for a license.

(*3*) On such application being made, he may issue a license specifying the names of the licensees, and defining the conditions on which alone such assembly or such procession is to be permitted to take place, and otherwise giving effect to the section:

Provided that no fee shall be charged on the application for, or grant of, any such license.

Music in the streets.

(*4*) He may also regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies.

Powers with regard to assemblies and processions violating conditions of license.

**30A**‡ (*1*) Any Magistrate or District Superintendent of Police, or Assistant District Superintendent of Police, or Inspector of Police, or any police-officer in charge of a station, may stop any procession which violates the conditions of a license granted under the last foregoing section, and may order it or any assembly which violates any such conditions as aforesaid to disperse.

(*2*) Any procession or assembly which neglects or refuses to obey any order given under the last preceding sub-section shall be deemed to be an unlawful assembly.

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* To s. 29 the words quoted have been added by the Police Act (1861) Amendment Act (VIII. of 1895), s. 9.

† This section has been substituted for the original by the Police Act (1861) Amendment Act (VIII. of 1895), s. 10. The original section ran as follows:—

"The District Superintendent and Assistant District Superintendent of Police may, as occasion requires, direct the conduct of all assemblies and processions on the public roads or in the public streets or thoroughfares, and prescribe the routes by which and the times at which, such processions may pass.

"They may also regulate the use of music in the streets on the occasion of festivals and ceremonies."

‡ S. 30A has been inserted by the Police Act (1861) Amendment Act (VIII. of 1895), s. 11.

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**31.** It shall be the duty of the police to keep order on the public roads, and in the public streets, thoroughfares, ghâts, and landing places, and at all other places of public resort, and to prevent obstructions on the occasions of assemblies and processions on the public roads and in the public streets, or in the neighbourhood of places of worship during the time of public worship, and in any case when any road, street, thoroughfare, ghât, or landing place may be thronged, or may be liable to be obstructed.

Police to keep order in public roads, &c.

**32.** Every person opposing or not obeying the orders issued under the last three* preceding sections, or violating the conditions of any license granted by the District Superintendent or Assistant District Superintendent of Police for the use of music, or for the conduct of assemblies and processions, shall be liable, on conviction before a Magistrate, to a fine not exceeding two hundred rupees.

Penalty for disobeying orders issued under last three sections, &c.

**33** Nothing in the last four† preceding sections shall be deemed to interfere with the general control of the Magistrate of the district over the matters referred to therein.

Saving of control of Magistrate of district.

**34.** Any person who, on any road, or in any "open place or"‡ street or thoroughfare, within the limits of any town § to which this section shall be specially extended‖ by the Local Government, commits any of the following offences to the obstruction, inconvenience, annoyance, risk, danger, or damage of the residents *or*¶ passengers, shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees, or to imprisonment not exceeding eight days; and it shall be lawful for any police-officer to take into custody, without a warrant, any person who, within his view, commits any of such offences, namely:—

Punishment for certain offence on roads, &c.

Power of police-officers.

*First.*—Any person who slaughters any cattle or cleans any carcass; any person who rides or drives any cattle recklessly or furiously, or trains or breaks any horse or other cattle.

Slaughtering cattle, furious riding, &c.

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* "Three" has been substituted for "two" by the Police Act (1861) Amendment Act (VIII. of 1895), s. 12.

† "Four" has been substituted for "three" by the Police Act (1861) Amendment Act (VIII. of 1895), s. 12.

‡ In s. 34, the words quoted have been inserted by the Police Act (1861) Amendment Act (VIII. of 1895), s. 13.

§ "Town" here includes a cantonment.—See the Cantonments Act (XIII. of 1889), s. 12 (7).

‖ For list of the towns to which this section has been specially extended in—

(1) Assam, see the Assam Manual of Local Rules and Orders, Ed. 1893, pp. v. to vii.;

(2) Burma, see Appendix A to the Burma Laws List, Ed. 1897;

(3) Central Provinces, see the Central Provinces List of Local Rules and Orders, Ed. 1896 p. 10;

(4) North-Western Provinces and Oudh, see the North-Western Provinces and Oudh List of Local Rules and Orders Ed 1894, pp. 16 to 31.

(5) For an instance of the extension of the section to a town in Bengal, see Notification No. 1077-J D., dated 10th October 1897, Calcutta Gazette, 1897, Pt. I., p. 1321 It was extended to the towns of Ajmere and Beawar by Notification No. 426-A, dated 26th April 1865—See N.-W. P. Gazette, 1865, p 207.

In the Presidencies of Madras and Bombay there are separate Acts.—See note to s 46.

¶ In s. 34, the italicized word "*or*" has been substituted for the word "and" by the Police Act (1861) Amendment Act (VIII. of 1895), s 13.

Cruelty to animals.

*Second.*—Any person who wantonly or cruelly beats, abuses, or tortures any animal.

Obstructing passengers.

*Third.*—Any person who keeps any cattle or conveyance of any kind standing longer than is required for loading or unloading, or for taking up or setting down passengers, or who leaves any conveyance in such a manner as to cause inconvenience or danger to the public.

Exposing goods for sale.

*Fourth.*—Any person who exposes any goods for sale.

Throwing dirt into street.

*Fifth.*—Any person who throws or lays down any dirt, filth, rubbish, or any stones or building materials; or who constructs any cowshed, stable, or the like; or who causes any offensive matter to run from any house, factory, dung-heap, or the like.

Being found drunk or riotous.

*Sixth.*—Any person who is found drunk or riotous, or who is incapable of taking care of himself.

Indecent exposure of person.

*Seventh.*—Any person who wilfully and indecently exposes his person or any offensive deformity or disease, or commits nuisance by easing himself, or by bathing or washing in any tank or reservoir not being a place set apart for that purpose.

Neglect to protect dangerous places.

*Eighth.*—Any person who neglects to fence in, or duly to protect, any well, tank, or other dangerous place or structure.

Jurisdiction.

**35.*** Any charge against a police-officer above the rank of a constable under this Act shall be enquired into and determined only by an officer exercising the powers of a Magistrate.

Power to prosecute under other law not affected.

**36.** Nothing contained in this Act shall be construed to prevent any person from being prosecuted under any other Regulation or Act for any offence made punishable by this Act, or from being liable under any other Regulation or Act to any other or higher penalty or punishment than is provided for such offence by this Act:

Proviso.

Provided that no person shall be punished twice for the same offence.

Recovery of penalties and fines imposed by Magistrates.

**37.†** The provisions of sections 64 to 70, both inclusive, of the Indian Penal Code, and of sections 386 to 389, both inclusive, of the Code of Criminal Procedure, 1882,‡ with respect to fines, shall apply to penalties and fines imposed under this Act, on conviction before a Magistrate:

Provided that, notwithstanding anything contained in section 65 of the first-mentioned Code, any person sentenced to fine under section 34 of this Act may be imprisoned in default of payment of such fine for any period not exceeding eight days.

**38.** [*Procedure until return is made to warrant of distress.*] *Repealed by the Police Act (1861) Amendment Act (VIII. of 1895), s. 14.*

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* The words, "In all cases of convictions under this Act, the officer trying the case shall be limited to his ordinary jurisdiction as to the amount of fine or imprisonment which he may inflict: Provided that," repealed by the Code of Criminal Procedure (Act X. of 1882), have here been omitted.

† This section has been substituted for the original s. 37, and for ss. 38, 39, and 40, by the Police Act (1861) Amendment Act (VIII. of 1895), s. 14.

‡ Read now the new Code of Criminal Procedure (Act V. of 1898).

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**39.** [*Imprisonment if distress not sufficient.*] *Repealed by the Police Act (1861) Amendment Act (VIII. of 1895), s. 14.*

**40.** [*Levy of fines from European British subjects.*] *Repealed by the Police Act (1861) Amendment Act (VIII. of 1895), s. 14.*

Rewards to police and informers payable to General Police Fund.

**41.** All sums paid for the service of process by police-officers, and all rewards, forfeitures, and penalties, or shares of rewards, forfeitures, and penalties, which by law are payable to informers, shall, when the information is laid by a police-officer, be paid into the General Police Fund.*

Limitation of actions.

**42.** *All actions and prosecutions against any person, which may be lawfully brought for anything done or intended to be done under the provisions of this Act, or under the general police-powers hereby given, shall be commenced within three months after the act complained of shall have been committed, and not otherwise;* † and notice in writing of such action and of the cause thereof shall be given to the defendant, or to the District Superintendent or an Assistant District Superintendent of the district in which the act was committed, one month at least before the commencement of the action.

Tender of amends.

No plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought, by or on behalf of the defendant; and, though a decree shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the Judge before whom the trial is held shall certify his approbation of the action:

Proviso.

Provided always that no action shall in any case lie where such officers shall have been prosecuted criminally for the same act.

Plea that act was done under warrant.

**43.**‡ When any action or prosecution shall be brought, or any proceedings held, against any police-officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate.

Such plea shall be proved by the production of the warrant directing the act, and purporting to be signed by such Magistrate, and the defendant shall thereupon be entitled to a decree in his favour, notwithstanding any defect of jurisdiction in such Magistrate. No proof of the signature of such Magistrate shall be necessary, unless the Court shall see reason to doubt its being genuine:

Proviso.

Provided always that any remedy which the party may have against the authority issuing such warrant shall not be affected by anything contained in this section.

Police-officers to keep diary.

**44.** It shall be the duty of every officer in charge of a police-station to keep a general diary in such form as shall, from time to time, be prescribed by the Local Government, and to record therein all complaints and charges preferred, the names of all persons

* See, as to this fund, s. 16, *supra*.

† So much of s. 42 (*i.e.*, the portion in italics) as relates to the limitation of suits has been repealed by the Indian Limitation Act (IX. of 1871).

‡ A Commandant or Second-in-command of Military Police in Burma is entitled to the privileges which a police-officer has under sections 42 and 43—See the Burma Military Police Act (XV. of 1887), s. 13.

arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined.

The Magistrate of the district shall be at liberty to call for and inspect such diary.

Local Government may prescribe form of returns.

**45.** The Local Government may direct the submission of such returns by the Inspector-General and other police-officers as to such Local Government shall seem proper, and may prescribe the form in which such returns shall be made.

Scope of Act.

**46.*** (*1*) This Act shall not, by its own operation, take effect in any presidency, province, or place.† But the Governor-General in Council, by an order to be published in the *Gazette*

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* This section has been substituted for the original s. 46 by the Police Act (1861) Amendment Act (VIII. of 1895), s. 15. That section was as follows:—

"46. This Act shall not take effect in any presidency, province, or place unless the same shall be extended to such presidency, province, or place by the Governor-General of India in Council by an order to be published in the Government Gazette.

"When the Act shall have been so extended, it shall be carried into effect in such presidency, province, or place as the Local Government, by an order to be published in the official Gazette, shall direct."

† In the Madras and Bombay Presidencies, there are special Police Acts—see Act XXIV. of 1859, and Bombay Acts VII. of 1867 and IV. of 1890; and, in the Lower Provinces of Bengal, Bengal Act VII. of 1869 is to be read with and taken as part of Act V. of 1861 (see s. 6 of the former Act). But, for the purposes of s. 2 of the Police Act (III. of 1888), and notwithstanding s. 46 of this Act, the Act of 1861 shall be deemed to take effect throughout British India.—See s. 2 (*b*) of Act III. of 1888.

For notifications extending this Act under the power conferred by the old section to—

(*1*) the North-Western Provinces, including Ajmere-Merwara then under that Government, see Notification No. 964 in the North-Western Provinces Gazette, 1801, p. 634.

[For orders as to enforcement of the Act in 27 districts in the North-Western Provinces, in Hamirpur, Jalaun, Jhansi, Lalitpur, Naini Tal (including the Tarai Parganas), and Almora and Garhwal issued under the old s. 46, para. 2 (after the Act had been extended under para. 1 of that section to the whole province), see Notifications noted at pp. 31 and 32 of the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894. These orders are kept in force by s. 16 of Act VIII. of 1895.]

(*2*) Oudh, see Notification No. 34 in the North-Western Provinces Gazette, 1861, p. 1758;

(*3*) tract of land between Allahabad and Jubbulpore ceded in full sovereignty by certain Native States, see Notification No. 205-F., at page 13 of the Central Provinces List of Local Rules and Orders, Ed. 1896;

(*4*) Districts in Burma—

(*a*) Pegu [now the "Pegu and Irrawaddy Divisions," see Burma Gazette, 1881, Pt. II., p 98; Notification No. 946], see Notification No. 1453, Burma Gazette, 1861, Pt. I., p 2340;

(*b*) {Tenasserim / Martaban}, see Notification No. 1900, Burma Gazette, 1861, Pt. I., p. 3189;

(*c*) Arakan, see Notification No. 571, Burma Gazette, 1864, Pt. I., p 45;

(*5*) the Central Provinces—for extensions of the Act to the Provinces of Nagpur, Sironcha, Sambalpur, Nimar Bijeraghogarh, see List of Local Rules and Orders, Ed. 1896, p. 4;

(*6*) Bengal and Assam—that is, the Provinces comprised in the Lieutenant-Governorship of Bengal, of which the various districts now forming the Chief Commissionership of Assam then formed part, see Notification No. 1871, set out at p. 3 of the Assam Manual of Local Rules and Orders, Ed. 1893;

(*7*) Several districts in the Punjab, see Notification No. 971, dated 15th May 1861, Calcutta Gazette, 18th May 1861, p. 1302.

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*of India*, may extend the whole or any part of this Act to any presidency, province, or place, and the whole or such portion of this Act as shall be specified in such order shall thereupon take effect in such presidency, province, or place.

(*2*)* When the whole or any part of this Act shall have been so extended, the Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act—

(*a*) to regulate the procedure to be followed by Magistrates and police-officers in the discharge of any duty imposed upon them by or under this Act;

(*b*) to prescribe the time, manner, and conditions within and under which claims for compensation under section 15A† are to be made, the particulars to be stated in such claims, the manner in which the same are to be verified, and the proceedings (including local enquiries, if necessary) which are to be taken consequent thereon; and

(*c*) generally for giving effect to the provisions of this Act.

(*3*) All rules made under this Act may, from time to time, be amended, added to, or cancelled by the Local Government.

**Authority of District Superintendent of Police over village police.**

**47.** It shall be lawful for the Local Government, in carrying this Act into effect in any part of the territories subject to such Local Government, to declare that any authority which now is or may be exercised by the Magistrate of the district over any village-watchman or other village police-officer, for the purposes of police, shall be exercised, subject to the general control of the Magistrate of the district, by the District Superintendent of Police.‡

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FORM.

(*See section 8.*)

*A B* has been appointed a member of the police-force under Act V. of 1861, and is vested with the powers, functions, and privileges of a police-officer.

NOTE.—For rulings under the Police Act (V. of 1861), see page 313, *infra*.

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Under the power conferred by the section as it now stands it has been extended as follows to—

(*1*) Upper Burma (except the Shan States), see Notification No. 619, Burma Gazette, 1895, Pt. II., p. 265;

(*2*) Madras [sections 15, 15A, 16, 30, 30A, 31, and 32 of the Act have been extended to the whole of the Madras Presidency, see Notification No. 728, dated 31st October 1895, Gazette of India, 1895, Pt. I, p. 876];

(*3*) Eastern Dvárs in the district of Goalpara, see Notification No. 230, Gazette of India, 1897, Pt. I., p. 198.

For list of provinces and districts to which the Act has been extended by special enactments, see note on p. 294, *supra*.

* Sub-s. (*2*) of s. 46 has been extended to Calcutta with modifications.—See Bom. Act I. of 1898.

† For rules regulating proceedings in Burma under s. 15A, see Notification No 266, Burma Gazette, 1895, Pt. I., p. 448.

‡ For powers conferred under this section in—

(*1*) the Central Provinces, see Notifications noted at p. 14 of the Central Provinces List of Local Rules and Orders, Ed. 1896;

(*2*) Assam, in the districts of Kamrup, Darrang, Sibsagar, Khasi and Jaintia Hills, Nowgong, Goalpara, Lakhimpur, see Bengal Government Notification No. 1862, set out at p. 6 of the Manual of Local Rules and Orders relating to Assam, Ed. 1893.

**SECTIONS OF THE POLICE ACT, 1861,* IN THE FORM IN WHICH THEY ARE EXTENDED TO THE TOWN AND SUBURBS OF CALCUTTA BY BEN. ACT I. OF 1898.** **1861. Act 5**

1. The following words and expressions in this Act shall have the meaning assigned to them, unless there be something in the subject or context repugnant to such construction, that is to say:—

Definitions.

* * * * * * * *

the word "property" shall include any moveable property, money, or valuable security:

words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number:

words importing the masculine gender shall include females:

the word "person" shall include a company or corporation.

the word "month" shall mean a calendar month.

* * * * * * * *

15. (*1*) It shall be lawful for the Local Government, by proclamation to be notified in the official Gazette, and in such other manner as the Local Government shall direct, to declare that any area subject to its authority has been found to be in a disturbed or dangerous state, or that, from the conduct of the inhabitants of such area, or of any class or section of them, or of any persons resorting to such area, it is expedient to increase the number of police.

Quartering of additional police in disturbed or dangerous area at cost of inhabitants.

(*2*) It shall thereupon be lawful for the Commissioner of Police, with the sanction of the Local Government, to employ any police-force in addition to the ordinary fixed complement, to be quartered in the area specified in such proclamation as aforesaid.

(*3*) Subject to the provisions of sub-section (*5*) of this section, the cost of such additional police-force shall be borne by the inhabitants of such area described in the proclamation.

(*4*) Such officer as the Local Government may appoint in this behalf, or, in the suburbs, the Magistrate of the 24-Parganas, after such enquiry as he may deem necessary, shall apportion such cost among the inhabitants who are, as aforesaid, liable to bear the same, and who shall not have been exempted under the next succeeding sub-section. Such apportionment shall be made according to such officer's or Magistrate's judgment of the respective means within such area of such inhabitants.

(*5*) It shall be lawful for the Local Government, by order, to exempt any persons or class or section of such inhabitants from liability to bear any portion of such cost.

(*6*) Every proclamation issued under sub-section (*1*) of this section shall state the period for which it is to remain in force, but it may be withdrawn at any time, or continued from time to time for a further period or periods, as the Local Government may in each case think fit to direct.

*Explanation.*—For the purposes of this section, "inhabitants" shall include persons who, themselves or by their agents or servants, occupy or hold land or other immoveable property within such area, and landlords, who themselves or by their agents or servants, collect rents direct from raiyats or occupiers in such area, notwithstanding that they do not actually reside therein:

15A. (*1*) If, in any area in regard to which any proclamation notified under the last preceding section is in force, death or grievous hurt, or loss of, or damage to, property, has been caused by, or has ensued from, the misconduct of the inhabitants of such area or any class or section of them, or of any persons resorting to such area, it shall be lawful for any person who claims to have suffered injury from such misconduct to make, within one month from the date of the injury, or

Award of compensation to sufferers from misconduct of inhabitants or persons interested in land.

* Act V. of 1861.

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such shorter period as may be prescribed, an application for compensation to the officer appointed under section 15, sub-section (4), or, in the suburbs, the Magistrate of the 24-Parganas.

(2) It shall thereupon be lawful for the officer appointed as aforesaid, or, in the suburbs, the Magistrate of the 24-Parganas, with the sanction of the Local Government, after such enquiry as he may deem necessary, and whether any additional police-force has or has not been quartered in such area under the last preceding section, to—

(a) declare the persons to whom injury has been caused by, or has ensued from, such misconduct;

(b) fix the amount of compensation to be paid to such persons and the manner in which it is to be distributed among them; and

(c) assess the proportion in which the same shall be paid—

(i) by the inhabitants of the area specified in the proclamation (other than the applicant), or

(ii) by the inhabitants of the area of which the persons resorting as aforesaid are inhabitants, or

(iii) by the inhabitants of both the said areas,

who shall not have been exempted from liability to pay under the next succeeding sub-section:

Provided that the said officer or Magistrate shall not make any declaration or assessment under this sub-section unless he is of opinion that such injury as aforesaid has arisen from a riot or unlawful assembly within the area specified in the proclamation, and that the person who suffered the injury was himself free from blame in respect of the occurrences which led to such injury.

(3) It shall be lawful for the Local Government, by order, to exempt any person or class or section of such inhabitants from liability to pay any portion of such compensation.

(4) Every declaration or assessment made, or order passed, by the officer appointed as aforesaid or the Magistrate of the 24-Parganas under sub-section (2), shall be subject to revision by the Commissioner of the Division or the Local Government, but, save as aforesaid, shall be final.

(5) No civil suit shall be maintainable in respect of any injury for which compensation has been awarded under this section.

(6) *Explanation.*—In this section the word "inhabitants" shall have the same meaning as in the last preceding section.

Recovery of moneys payable under sections 15 and 15A, and disposal of same when recovered.

16. (1) All moneys payable under sections 15 and 15A shall be recoverable by the officer appointed under section 15, sub-section (4), or the Magistrate of the 24-Parganas, as the case may be, under the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and execution of warrants for the levy of fines, or by suit in any competent Court.

(2) All moneys paid or recovered under section 15 shall be applied to the maintenance of the police-force under such orders as the Local Government shall pass.

(3) All moneys paid or recovered under section 15A shall be paid, by the officer appointed under section 15, sub-section (4), or the Magistrate of the 24-Parganas, as the case may be, to the persons to whom, and in the proportions in which, the same are payable under the said section 15A.

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Power to make rules.

46. (2) The Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act—

(a) to regulate the procedure to be followed by the officer appointed under section 15, sub-section (4), the Magistrate, and police-officers in the discharge of any duty imposed upon them by or under this Act;

(*b*) to prescribe the time, manner, and conditions within and under which claims for compensation under section 15A are to be made, the particulars to be stated in such claims, the manner in which the same are to be verified, and the proceedings (including local enquiries, if necessary) which are to be taken consequent thereon; and,

(*c*) generally, for giving effect to the provisions of this Act.

(*3*) All rules made under this Act may, from time to time, be amended, added to, or cancelled by the Local Government.

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# ACT NO. III. OF 1888.*

## THE POLICE ACT, 1888.

RECEIVED THE G.-G.'S ASSENT ON THE 17TH FEBRUARY 1888.

*An Act to amend the Law relating to the Regulation of Police.*

WHEREAS it is expedient to relax those provisions of Acts for the regulation of police which restrict the employment of police-officers to the presidency, province, or place of the police-establishment of which they are members: It is hereby enacted as follows:—

Title, extent, and commencement.

**1.** (*1*) This Act may be called "The Police Act, 1888."

(*2*) It extends to the whole of British India: and

(*3*) It shall come into force at once.

Constitution of police-forces for special purposes.

**2.** (*1*) Notwithstanding anything in Act XXIV. of 1859 (*an Act for the better regulation of the police within the territories subject to the Presidency of Fort St. George*), Act V. of 1861 (*an Act for the regulation of police*), "or the corresponding law for the time being in force in the territories administered by the Governor of Bombay in Council,"† or any Act relating to the police in any presidency-town, the Governor-General in Council may, by notification in the *Gazette of India*, create a general police-district embracing parts of two or more presidencies, provinces, or places, and direct the enrolment, under Act V. of 1861, of a police-force for service therein.‡

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* For Statement of Objects and Reasons, see Gazette of India, 1888, Pt. V., p. 130; for Report of the Select Committee, see *ibid*, 1888 Pt. IV, p 8, and for Proceedings in Council, see *ibid*, 1887, Pt. VI. p. 100, and *ibid*, 1888, pp. 37 and 40.

Act III. of 1888 has been declared in force in British Baluchistan by the British Baluchistan Laws Regulation (I of 1890)

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act (XIV. of 1874), to be in force in the districts of Hazáribágh, Lohárdaga, Mánbhum, and Palamau, and in Pargana Dhálbhum, and the Kolhán in the Singbhum district—See Gazette of India, 1895, Pt. I, p 130.

It has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act (XIII. of 1898).

It had been previously extended there by notification under s. 5 of Act XIV. of 1874. —See Gazette of India, 1892, Pt. I., p 94

† In s. 2 (*1*), the words quoted have been substituted for the words, "the Bombay District Police Act, 1867," by the second schedule to the Repealing and Amending Act (XII. of 1891). See now the Bombay District Police Act (Bom. Act IV. of 1890).

‡ For notification issued under these powers, see Gazette of India, 1892, 1896, and 1898, Pt. I., pp. 44, 374, and 130, respectively.

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(2) With respect to such a district and the police-force enrolled therefor, the functions of the Local Government under Act V. of 1861, the Code of Criminal Procedure, 1882,* and any other enactment for the time being in force relating to police, shall, subject to any orders which the Governor-General in Council may make in this behalf, be discharged by the Governor-General in Council, or by such Local Government or other authority as the Governor-General in Council may appoint,† and the functions of the Inspector-General of Police, Deputy Inspectors-General, Assistant Inspectors-General, District Superintendents of Police, and Assistant District Superintendents under Act V. of 1861, and any other enactment for the time being in force, shall, subject as aforesaid, be discharged by such officer or officers as may be appointed by the authority ordinarily discharging under this sub-section the functions of the Local Government with respect to the district and force.

(3) Subject to any orders which the Governor-General in Council may make in this behalf, members of a police-force enrolled for service in a general police-district created under sub-section (1) shall have, within every part of any presidency, province, or place, of which any part is included in the district, the powers, duties, privileges, and liabilities, which, as police-officers appointed under Act V. of 1861, they have within the district.

(4) Any member of such a force whom the authority ordinarily discharging with respect thereto the functions of the Local Government under sub-section (2) has generally or specially empowered to act under this sub-section may, subject to any orders which the Governor-General in Council may make in this behalf, exercise in any part of the local area in which he has the powers of a police-officer under sub-section (3) any of the powers which an officer in charge of a police-station has in that part, and, when so exercising any such power, shall, subject as aforesaid, be deemed to be an officer in charge of a police-station discharging the functions of such an officer within the limits of his station.

(5) Subject to any orders which the Governor-General in Council may make in this behalf, a part of a presidency, province, or place included in a general police-district under sub-section (1), shall not, by reason of being included therein, cease, for the purposes of any enactment relating to police, to be part of the presidency, province, or place of which it forms part.

(6) For the purposes of this section, and subject to the provisions thereof, Act V. of 1861 shall, notwithstanding anything in section 46 of that Act, be deemed to take effect throughout the whole of British India.

**Employment of police-officers beyond the presidency, province, or place to which they belong.**

**8.** Notwithstanding anything in any of the Acts mentioned or referred to in the last foregoing section, but subject to any orders which the Governor-General in Council may make in this behalf, a member of the police-establishment of any presidency, province, or place may discharge the functions of a police officer in any part of British India beyond the limits of the presidency, province, or place, and shall, while so discharging such functions, be deemed to be a member of the police-establishment of that part, and be vested with the powers, functions, and privileges, and be subject to the liabilities of a police-officer belonging to that establishment

* See now the Code of Criminal Procedure (Act V. of 1898).

† For notification issued under these powers, see Gazette of India, 1892, 1896, and 1898, Pt. I., pp. 44, 374, and 130, respectively.

A MAGISTRATE only, and not a Sessions Judge, has power to try cases under s. 29, Act V. of 1861. S. 152 of the Code of Criminal Procedure (Act XXV. of 1861) does not apply to cases in which there has not been a continuous detention of 24 hours.—INDROBEER THABA, 1 W. R. 5. [Kemp and Glover, JJ. Aug. 15, 1864.]

A DEPUTY MAGISTRATE, exercising the full powers of a Magistrate, has jurisdiction, under s. 29, Act V. of 1861, to fine police-officers for violation of duty. — REFERENCE UNDER S. 434 OF THE CRIMINAL PROCEDURE CODE (ACT XXV. OF 1861), 4 W. R 2. [Kemp and Seton-Karr, JJ. Sep 4, 1865.]

CONVICTIONS under the Police Act (V. of 1861) are appealable like other convictions. Where the appellants are convicted by an officer exercising the powers of a Magistrate, and sentenced to imprisonment exceeding the limit prescribed by s. 411 of the Code of Criminal Procedure (Act XXV. of 1861), the appeal lies to the Sessions Court.—THAKOOR DASS, 5 W. R. 22. [Trevor, Jackson, and Glover, JJ. Jan. 31, 1866.]

A POLICE-OFFICER (chief constable), being authorized by law to depute his subordinate to proceed to the place where crime is reported to have been committed, cannot be supposed to have contravened the law by not proceeding to the spot himself, and therefore the conviction of the prisoner on the charge of wilful violation of duty was illegal.—GOVERNMENT v. KARAMUT KHAN, 1 Agra H. C. R. 1. [Roberts and Turner, JJ. July 17, 1866.]

WHERE an accused was charged before the Sessions Judge under both s. 409, Penal Code, and under the special law, s. 29, Act V. of 1861, and was acquitted under the former section, it was held that the Sessions Judge could not convict under the latter law, as the Magistrate alone has jurisdiction to convict under that law. — BHOOBUN SINGH, 9 W. R. 36. [Loch and Hobhouse, JJ. March 23, 1868.]

PLACING tambans in a public thoroughfare is an offence under s. 34 of Act V. of 1861. But a Sub-Magistrate is not competent of his own motion to institute the prosecution. — QUEEN v. AMEER, 2 N.-W. P. 5. [Turner and Spankie, JJ. Jan. 8 1870.]

WHERE a police-officer duly appointed under Act V. of 1861 was engaged in the discharge of his duty as such police-officer at a time when an unlawful assembly took place, it was held that he was competent to apprehend any of the members of such unlawful assembly; and a person who rescued the party apprehended was convicted of rescuing from lawful custody within the meaning of s. 225 of the Penal Code.—QUEEN v. ASSAM SHURREEF, 13 W. R. 75. [Phear and Mitter, JJ. May 17, 1870.]

A POLICE-OFFICER negligently or improperly submitting an incorrect report of a local investigation may be punished under s. 29 of Act V. of 1861 in cases where the proof is insufficient to bring the case under s. 218 of the Penal Code.—BORODA KANT MOOKHOPADHYA, 15 W. R. 17. [Norman, Offg. C.J., and Loch, J. Feb. 11, 1871.]

IN a prosecution under the Police Act (V. of 1861) the Magistrate is bound to take into consideration and determine a prisoner's plea that he is a European British subject. S. 29 of Act V. of 1861 does not give to the Magistrate jurisdiction over European British subjects. — QUEEN v. HEARN, 3 N.-W. P. 128. [Turner, J. June 3, 1871.]

A POLICE OFFICER under suspension cannot be convicted, under s. 29, Act V. of 1861, of withdrawing from the duties of his office without permission.— QUEEN v. DINONATH GANGOOLY, 17 W. R. 12; 8 B. L. R. Ap. 58. [Kemp and Jackson, JJ. Feb. 10, 1872.]

BEFORE a police-officer can be convicted of an offence under s. 29, Act V. of 1861, it must be found that he is guilty, not of mere neglect, but of deliberate and intentional violation of duty. — RADHOO SINGH, 17 W. R. 34: 8 B. L. R. Ap. 60. [Bayley and Markby, JJ. March 2, 1872.]

WHERE a Magistrate appointed special constables under s. 17, Act V. of 1861, on the ground that a murder had occurred, and he was apprehensive that frequent murders would take place, it was *held* that his orders were illegal, that section referring to cases of unlawful assembly, riot, or disturbance of peace only; but that, as the order was one of a purely executive nature, the High Court had no power to interfere with it. The Magistrate should rather have proceeded under s. 15 of the Act, and applied for sanction to an increase in the police-force.—ROHOMAN SIRKAR, 18 W. R. 67; 10 B. L. R. Ap. 4. [Kemp and Glover, JJ. Nov. 29, 1872.]

MERE rashness or negligence on the part of a police-officer before ordering the search of a man's house for stolen property does not constitute an offence amounting to violation of duty under s. 29, Act V. of 1861. The violation there intended must be wilful intentional violation of some clear duty or other.—QUEEN v. BOLAKI LALL, 19 W. R. 7. [Jackson and Markby, JJ. Dec. 17, 1872.]

UNDER Act V. of 1861, a police-officer is bound to communicate information to his superior officer regarding the commission of

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RULINGS UNDER THE POLICE ACT (V. OF 1861)—*contd.*

Act 5.

a riot affecting the public peace, and to make an entry thereof in the diary which he is required by s. 44 of that Act to keep, and the omission to give such information brings him within the purview of s. 177 of the Penal Code.—SYED FUTTEH MAHOMED, 21 W. R. 30. [Kemp and Glover, JJ. Jan. 17, 1874.]

S. 42 of Act V. of 1861 (which refers to all actions and prosecutions, by persons deeming themselves aggrieved, against any person, which may be lawfully brought for anything done, or intended to be done, under the provisions of the Act, or under the general police-powers given by it) has no bearing on, or connection with, s. 29 of the Act, by which police officers are punishable for breaches of discipline and disobedience of orders committed by them as against their immediate superiors, and the rules and regulations of the body in which they have been enrolled.—*QUEEN v.* HAZAR MIR KHAN, 7 N.-W. P. 237. [Spankie, J. April 13, 1875.]

ACTS or omissions punishable under Act V. of 1861, s. 29, come within the category of "offences punishable under any law other than the Penal Code" (Code of Criminal Procedure, s. 8), and those offences likewise fall within the terms of s. 148 of the same Code —QUEEN *v.* GOLAM ARABEE, 25 W. R. 20. [Jackson and McDonell, JJ. Feb 16, 1876.]

WHERE a police-officer, who had been called on to answer to a charge of bribery, which was not sustained by the evidence, was found guilty of violation of duty under s. 29, Act V. of 1861, of which offence the trying officer found sufficient evidence in the course of the trial, *held* that an accused person called on to answer to a specific charge cannot be convicted on an entirely different charge without previous notice of the offence imputed to him, and opportunity being afforded him of meeting the accusation under s. 23, Act V. of 1861. A police-officer is not bound to arrest a person against whom no proceedings have been directed if he believes that he has not sufficient grounds for apprehending him.—GREESH CHUNDER NUNDEE, 26 W. R. 8 [Morris and McDonell, JJ. Sep 7, 1876.]

THE failure of a police-constable to resume his duty on the expiration of his leave does not constitute an offence under s. 29, Act V. of 1861.—IN THE MATTER OF THE PETITION OF JANOKINATH GUPTA: EMPRESS *v* JANOKINATH GUPTA, I. L. R., 6 Cal. 625; 8 C. L. R. 56. [Mitter and Maclean, JJ. Jan. 27, 1881.] [S. 29 has since been amended.]

S. 29 of Act V. of 1861 is not applicable to persons who are not police-officers. Where a Magistrate, acting merely on certain information contained in a letter addressed to him, convicted a person for obstruction and nuisance, the High Court set aside the conviction on the ground that there was no complaint and no evidence.—RAM KUMAR, 10 C. L. R. 521. [McDonell and Field, JJ. Mar. 31, 1881.]

A POLICE-OFFICER obtained leave of absence for one month, a substitute being appointed and overstayed his leave twenty-nine days. *Held* that such absence without leave did not amount to "withdrawal from the duties of his office without permission" within the meaning of s. 29 of Act V. of 1861.—EMPRESS *v.* SALIG RAM, I. L. R., 6 All. 495. [Duthoit, J. June 27, 1884.] [S. 29 has since been amended.]

A DISTRICT Superintendent of Police directed his constables to cut down the jungle in the vicinity of their lines and, on their refusal to comply, ordered them extra drill every day. One of such constables, not turning out to such extra drill, was thereupon prosecuted, and convicted of neglect of duty under s. 29, Act V. of 1861. *Held* that s. 29 provided for no such offence, and that any neglect of duty, short of a violation of duty, does not amount to an offence under that section. *Held*, further, that the omission to attend such extra drill did not amount to an offence under that section, as the words "lawful order" used in the section mean an order which the authority mentioned therein is competent to make, and it did not appear that a District Superintendent of Police was competent to order his constables to cut down the jungle in the vicinity of their lines, and, on their refusal to do so, to order them extra drill —BHOLA NATH DAS, I. L. R., 12 Cal. 427. [Mitter and Agnew, JJ. Dec. 4 1885.]

A POLICE-CONSTABLE was suspended, and ordered to remain in the lines during suspension. Despite the order, he absented himself therefrom without leave. He was convicted under s. 29 of Act V. of 1861. *Held* that s. 29 of Act V of 1861 contemplates that the person to be charged with an offence under it must have been, at the time of his doing the act in respect of which the charge is preferred, a police-constable within the meaning of that Act. When a police-officer is suspended, he ceases to be a police officer; the conviction was therefore wrong. *Queen* v. *Dinonath Gangooly* (8 B. L. R. Ap. 58) followed.—QUEEN-EMPRESS *v.* DURGA, I. L. R., 10 All. 459. [Straight, J. June 23, 1888.]

THERE is no express power given by Act V. of 1861 to any officer, save the Inspector-General of Police, to make rules; therefore the violation of a general rule, alleged to have been made by a District Superintendent of Police to the effect that constables are to be within the lines at a particular time or at roll-call, is not punishable under s. 29 of the Act. *Semble.*—The violation of a special order made by a District Superintendent of Police, requiring the presence of an officer or of certain officers within the police-lines, and issued expressly to him or each of them, would come within s. 29 of the Act as being not "a rule or regulation," but a "lawful order," made by a competent authority, and relating to the duties of the officer or officers.—*In re* ABDUL HOSSEIN, QUEEN-EMPRESS *v.* ABDUL HOSSEIN, I. L. R., 15 Cal. 194 [Prinsep and Pigot, JJ. Aug. 29, 1887.]

THE operation of s. 560 of the Code of Criminal Procedure is restricted to cases instituted by "complaint" as defined in the Code, or upon information given *to* a police-officer or a Magistrate, and consequently that section has no application to a case instituted on a police-report, or on information given *by* a police-officer. *Quære.*—Whether, under the section, a Magistrate has power to make an order for imprisonment in default of payment of the compensation awarded? A police constable arrested a carter, and charged him before a Magistrate with an offence under s. 34 of Act V. of 1861. The Magistrate acquitted the accused, and directed, under s. 560 of the Code, that the police-constable should pay him Rs. 20 as compensation, or undergo simple imprisonment for a fortnight. *Held* that, as the section had no application to the case, the order was illegal, being made without jurisdiction. *Held*, further, that, even if the Magistrate had power under the Code to pass an order for imprisonment in default of payment of compensation awarded under s. 560, it was illegal to pass such an order until some attempt had been made to levy the amount in the manner provided by s. 386 for the levying of a fine.—RAMJERVAN KOORMI *v.* DURGACHURN SADHUKHAN, I. L. R., 21 Cal. 799. [Beverley and Banerjee, JJ. July 4, 1894.]

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# ACT NO. VI. OF 1898,*

## THE INDIAN POST OFFICE ACT, 1898.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*Received the assent of the Governor-General on the 22nd March 1898.*

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*An Act to consolidate and amend the Law relating to the Post Office in India.*

WHEREAS it is expedient to consolidate and amend the law relating to the Post Office in India; It is hereby enacted as follows:—

### CHAPTER I.

PRELIMINARY.

Short title, extent, application, and commencement.

**1.** (*1*) This Act may be called "The Indian Post Office Act, 1898."

(*2*) It extends to the whole of British India, inclusive of * * * † British Baluchistan, the Santal Parganas, and the Pargana of Spiti; and it applies also to—

(*a*) all Native Indian subjects of Her Majesty in any place without and beyond British India;

(*b*) all other British subjects within the territories of any Native Prince or Chief in India; and

(*c*) all servants of the Queen, whether British subjects or not, within the territories of any Native Prince or Chief in India.

(*3*) It shall come into force on the first day of July, 1898.

Definitions.

**2.** In this Act, unless there is anything repugnant in the subject or context,—

(*a*) the expression "Director-General" means the Director-General of the Post Office of India:

(*b*) the expression "inland," used in relation to a postal article, means—

(i) posted in British India, and addressed to any place in British India or to any place for which a post office is established by the Governor-General in Council beyond the limits of British India; or

(ii) posted at any post office established by the Governor-General in Council beyond the limits of British India, and addressed to any place for which any such post office is established, or to any place in British India:

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* For Statement of Objects and Reasons, see Gazette of India, 1897, Pt. V., p. 385; for Report of the Select Committee, see *ibid*, 1898, Pt. V., p. 211; for Proceedings in Council, see *ibid*, 1897, Pt. VI., p. 249; *ibid*, 1898, Pt VI., pp. 23, 99, and 285 to 289

The Act has been applied, under s. 3 (*2*) of the Chin Hills Regulation (V. of 1896), to tracts in which ss. 2 and 4 to 41 of the Regulation have been applied.—See Burma Gazette, 1898, Pt. I., p. 564.

It was declared in force in Upper Burma (except the Shan States) by the Burma Laws Act (XIII. of 1898).

As to rules made under the Post Office Act which are now in force, or are in force from time to time, see the Indian Postal Guide, which is published by the Post Office half-yearly.

† Here the words, "Upper Burma," have been repealed by the Burma Laws Act (XIII. of 1898).—See the Fifth Schedule.

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(*c*) the expression "mail bag" includes a bag, box, parcel, or any other envelope or covering in which postal articles, in course of transmission by post, are conveyed, whether it does or does not contain any such article:

(*d*) the expression "mail ship" means a ship employed for carrying mails, pursuant to contract or continuing arrangement, by the Government of India or Her Majesty's Government, or the Government of any British possession or foreign country:

(*e*) the expression "officer of the post office" includes any person employed in any business of the post office, or on behalf of the post office:

(*f*) the expression "postage" means the duty chargeable for the transmission by post of postal articles:

(*g*) the expression "postage stamp" means any stamp provided by the Governor-General in Council for denoting postage or other fees or sums payable in respect of postal articles under this Act, and includes adhesive postage stamps and stamps printed, embossed, impressed, or otherwise indicated on any envelope, wrapper, postcard, or other article:

(*h*) the expression "post office" includes every house, building, room, carriage, or place used for the purposes of the post office, and every letter-box provided by the post office for the reception of postal articles:

(*i*) the expression "postal article" includes a letter, postcard, newspaper, book, pattern, or sample packet, parcel, and every article or thing transmissible by post:

(*j*) the expression "Post-Master-General" includes a Deputy Post-Master-General or other officer exercising the powers of a Post-Master-General; and

(*k*) the expression "the Post Office" means the department presided over by the Director-General.

**Meanings of "in course of transmission by post" and "delivery."**

**3.** For the purposes of this Act—

(*a*) a postal article shall be deemed to be in course of transmission by post from the time of its being delivered to a post office to the time of its being delivered to the addressee, or of its being returned to the sender or otherwise disposed of under Chapter VII.:

(*b*) the delivery of a postal article of any description to a postman or other person authorized to receive postal articles of that description for the post shall be deemed to be a delivery to a post office; and

(*c*) the delivery of a postal article at the house or office of the addressee, or to the addressee, or his servant or agent or other person considered to be authorized to receive the article according to the usual manner of delivering postal articles to the addressee, shall be deemed to be delivery to the addressee.

## CHAPTER II.

### PRIVILEGE AND PROTECTION OF THE GOVERNMENT.

**Exclusive privilege of conveying letters reserved to the Government.**

**4.** (*1*) Wherever within British India posts or postal communications are established by the Governor-General in Council, the Governor-General in Council shall have the exclusive privilege of conveying by post, from one place to another, all letters, except in the following cases, and shall also have the exclusive privilege of performing all the incidental services of receiving, collecting, sending, despatching, and delivering all letters, except in the following cases, that is to say:—

(*a*) letters sent by a private friend in his way, journey, or travel, to be delivered by him to the person to whom they are directed, without hire, reward, or other profit or advantage for receiving, carrying, or delivering them;

(*b*) letters solely concerning the affairs of the sender or receiver thereof sent by a messenger on purpose; and

(*c*) letters solely concerning goods or property sent either by sea or by land to be delivered with the goods or property which the letters concern, without hire, reward, or other profit or advantage for receiving, carrying, or delivering them:

Provided that nothing in this section shall authorize any person to make a collection of letters excepted as aforesaid for the purpose of sending them otherwise than by post.

(*2*) For the purposes of this section and section 5, the expression "letters" includes postcards.

**Certain persons expressly forbidden to convey letters.**

**5.** Wherever within British India posts or postal communications are established by the Governor-General in Council, the following persons are expressly forbidden to collect, carry, tender, or deliver letters, or to receive letters for the purpose of carrying or delivering them, although they obtain no hire, reward, or other profit or advantage for so doing, that is to say:—

(*a*) common carriers of passengers or goods, and their servants or agents, except as regards letters solely concerning goods in their carts or carriages; and

(*b*) owners and masters of vessels sailing or passing on any river or canal in British India, or between any ports or places in British India, and their servants or agents, except as regards letters solely concerning goods on board, and except as regards postal articles received for conveyance under Chapter VIII.

**Exemption from liability for loss, misdelivery, delay, or damage.**

**6.** The Secretary of State for India in Council shall not incur any liability by reason of the loss, misdelivery, or delay of, or damage to, any postal article in course of transmission by post, except in so far as such liability may in express terms be undertaken by the Governor-General in Council as hereinafter provided; and no officer of the post office shall incur any liability by reason of any such loss, misdelivery, delay, or damage, unless he has caused the same fraudulently or by his wilful act or default.

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## CHAPTER III.

### POSTAGE.

Power to fix rates of inland postage.

**7.** (*1*) The Governor-General in Council may, by notification in the *Gazette of India*, fix the rates* of postage and other sums to be charged in respect of postal articles sent by the inland post under this Act, and may make rules as to the scale of weights, terms, and conditions subject to which the rates so fixed shall be charged:

Provided that the highest rate of postage, when prepaid, shall not exceed the rate set forth for each class of postal articles in the first schedule.

(*2*) Unless and until such notification as aforesaid is issued, the rates set forth in the said schedule shall be the rates chargeable under this Act.

(*3*) The Governor-General in Council may, by notification in the *Gazette of India*, declare what packets may be sent by the inland post as book, pattern, and sample packets within the meaning of this Act.

Power to make rules as to payment of postage and fees in certain cases.

**8.** The Governor-General in Council may, by rule†—

(*a*) require the prepayment of postage on inland postal articles or any class of inland postal articles, and prescribe the manner in which prepayment shall be made:

(*b*) prescribe the postage to be charged on inland postal articles when the postage is not prepaid or is insufficiently prepaid;

(*c*) provide for the re-direction of postal articles and the transmission by post of articles so re-directed, either free of charge or subject to such further charge as may be specified in the rules; and

(*d*) prescribe the fees to be charged for the "express delivery" of postal articles, in addition to, or instead of, any other postage chargeable thereon under this Act.

*Explanation.*—"Express delivery" means delivery by a special messenger or conveyance.

Power to make rules as to registered newspapers.

**9.** (*1*) The Governor-General in Council may make rules providing for the registration of newspapers for transmission by inland post as registered newspapers.

(*2*) For the purpose of such registration, every publication, consisting, wholly or in great part, of political or other news, or of articles relating thereto, or to other current topics, with or without advertisements, shall be deemed a newspaper, subject to the following conditions, namely:—

(*a*) that it is published in numbers at intervals of not more than thirty-one days; and

(*b*) that it has a *bond-fide* list of subscribers.

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* For notification fixing rates of postage on inland letters, see Gazette of India 1898 Pt. I., p. 960.

† For revised rates of postage on registered newspapers with effect from the 1st October 1898, see Gazette of India 1898, Pt. I. p 856

(3) An extra or supplement to a newspaper, bearing the same date as the newspaper, and transmitted therewith, shall be deemed to be part of the newspaper:

Provided that no such extra or supplement shall be so deemed unless it consists, wholly or in great part, of matter like that of the newspaper, and has the title and date of publication of the newspaper printed at the top of each page.

*Explanation.*—Nothing in this section or in the rules thereunder shall be construed to render it compulsory to send newspapers by the inland post.

Power to declare rates of foreign postage.

**10.** (1) Where arrangements are in force with the United Kingdom, or with any British possession or foreign country, for the transmission by post of postal articles between British India and the United Kingdom or such possession or country, the Governor-General in Council may, in conformity with the provisions of such arrangements, declare what postage rates and other sums shall be charged in respect of such postal articles, and may make rules as to the scale of weight, terms, and conditions subject to which the rates so declared shall be charged.*

(2) Unless and until such declaration as aforesaid is made, the existing rates and regulations shall continue in force.

Liability for payment of postage.

**11.** (1) The addressee of a postal article on which postage or any other sum chargeable under this Act is due shall be bound to pay the postage or sum so chargeable on his accepting delivery of the postal article, unless he forthwith returns it unopened:

Provided that, if any such postal article appears, to the satisfaction of the Post-Master-General, to have been maliciously sent for the purpose of annoying the addressee, he may remit the postage.

(2) If any postal article on which postage or any other sum chargeable under this Act is due is refused or returned as aforesaid, or if the addressee is dead or cannot be found, then the sender shall be bound to pay the postage or sum due thereon under this Act.

Recovery of postage and other sums due in respect of postal articles.

**12.** If any person refuses to pay any postage or other sum due from him under this Act in respect of any postal article, the sum so due may, on application made by an officer of the post office authorized in this behalf by the written order of the Post-Master-General, be recovered for the use of the post office from the person so refusing, as if it were a fine imposed under this Act, by any Magistrate having jurisdiction where that person may, for the time being, be resident; and the Post-Master-General may further direct that any other postal article, not being on Her Majesty's service, addressed to that person, shall be withheld from him until the sum so due is paid or recovered as aforesaid.

Customs-duty paid by the post office to be recoverable as postage.

**13.** When a postal article on which any duty of customs is payable has been received by post from any place beyond the limits of British India, and the duty has been paid by the postal authorities at any customs-port or elsewhere, the amount of the duty shall be recoverable as if it were postage due under this Act.

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* For notification extending Indian inland rates of postage to letters, &c., sent to Ceylon, see Gazette of India, 1898 Pt. I., p. 1170

For notification prescribing rates of postage letters from British India to the United Kingdom and to certain British possessions see No 4812-S.R., dated Nov. 4, 1898 and No. 5664-S.R., dated Dec. 26, 1898, Gazette of India, 1898, Pt. I, pp. 1086 and 1211.

Post office marks *prima-facie* evidence of certain facts denoted.

**14.** In every proceeding for the recovery of any postage or other sum alleged to be due under this Act in respect of a postal article—

(*a*) the production of the postal article, having thereon the official mark of the post office denoting that the article has been refused, or that the addressee is dead or cannot be found, shall be *prima-facie* evidence of the fact so denoted, and

(*b*) the person from whom the postal article purports to have come shall, until the contrary is proved, be deemed to be the sender thereof.

Official mark to be evidence of amount of postage.

**15.** The official mark on a postal article denoting that any postage or other sum is due in respect thereof to the post office of British India or to the post office of the United Kingdom, or of any British possession or foreign country, shall be *prima-facie* evidence that the sum denoted as aforesaid is so due.

## CHAPTER IV.

### POSTAGE STAMPS.

Provision of postage stamps and power to make rules as to them.

**16.** (*1*) The Governor-General in Council shall cause postage stamps to be provided of such kinds and denoting such values as he may think necessary for the purposes of this Act.

(*2*) The Governor-General in Council may make rules as to the supply, sale, and use of postage stamps.

(*3*) In particular and without prejudice to the generality of the foregoing power, such rules may—

(*a*) fix the price at which postage stamps shall be sold;

(*b*) declare the classes of postal articles in respect of which postage stamps shall be used for the payment of postage or other sums chargeable under this Act;

(*c*) prescribe the conditions with regard to perforation, defacement, and all other matters subject to which postage stamps may be accepted or refused in payment of postage or other sums;

(*d*) regulate the custody, supply, and sale of postage stamps;

(*e*) declare the persons by whom, and the terms and conditions subject to which, postage stamps may be sold; and

(*f*) prescribe the duties and remuneration of persons selling postage stamps.

Postage stamps to be deemed to be stamps for the purpose of revenue.

**17.** Postage stamps provided under section 16 shall be deemed to be stamps issued by Government for the purpose of revenue within the meaning of the Indian Penal Code,* and, subject to the other provisions of this Act, shall be used for the prepayment of postage or other sums chargeable under this Act in respect of postal articles, except where the Governor-General in Council directs that prepayment shall be made in some other way.

* Act XLV. of 1860.

## CHAPTER V.

### CONDITIONS OF TRANSMISSION OF POSTAL ARTICLES.

Re-delivery to sender of postal article in course of transmission by post.

**18.** (*1*) The Governor-General in Council may, by rule,* provide for the re-delivery to the sender, without reference to the consent of the addressee and subject to such conditions (if any) as may be deemed fit, of any postal article in course of transmission by post.

(*2*) Save as provided by any rules that may be made under sub-section (*1*), the sender shall not be entitled to recall a postal article in course of transmission by post.

Transmission by post of anything injurious prohibited.

**19.** (*1*) Except as otherwise provided by rule, and subject to such conditions as may be prescribed thereby, no person shall send by post any explosive, dangerous, filthy, noxious, or deleterious substance, any sharp instrument not properly protected, or any living creature which is either noxious or likely to injure postal articles in course of transmission by post or any officer of the post office.

(*2*) No person shall send by post any article or thing which is likely to injure postal articles in course of transmission by post or any officer of the post office.

Transmission by post of anything indecent, &c., prohibited.

**20.** No person shall send by post—

(*a*) any indecent or obscene printing, painting, photograph, lithograph, engraving, book, or card, or any other indecent or obscene article, or

(*b*) any postal article having thereon, or on the cover thereof, any words, marks, or designs of an indecent, obscene, seditious, scurrilous, threatening, or grossly offensive character.

Power to make rules as to transmission by post of postal articles.

**21.** (*1*) The Governor-General in Council may make rules as to the transmission by post of postal articles.

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may—

(*a*) provide for the granting receipts for, and the granting and obtaining certificates of posting and delivery of, postal articles, and the sums to be paid, in addition to any other postage, for such receipts and certificates; and

(*b*) regulate covers, form, dimensions, maximum weight and enclosures, and the use of postal articles, other than letters, for making communications.

(*3*) Postal articles shall be posted and delivered at such times and in such manner as the Director-General may, by order, from time to time appoint.

Power to postpone despatch or delivery of certain postal articles.

**22.** (*1*) Where the despatch or delivery from a post office of letters would be delayed by the despatch or delivery therefrom at the same time of book, pattern, or sample packets and parcels, or any of them, such packets or parcels, or

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* For such rules, see Notification No. 2832-S. R., dated June 24, 1898, Gazette of India, 1898, Pt. I., p. 686.

1898. Act 6. any of them, may, subject to such rules* as the Governor-General in Council may make in this behalf, be detained in the post office so long as may be necessary.

(2) Where separate parcel posts are established, parcels may be forwarded and conveyed by them, being detained, if necessary, in the post office for that purpose.

Power to deal with postal articles posted in contravention of Act.

**23.** (1) Any postal article sent by post in contravention of any of the provisions of this Act may be detained and either returned to the sender or forwarded to destination, in each case charged with such additional postage (if any) as the Governor-General in Council may, by rule, direct.

(2) Any officer in charge of a post office or authorized by the Post-Master-General in this behalf may open or unfasten any newspaper or any book, pattern, or sample packet, in course of transmission by post, which he suspects to have been sent by post in contravention of section 21, or of any of the provisions of this Act relating to postage.

(3) Notwithstanding anything in sub-section (1)—

(a) any postal article sent by post in contravention of the provisions of section 19 may, under the authority of the Post-Master-General, if necessary, be opened and destroyed; and

(b) any postal article sent by post in contravention of the provisions of section 20 may, under the authority of the Post-Master-General, be destroyed.

Power to deal with postal articles containing goods contraband or liable to duty.

**24.** Where a postal article, suspected to contain any contraband goods or anything liable to duty, is received for delivery at a post office, the officer in charge of the post office shall send a notice in writing to the addressee inviting him to attend, either in person or by agent, within a specified time at the post office, and shall, in the presence of the addressee or his agent, or if the addressee or his agent fails to attend as aforesaid then in his absence, open and examine the postal article:

Provided, first, that, if the Director-General so directs in the case of any post office or class of post offices, the officer in charge of the post office shall call in two respectable persons as witnesses before he opens a postal article in the absence of the addressee or his agent:

Provided, secondly, that in all cases a postal article, after being opened under this section, shall be delivered to the addressee, unless it is required for the purpose of any further proceeding under this or any other law or enactment for the time being in force, and that the opening of the postal article and the circumstances connected therewith shall be immediately reported to the Post-Master-General:

Provided, thirdly, that nothing in this section shall prevent the detention of parcels, received by post from any place beyond the limits of British India, at the customs-port or other place at which they are received and the opening of parcels so received by the Customs Authorities for the purpose of levying any duty of customs

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* For rules as to detention and disposal of undelivered postal articles, see Notification No. 2832 S. R., dated June 24, 1898, see Gazette of India, 1898, Pt I., p. 686.

**Power to intercept notified goods during transmission by post.**

**25.** Where a notification has been published under section 19 of the Sea Customs Act, 1878,* in respect of any goods of any specified description, any officer of the post office empowered in this behalf by the Governor-General in Council may search, or cause search to be made, for any such goods in course of transmission by post, and shall deliver all such goods found to such officer as the Governor-General in Council may appoint in this behalf, and such goods may be disposed of in such manner as the Governor-General in Council may direct.

**Power to intercept postal articles for public good.**

**26.** (*1*) On the occurrence of any public emergency, or in the interest of the public safety or tranquillity, the Governor-General in Council, or a Local Government, or any officer specially authorized in this behalf by the Governor-General in Council, may, by order in writing, direct that any postal article or class or description of postal articles in course of transmission by post shall be intercepted or detained, or shall be delivered to the Government, or to an officer thereof mentioned in the order, to be disposed of in such manner as the Governor-General in Council may direct.

(*2*) If any doubt arises as to the existence of a public emergency, or as to whether any act done under sub-section (*1*) was in the interest of the public safety or tranquillity, a certificate signed by a Secretary to the Government of India or to the Local Government shall be conclusive proof on the point.

**Power to deal with postal articles from abroad bearing fictitious or previously-used stamps.**

**27.** (*1*) Where a postal article is received by post from any place beyond the limits of British India—

(*a*) bearing a fictitious postage stamp, that is to say, any facsimile or imitation or representation of a postage stamp; or

(*b*) purporting to be prepaid with any postage stamp which has been previously used to prepay any other postal article,

the officer in charge of the post office at which the postal article is received shall send a notice to the addressee inviting him to attend, either in person or by agent, within a specified time at the post office to receive delivery of the postal article.

(*2*) If the addressee or his agent attends at the post office within the time specified in the notice, and consents to make known to the officer in charge of the post office the name and address of the sender of the postal artcle, and to re-deliver to the officer aforesaid the portion of the postal article which bears the address and the fictitious or previously used postage stamp, or, if the postal article is inseparable from the stamp, the entire postal article, the postal article shall be delivered to the addressee or his agent.

(*3*) If the addressee or his agent fails to attend at the post office within the time specified in the notice or, having attended within that time, refuses to make known the name and address of the sender, or to re-deliver the postal article or portion thereof as required by sub-section (*2*), the postal article shall not be delivered to him, but shall be disposed of in such manner as the Governor-General in Council may direct.

*Explanation.*—For the purposes of this section, the expression "postage stamp" includes any postage stamp for denoting any rate or duty of postage of any part of Her Majesty's dominions, or of any Native State or foreign country.

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* Act VIII. of 1878

Registration of postal articles.

**28.** The sender of a postal article may, subject to the other provisions of this Act, have the article registered at the post office at which it is posted, and require a receipt therefor; and the Governor-General in Council may, by notification in the *Gazette of India*, direct that, in addition to any postage chargeable under this Act, such further fee as may be fixed by the notification shall be paid on account of the registration of postal articles.

Power to make rules as to registration.

**29.** (*1*) The Governor-General in Council may make rules as to the registration of postal articles.

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may—

(*a*) declare in what cases registration shall be required;

(*b*) prescribe the manner in which the fees for registration shall be paid; and

(*c*) direct that twice the fee for registration shall be levied on the delivery of a postal article required to be registered on which the fee for registration has not been prepaid.

(*3*) Postal articles made over to the post office for the purpose of being registered shall be delivered, when registered, at such times and in such manner as the Director-General may, by order, from time to time appoint.

Insurance of postal articles.

**30.** The Governor-General in Council may, by notification in the *Gazette of India*, direct—

(*a*) that any postal article may, subject to the other provisions of this Act, be insured at the post office at which it is posted, against the risk of loss or damage in course of transmission by post, and that a receipt therefor shall be granted to the person posting it; and

(*b*) that, in addition to any postage and fees for registration chargeable under this Act, such further fee as may be fixed by the notification shall be paid on account of the insurance of postal articles.

Power to require insurance of postal articles.

**31.** The Governor-General in Council may, by notification in the *Gazette of India*, declare in what cases insurance shall be required, and direct that any postal article containing anything required to be insured, which has been posted without being insured, shall be returned to the sender or shall be delivered to the addressee, subject to the payment of such special fee as may be fixed by the notification:

Provided that the levy of such special fee as aforesaid shall not impose any liability upon the Secretary of State for India in Council in respect of the postal article.

Power to make rules as to insurance.

**32.** (*1*) The Governor-General in Council may make rules* as to the insurance of postal articles.

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may—

* For notification prescribing rules as to insurance of postal articles, and value-payable postal articles, see No. 5333-S.R., dated Dec. 5, 1898, Gazette of India, 1898, Pt. I., p. 1171.

(*a*) declare what classes of postal articles may be insured under section 30; 1908. Act 6.

(*b*) fix the limit of the amount for which postal articles may be insured; and

(*c*) prescribe the manner in which the fees for insurance shall be paid.

(3) Postal articles made over to the post office for the purpose of being insured shall be delivered, when insured, at such places and times, and in such manner, as the Director-General may, by order, from time to time appoint.

Liability in respect of postal articles insured.

**33.** Subject to such conditions and restrictions as the Governor-General in Council may, by rule, prescribe, the Secretary of State for India in Council shall be liable to pay compensation, not exceeding the amount for which a postal article has been insured, to the sender thereof for the loss of the postal article or its contents, or for any damage caused to it in course of transmission by post:

Provided that the compensation so payable shall in no case exceed the value of the article lost or the amount of the damage caused.

Transmission by post of value-payable postal articles.

**34.** The Governor-General in Council may, by notification in the *Gazette of India*, direct that, subject to the other provisions of this Act, and to the payment of fees at such rates as may be fixed by the notification, a sum of money specified in writing at the time of posting by the sender of a postal article shall be recoverable on the delivery thereof from the addressee, and that the sum so recovered shall be paid to the sender:

Provided that the Secretary of State for India in Council shall not incur any liability in respect of the sum specified for recovery, unless and until that sum has been received from the addressee.

*Explanation.*—Postal articles sent in accordance with the provisions of this section may be described as "value-payable" postal articles.

Power to make rules as to value-payable postal articles.

**35.** (1) The Governor-General in Council may make rules as to the transmission by post of value-payable postal articles.

(2) In particular and without prejudice to the generality of the foregoing power such rules may—

(*a*) declare what classes of postal articles may be sent as value-payable postal articles;

(*b*) direct that no postal article shall be so sent unless the sender declares that it is sent in execution of a *bond-fide* order received by him;

(*c*) limit the value to be recovered on the delivery of any value-payable postal article; and

(*d*) prescribe the form of declaration to be made by the senders of value-payable postal articles, and the time and manner of the payment of fees.

(3) Postal articles shall be made over to the post office for the purpose of being sent as "value-payable," and shall be delivered, when so sent, at such times and in such manner as the Director-General may, by order, from time to time appoint.

Power to give effect to arrangements with other countries.

**36.** (1) Where arrangements are in force with the United Kingdom, or with any British possession, Native State or foreign country, for the transmission by post of registered, insured, or value-payable postal articles between Bri-

1898. Act 6.

tish India and the United Kingdom or such possession, State, or country, the Governor-General in Council may make rules to give effect to such arrangements.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

(a) the form of declaration to be made by the senders of such postal articles as aforesaid; and

(b) the fees to be charged in respect thereof.

## CHAPTER VII.

### UNDELIVERED POSTAL ARTICLES.

Power to make rules as to disposal of undelivered postal articles.

**37.** (1) The Governor-General in Council may make rules as to the disposal* of postal articles which, for any reason, cannot be delivered (hereinafter referred to as "undelivered postal articles").

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) prescribe the period during which undelivered postal articles at a post office shall remain in that office; and

(b) provide for the publication of lists of undelivered postal articles, or of any class of undelivered postal articles.

(3) Every undelivered postal article, after being detained at a post office for the period prescribe d by rule under the foregoing provisions of this section, shal be either forwarded, free of further charge, to the post office at which it was posted for return to the sender, or sent to the office of the Post-Master-General.

Disposal of undelivered postal articles at office of Post-Master-General.

**38.** (1) Every postal article received at the office of the Post-Master-General under sub-section (3) of section 37 shall be dealt with as follows:—

(a) if practicable, it shall be redirected and forwarded by post to the addressee; or,

(b) if it cannot be redirected and forwarded as aforesaid, it shall be opened by some officer appointed by the Post-Master-General in this behalf, and bound to secrecy, in order to ascertain the name and address of the sender.

(2) If the name and address of the sender are so ascertained, it shall be returned by post to the sender, free of further charge, or subject to such further charge as the Governor-General in Council may, by rule, direct.

Final disposal of undelivered postal articles.

**39.** Undelivered postal articles which cannot be disposed of under the foregoing provisions shall be detained in the office of the Post-Master-General for such further period (if any), and shall be dealt with in such manner, as the Governor-General in Council may, by rule, direct:

Provided that—

(a) letters and postcards shall be destroyed;

* For rules as to disposal of undelivered postal articles, see Notification No. 1833-S. R., dated June 24, 1898, Gazette of India, 1898, Pt. I., p. 686.

(*b*) money or saleable property, not being of a perishable nature, found in any undelivered postal article, shall be detained for a period of one year in the office of the Post-Master-General, and if, on the expiration of that period, no person has established his right thereto, shall, if money, be credited to the post office, and, if saleable property, be sold, the sale-proceeds being credited to the post office. 1898. Act 6.

## CHAPTER VIII.

### SHIP LETTERS.

**40.** The master of a ship, not being a mail ship, about to depart from any port in British India to any port within, or any port or place beyond, British India, shall receive on board any mail bag tendered to him by any officer of the post office for conveyance, granting a receipt therefor in such form as the Governor-General in Council may, by rule, prescribe, and shall, without delay, deliver the same at the port or place of destination.

Duty of master of ship, departing from any port in British India, and not being a mail ship, to convey mail bags.

**41.** (*1*) The master of a ship arriving at any port in British India shall, without delay, cause every postal article or mail bag on board which is directed to that port, and is within the exclusive privilege conferred on the Governor-General in Council by section 4, to be delivered either at the post office at that port, or to some officer of the post office authorized in this behalf by the Post-Master-General.

Duty of master of ship arriving at any port in British India in respect of postal articles and mail bags on board.

(*2*) If there is on board any postal article or mail bag which is directed to any other place within British India, and is within the exclusive privilege aforesaid, the master shall, without delay, report the fact to the officer in charge of the post office at the port of arrival, and act according to the directions he may receive from such officer, and the receipt of such officer shall discharge him from all further responsibility in respect of the postal article or mail bag.

**42.** The Governor-General in Council may, by notification in the *Gazette of India*, declare what gratuities* shall be allowed to masters of ships, not being mail ships, in respect of postal articles received by them for conveyance on behalf of the post office; and the master of a ship, not being a mail ship, about to leave any port in British India as aforesaid, shall, if he receives on board a mail bag for conveyance, be entitled to demand and obtain immediately the amount of the gratuity payable under this section in respect of the mail bag and its contents.

Allowance of gratuities for conveyance of postal articles by ships other than mail ships.

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* For such notification, see No. 375-S. R., dated Jan. 24, 1899, Gazette of India, 1899, Pt. I., p. 41.

1898.

Act 6.

## CHAPTER IX.

### MONEY ORDERS.

*Power to maintain money order system, and to make rules as to remittances thereby.*

**43.** (*1*) The Governor-General in Council may provide for the remitting of small sums of money through the post office by means of money orders, and may make rules* as to such money orders.

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

(*a*) the limit of amount for which money orders may be issued;

(*b*) the period during which money orders shall remain current; and

(*c*) the rates of commission or the fees to be charged on money orders or in respect thereof.

*Power for remitter to recall money order or alter name of payee.*

**44.** (*1*) Subject to such conditions as the Governor-General in Council may, by rules made under section 43, prescribe in respect of the levy of additional rates of commission or fees or any other matters, a person remitting money through the post office by means of a money order may require that the amount of the order, if not paid to the payee, be repaid to him, or be paid to such person other than the original payee as he may direct.

(*2*) If neither the payee nor the remitter of a money order can be found, and if, within the period of one year from the date of the issue of the order, no claim is made by such payee or remitter, the amount of such order shall not be claimable from the Government.

*Power to provide for the issue of postal orders.*

**45.** The Governor-General in Council may authorize the issue, in such form as may be suitable, of money orders, to be called postal orders, or by such other designation as may be deemed appropriate, for certain fixed amounts, and may make rules as to the rates of commission to be charged thereon, and the manner in which, and conditions subject to which, they may be issued, paid, and cancelled:

Provided that no such order shall be issued for an amount in excess of ten rupees.

*Power to give effect to arrangements with other countries.*

**46.** (*1*) Where arrangements are in force with the United Kingdom, or with any British possession, Native State, or foreign country, for the issue and payment through the post office of money orders between British India and the United Kingdom or such possession, State, or country, the Governor-General in Council may make rules to give effect to such arrangements.†

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

(*a*) the manner in which, and the conditions subject to which, such orders may be issued and paid in British India; and

(*b*) the rates of commission to be charged thereon.

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* For rules as regards postal money orders, see Notification No. 2832-S. R., dated June 24, 1898, Gazette of India, 1898, Pt. I, p. 686.

† *For rules giving effect to arrangements in force for the issue and payment of foreign money orders, see* Notification No. 2988-S. R., dated July 6, 1898, Gazette of India, 1898, Pt. I., p. 728.

Recovery of money order paid to the wrong person.

**47.** If any person, without reasonable excuse, the burden of proving which shall lie on him, neglects or refuses to refund— 1898. Act 6.

(*a*) any amount paid to him in respect of a money order by an officer of the post office in excess of what ought to have been paid to him in respect thereof, or

(*b*) the amount of a money order paid by an officer of the post office to him instead of to some other person to whom it ought to have been paid,

such amount shall be recoverable by an officer of the post office authorized by the Post-Master-General in this behalf from the person so neglecting or refusing as if it were an arrear of land-revenue due from him.*

Exemption from liability in respect of money orders.

**48.** No suit or other legal proceeding shall be instituted against the Secretary of State for India in Council or any officer of the post office in respect of—

(*a*) any thing done under any rules made by the Governor-General in Council under this chapter; or

(*b*) the wrong payment of a money order caused by incorrect or incomplete information given by the remitter as to the name and address of the payee, provided that, as regards incomplete information, there was reasonable justification for accepting the information as a sufficient description for the purpose of identifying the payee; or

(*c*) the payment of any money order being refused or delayed by, or on account of, any accidental neglect, omission, or mistake, by, or on the part of, an officer of the post office, or for any other cause whatsoever, other than the fraud or wilful act or default of such officer; or

(*d*) any wrong payment of a money order after the expiration of one year from the date of the issue of the order.

## CHAPTER X.

### PENALTIES AND PROCEDURE.

*Offences by Officers of the Post Office.*

Penalty for misconduct of person employed to carry or deliver mail bags or postal articles.

**49.** Whoever, being employed to carry or deliver any mail bag or any postal article in course of transmission by post—

(*a*) is in a state of intoxication while so employed, or

(*b*) is guilty of carelessness or other misconduct, whereby the safety of any such mail bag or postal article as aforesaid is endangered, or

(*c*) loiters or makes delay in the conveyance or delivery of any such mail bag or postal article as aforesaid, or

(*d*) does not use due care and diligence safely to convey or deliver any such mail bag or postal article as aforesaid,

shall be punishable with fine which may extend to fifty rupees.

* See the Revenue Recovery Act (I. of 1890).

1898. Act 6.

**50.** Whoever, being employed to carry or deliver any mail bag or any postal article in course of transmission by post, voluntarily withdraws from the duties of his office without permission, or without having given one month's previous notice in writing, shall be punishable with imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both.

Penalty for voluntary withdrawal from duty, without permission or notice, of person employed to carry or deliver mail bags or postal articles.

**51.** Whoever, being employed to carry or deliver any postal article in course of transmission by post, and required, while so employed, to keep any register, makes, or causes or suffers to be made, any false entry in the register with intent to induce the belief that he has visited a place, or delivered a postal article, which he has not visited or delivered, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one hundred rupees, or with both.

Penalty for making false entry in register kept by person employed to carry or deliver postal articles.

**52.** Whoever, being an officer of the post office, commits theft in respect of, or dishonestly misappropriates, or, for any purpose whatsoever, secretes, destroys, or throws away, any postal article in course of transmission by post or anything contained therein, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be punishable with fine.

Penalty for theft, dishonest misappropriation, secretion, destruction, or throwing away, of postal articles.

**53.** Whoever, being an officer of the post office, contrary to his duty, opens, or causes or suffers to be opened, any postal article in course of transmission by post, or wilfully detains or delays, or causes or suffers to be detained or delayed, any such postal article, shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both:

Penalty for opening, detaining, or delaying postal articles.

Provided that nothing in this section shall extend to the opening, detaining, or delaying of any postal article under the authority of this Act, or in obedience to the order in writing of the Governor-General in Council or the direction of a competent Court.

Penalty for fraud in connection with official marks, and for receipt of excess postage.

**54.** Whoever, being an officer of the post office,—

(*a*) fraudulently puts any wrong official mark on a postal article, or

(*b*) fraudulently alters, removes, or causes to disappear any official mark which is on a postal article, or,

(*c*) being entrusted with the delivery of any postal article, knowingly demands or receives any sum of money in respect of the postage thereof which is not chargeable under this Act,

shall be punishable with imprisonment for a term which may extend to two years, and shall also be punishable with fine.

**55.** Whoever, being an officer of the post office entrusted with the preparing or keeping of any document, fraudulently prepares the document incorrectly, or alters or secretes or destroys the document, shall be punishable with imprisonment for a term which may extend to two years, and shall also be punishable with fine.

Penalty for fraudulently preparing, altering, secreting, or destroying post office documents.

**56.** Whoever, being an officer of the post office, sends by post, or puts into any mail bag, any postal article upon which postage has not been paid or charged in the manner prescribed by this Act, intending thereby to defraud the Government of the postage on such postal article, shall be punishable with imprisonment for a term which may extend to two years, and shall also be punishable with fine.

Penalty for fraudulently sending unpaid postal articles.

**57.** (*1*) Whoever, being an officer of the post office employed in any place in India beyond the limits of British India in which posts are established by the Governor-General in Council, or being appointed to sell postage stamps in any such place, commits therein an offence punishable under this Act, shall be punishable either in the place where the offence was committed by any Court or officer duly empowered by the Governor-General in Council to take cognizance of offences committed in that place, or in any part of British India by any Court of competent jurisdiction, as if the offence had been committed in that part.

Punishment of offences committed in India outside British India.

(*2*) The provisions of section 188 of the Code of Criminal Procedure, 1898,* shall not apply to any offence referred to in this section.

*Other Offences.*

Penalty for contravention of section 4.

**58.** (*1*) Whoever—

(*a*) conveys, otherwise than by post, a letter within the exclusive privilege conferred on the Governor-General in Council by section 4, or

(*b*) performs any service incidental to convey, otherwise than by post, any letter within the exclusive privilege aforesaid, or

(*c*) sends, or tenders or delivers in order to be sent, otherwise than by post, a letter within the exclusive privilege aforesaid, or

(*d*) makes a collection of letters excepted from the exclusive privilege aforesaid for the purpose of sending them otherwise than by post,

shall be punishable with fine which may extend to fifty rupees for every such letter.

(*2*) Whoever, having already been convicted of an offence under this section, is again convicted thereunder, shall, on every such subsequent conviction, be punishable with fine which may extend to five hundred rupees.

Penalty for contravention of section 5.

**59.** (*1*) Whoever, in contravention of the provisions of section 5, carries, receives, tenders, or delivers letters, or collects letters, shall be punishable with fine which may extend to fifty rupees for every such letter.

(*2*) Whoever, having already been convicted of an offence under this section, is again convicted thereunder, shall, on every such subsequent conviction, be punishable with fine which may extend to five hundred rupees.

Penalty for breach of rules under section 16.

**60.** Whoever, being appointed to sell postage stamps,—

(*a*) takes from any purchaser for any postage stamp or quantity of postage stamps a price higher than that fixed by any rule made under section 16, sub-section (*3*), clause (*a*), shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both; or

* Act V. of 1898.

(*b*) commits a breach of any other rule made under section 16, shall be punishable with fine which may extend to two hundred rupees.

Penalty for contravention of section 19 or 20.

**61.** (*1*) Whoever, in contravention of the provisions of section 19 or section 20, sends, or tenders or makes over in order to be sent, by post, any postal article or any thing, shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(*2*) The detention in the post office of any postal article on the ground of its having been sent in contravention of the provisions of section 19 or section 20 shall not exempt the sender from any proceedings which might have been taken if the postal article had been delivered in due course of post.

Penalty for defiling or injuring post office letter-boxes.

**62.** Whoever places in or against any letter-box provided by the post office for the reception of postal articles any fire, match, or light, any explosive, dangerous, filthy, noxious, or deleterious substance, or any fluid, or commits a nuisance in or against any such letter-box, or does anything likely to injure any such letter-box or its appurtenances or contents, shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Penalty for affixing without authority thing to, or painting, tarring, or disfiguring, post office or post office letter-box.

**63.** Whoever, without due authority, affixes any placard, advertisement, notice, list, document, board, or other thing in or on, or paints, tars, or in any way disfigures, any post office or any letter-box provided by the post office for the reception of postal articles, shall be punishable with fine which may extend to fifty rupees.

Penalty for making false declaration.

**64.** Whoever, being required by this Act to make a declaration in respect of any postal article to be sent by post or the contents or value thereof, makes in his declaration any statement which he knows, or has reason to believe, to be false, or does not believe to be true, shall be punishable with fine which may extend to two hundred rupees, and, if the false declaration is made for the purpose of defrauding the Government, with fine which may extend to five hundred rupees.

Penalty for master of ship failing to comply with the provisions of section 40 or 41.

**65.** Whoever, being the master of a ship,—

(*a*) fails to comply with the provisions of section 40, or,

(*b*) without reasonable excuse, the burden of proving which shall lie on him, fails to deliver any postal article or mail bag, or to comply with the directions of the officer in charge of the post office at a port of arrival, as required by section 41,

shall be punishable with fine which may extend to one thousand rupees.

Penalty for detention of letters on board vessel arriving in port.

**66.** (*1*) Whoever, being either the master of a ship arriving at any port in British India or any one on board, knowingly has in his baggage or in his possession or custody, after the postal articles on board or any of them have been sent to the post office at the port of arrival, any postal article within the exclusive privilege conferred on the Governor-General in Council by section 4, shall be punishable with fine which may extend to fifty rupees for every such postal article as aforesaid.

(*2*) Whoever, being such master or other person as aforesaid, detains any such postal article as aforesaid after demand made for it by an officer of the post

office, shall be punishable with fine which may extend to one hundred rupees for every such postal article.

**Penalty for detaining mails or opening mail-bag.**

**67.** Whoever, except under the authority of this Act, or in obedience to the order in writing of the Governor-General in Council or the direction of a competent Court, detains the mails or any postal article in course of transmission by post, or on any pretence opens a mail-bag in course of transmission by post, shall be punishable with fine which may extend to two hundred rupees:

Provided that nothing in this section shall prevent the detention of an officer of the post office carrying the mails or any postal article in course of transmission by post, on a charge of having committed an offence declared to be cognizable by the Code of Criminal Procedure, 1898,* or any other law for the time being in force.

**Penalty for retaining postal articles wrongly delivered, or mail-bags.**

**68.** Whoever fraudulently retains, or wilfully secretes or makes away with, or keeps or detains, or, when required by an officer of the post office, neglects or refuses to deliver up, any postal article in course of transmission by post which ought to have been delivered to any other person, or a mail-bag containing a postal article, shall be punishable with imprisonment for a term which may extend to two years, and shall also be punishable with fine.

**Penalty for unlawfully diverting letters.**

**69.** Whoever, not being an officer of the post office, wilfully and maliciously, with intent to injure any person, either opens, or causes to be opened, any letter which ought to have been delivered, or does any act whereby the due delivery of a letter to any person is prevented or impeded, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both:

Provided that nothing in this section shall apply to a person who does any act to which the section applies, if he is a parent, or in the position of a parent or guardian, of the addressee, and the addressee is a minor or a ward.

*General.*

**Penalty for abetting, or attempting to commit, offences under Act.**

**70.** Whoever abets the commission of any offence punishable under this Act, or attempts to commit any offence so punishable, shall be punishable with the punishment provided for that offence.

**Property in cases of offences to be laid in the post office.**

**71.** In every prosecution for an offence in respect of a mail-bag, or of any postal article sent by post, it shall be sufficient, for the purpose of the charge, to describe the mail-bag or postal article as being the property of the post office, and it shall not be necessary to prove that the mail-bag or postal article was of any value.

**Authority for prosecutions under certain sections of Act.**

**72.** No Court shall take cognizance of an offence punishable under any of the provisions of sections 51, 53, 54, clauses (*a*) and (*b*), 55, 56, 58, 59, 61, 64, 65, 66, and 67 of this Act, unless upon complaint made by order of, or under authority from, the Director-General or a Post-Master-General.

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* Act V. of 1898.

## CHAPTER XI.

SUPPLEMENTAL.

Zamindari and other district posts.

**73.** (*1*) The Governor-General in Council may make rules for the management of any zamindari or other district post.

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may declare what portions of this Act shall be applicable to zamindari and other district posts, and to the persons employed in connection therewith.

General power to make rules and provisions as to rules under Act.

**74.** (*1*) In addition to the powers hereinbefore conferred, the Governor-General in Council may make rules to carry out any of the purposes and objects of this Act.

(*2*) In making any rule under this Act, the Governor-General in Council may direct that a breach of it shall be punishable with fine which may extend to fifty rupees.

(*3*) All rules made by the Governor-General in Council under this Act shall be published in the *Gazette of India*, and, on such publication, shall have effect as if enacted by this Act.

Delegation of powers, other than rule-making powers, to Director-General.

**75.** The Governor-General in Council may, by notification in the *Gazette of India*, authorize, either absolutely or subject to conditions, the Director-General to exercise any of the powers conferred upon the Governor-General in Council by this Act other than a power to make rules.

Repeal.

**76.** The enactments mentioned in the second schedule are repealed to the extent specified in the fourth column thereof.

Saving.

**77.** Nothing in this Act shall derogate from or affect the provisions of the East India Company Act, 1780,* or any enactment amending or extending the same.

## THE FIRST SCHEDULE.

INLAND POSTAGE RATES.

(*See section 7.*)

LETTERS.

| | |
|---|---|
| For a weight not exceeding half a tola ... | ... Half an anna. |
| For a weight not exceeding one tola ... | ... One anna. |
| For every tola or fraction thereof exceeding one tola | ... One anna. |

POST-CARDS.

| | |
|---|---|
| Single ... ... ... ... | ... Quarter of an anna. |
| Reply ... ... ... ... | ... Half an anna. |

BOOK, PATTERN, AND SAMPLE PACKETS.

| | |
|---|---|
| For every ten tolas or fraction thereof ... | ... Half an anna. |

NEWSPAPERS.

| | |
|---|---|
| For a weight not exceeding three tolas ... | ... Quarter of an anna. |

* 21 Geo. III., c. 70.

THE FIRST SCHEDULE—*concld.*

REGISTERED NEWSPAPERS.

| | |
|---|---|
| For a weight not exceeding twenty tolas ... ... | Half an anna. |
| For every twenty tolas or fraction thereof exceeding twenty tolas ... ... ... ... ... | Half an anna. |

PARCELS.

| | |
|---|---|
| For a weight not exceeding twenty tolas ... ... | Two annas. |
| For a weight not exceeding forty tolas ... ... | Four annas. |
| For every additional forty tolas or fraction thereof exceeding forty tolas ... ... ... ... | Four annas. |

## THE SECOND SCHEDULE.

ENACTMENTS REPEALED.

(*See section 76.*)

| Year. | No. | Short title. | Extent of repeal. |
|---|---|---|---|
| 1866 | XIV. | The Indian Post Office Act, 1866 ... | The whole. |
| 1882 | III. | The Seditious Publications Act, 1882 ... | So much as is unrepealed. |
| 1895 | III. | The Indian Criminal Law Amendment Act, 1895. | Section 7. |
| 1896 | XVI. | The Indian Post Office Act (1866) Amendment Act, 1896. | The whole. |
| 1897 | XIV. | The Indian Short Titles Act, 1897 ... | So much as relates to Act XVI. of 1896. |

# ACT NO. XXV. OF 1867.

## THE PRESS AND REGISTRATION OF BOOKS ACT, 1867.*

RECEIVED THE G.-G.'S ASSENT ON THE 22ND MARCH 1867.

*An Act for the regulation of Printing-presses and Newspapers, for the preservation of copies of books printed in British India, and for the registration of such books.*

WHEREAS it is expedient to provide for the regulation of printing-presses and of periodicals containing news, for the preservation

Preamble.

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* This is the short title given to the Act by the Indian Short Titles Act (XIV. of 1897).

For Statement of Objects and Reasons of the Bill, which was passed into law as Act XXV. of 1867, see Gazette of India, 1867, p. 191; for proceedings in Council relating to the Bill, see *ibid*, Supplement, pp. 72, 156, 299.

It has been declared, by notification under s. 3 (*b*) of the last-mentioned Act, not to be in force in the Scheduled District of Lahaul in the Punjab. See Gazette of India, 1886, Pt. I., p 301.

It has been applied to the Santhal Parganas Settlement Regulation (III. of 1872), s. 3, as amended by the Santhal Parganas Laws Regulation (III. of 1886), and to Upper Burma (except the Shan States) by the Upper Burma Laws Act (XX. of 1886), s. 6.

It has been applied, by notification under s. 3 (*a*) of the Scheduled Districts (XIV. of 1874), to the following Scheduled Districts, namely:—

| | | |
|---|---|---|
| (1) The Province of Sindh ... | See Gazette of India, | 1880, Pt. I., p. 672. |
| (2) Aden ... ... ... | Ditto | 1879, Pt. I., p. 434. |
| (3) The Territory of Peint ... | Ditto | 1887, Pt. I., p. 144. |
| (4) The Island of Perim ... | Ditto | 1887, Pt. I., p. 5. |
| (5) That portion of the Jalpáiguri District which was formerly the Jalpáiguri Sub-division, and now forms the western portion of the District of Jalpáiguri, and extends as far east as the Teesta River, the hills west of the Teesta River in the District of Dárjiling, the Dárjiling Tarái, the Damson Sub-division of the Dárjiling District, the Districts of Hazáribágh, Lohárdaga, and Manbhum, and Pargana Dhálbhum, and the Kolhan in the District of Singbhum ... | Ditto | 1881, Pt. I., pp. 74, 504. |
| (6) The Districts of Kumáon and Garhwál ... ... | Ditto | 1876, Pt. p., 605. |
| (7) The Scheduled Portion of the Mirzapur District ... ... | Ditto | 1879, Pt. I., p. 383. |
| (8) Pargana Jaunsar Báwar in the Dehra Dún District ... | Ditto | 1879 Pt. I., p. 382. |
| (9) The Districts of Hazára, Peshawar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán ... | Ditto | 1886, Pt. I., p. 48. |
| (10) The Districts of Kámrup, Nowgong, Darrang, Sibságar, Lakhimpur, Goálpára (excluding the Eastern Dvars), and Cachar (excluding the North Cachar Hills) ... ... | Ditto | 1878. Pt. I., p. 533. |

1867. Act 25.

of . . . . copies* of every book printed or lithographed in British India, and for the registration of such books; It is hereby enacted as follows:—

## PART I.

### PRELIMINARY.

Interpretation-clause.

**1.** In this Act, unless there shall be something repugnant in the subject or context,—

"Book" includes every volume, part, or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart, or plan separately printed or lithographed:

"British India" means the territories which are or shall be vested in Her Majesty or Her Successors by the Statute 21 and 22 Vict., cap. 106 *(An Act for the Better Government of India)* . . . . . .†

"Magistrate" means any person exercising the full powers of a Magistrate,‡ and includes a Magistrate of Police . . . . . .:

Words in the singular include the plural, and *vice versâ*; words denoting the masculine gender include females:

And in every part of British India to which this Act shall extend, "Local Government" shall mean the person authorized by law to administer executive government in such part, and includes a Chief Commissioner.

**2.** [*Repeal of Act XI. of 1835.*] *Repealed by Act XIV. of 1870.*

## PART II.

### OF PRINTING-PRESSES AND NEWSPAPERS.

Particulars to be printed on books and papers.

**3.** Every book or paper printed within British India shall have printed legibly on it the name of the printer and the place of printing, and (if the book or paper be published) "the name" § of the publisher, and the place of publication.

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(11) The Gáro Hills, the Khási and Jaintiá Hills, the Nága Hills, the North Cachar Hills in the Cachar District, and the Eastern Dvars in the Goálpára District ... ... ... See Gazette of India, 1897, Pt. I., p. 299.

(12) The District of Sylhet ... Ditto 1879, Pt. I., p. 631.

This Act was declared, by the Laws Local Extent Act (XV. of 1874), s. 3, to be in force in the whole of British India, except as regards the Scheduled Districts.

It has been extended, by notification under s. 5 of the same Act, to the Tarái District of the North-Western Provinces.—See Gazette of India, 1876, Pt. I., p. 506.

* In the preamble, the word "three," which had been originally inserted before the word "copies" has been omitted, having been repealed by the Press and Registration of Books Act Amendment Act (X. of 1890), s. 1.

† Here the words, "other than the Settlement of Prince of Wales's Island, Singapore, and Malacca." have been omitted, having been repealed by the Repealing and Amending Act (XII. of 1891).

‡ In s. 1 the word "Magistrate" means Magistrate of the first class, see the Code of Criminal Procedure (Act V. of 1898), s. 3. Also in s. 1, in the definition of the word "Magistrate," the words "and a Justice of the Peace," which had originally been inserted after the word "Police," have been omitted, having been repealed by the Press and Registration of Books Act (1867) Amendment Act (X. of 1890), s. 2. And the expression "Magistrate of Police" now means Presidency Magistrate. See the Press and Registration of Books Act (1867) Amendment Act (X. of 1890), s. 3. See also the Code of Criminal Procedure as above.

§ The words quoted have been inserted by the Repealing and Amending Act (XII. of 1891).

**4.** No person shall, within British India, keep in his possession any press for the printing of books or papers, who shall not have made and subscribed the following declaration before the Magistrate within whose local jurisdiction such press may be:—

Keeper of printing-press to make declaration.

"I, *A B*, declare that I have a press for printing at ————." And this last blank shall be filled up with a true and precise description of the place where such press may be situate.

**5.** No printed periodical work, containing public news or comments on public news, shall be published in British India, except in conformity with the rules hereinafter laid down:—

Rule as to publication of printed periodicals containing public news.

(*1*) The printer and the publisher of every such periodical work shall appear before the Magistrate within whose local jurisdiction such work shall be published, and shall make and subscribe, in duplicate, the following declaration:—

"I, *A B*, declare that I am the printer [*or* publisher, *or* printer and publisher] of the periodical work entitled ——, and printed [*or* published, *or* printed and published, *as the case may be*] at ——." And the last blank in this form of declaration shall be filled up with a true and precise account of the premises where the printing or publication is conducted:

(*2*) As often as the place of printing or publication is changed, a new declaration shall be necessary:

(*3*) As often as the printer or the publisher who shall have made such declaration as is aforesaid shall leave British India, a new declaration from a printer or publisher resident within the said territories shall be necessary.

**6.** Each of the two originals of every declaration so made and subscribed as is aforesaid shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration shall have been made.

Authentication of declaration.

One of the said originals shall be deposited among the records of the office of the Magistrate, and the other shall be deposited among the records of the High Court of Judicature, or "other principal Civil Court of original jurisdiction for the place where"* the said declaration shall have been made.

Deposit.

The officer in charge of each original shall allow any person to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said declaration, attested by the seal of the Court which has the custody of the original, on payment of a fee of two rupees.

Inspection and copies of declaration.

**7.** In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declarations, shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, that the said person was printer or publisher, or printer and publisher (according as the words of the said declaration may be) of

Office-copy of declaration to be *prima-facie* evidence.

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* In s. 6, the words quoted have been substituted for the words "other Court within the local limits of whose ordinary original civil jurisdiction."—See the Press and Registration of Books Act (1867) Amendment Act (X. of 1890), s. 3.

1897. Act 25.

every portion of every periodical work whereof the title shall correspond with the title of the periodical work mentioned in the declaration.

New declaration by persons who have signed declaration, and subsequently ceased to be printers or publishers.

8. Provided always that any person who may have subscribed any such declaration as is aforesaid, and who may subsequently cease to be the printer or publisher of the periodical work mentioned in such declaration, may appear before any Magistrate, and make and subscribe in duplicate the following declaration :—

"I, *A B*, declare that I have ceased to be the printer [*or* publisher, *or* printer and publisher] of the periodical work entitled ———."

Authentication and filing.

Each original of the latter declaration shall be authenticated by the signature and seal of the Magistrate before whom the said latter declaration shall have been made, and one original of the said latter declaration shall be filed along with each original of the former declaration.

Inspection and supply of copies.

The officer in charge of each original of the latter declaration shall allow any person applying to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said latter declaration attested by the seal of the Court having custody of the original on payment of a fee of two rupees.

Putting copy in evidence.

In all trials in which a copy, attested as is aforesaid, of the former declaration shall have been put in evidence, it shall be lawful to put in evidence a copy, attested as is aforesaid, of the latter declaration, and the former declaration shall not be taken to be evidence that the declarant was, at any period subsequent to the date of the latter declaration, printer or publisher of the periodical work therein mentioned.

## PART III.*

### Delivery of Books.

Copies of books printed after commencement of Act to be delivered gratis to Government.

9. Printed or lithographed copies of the whole of every book which shall be printed or lithographed in British India after this Act shall come into force, together with all maps, prints, or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same, shall, notwithstanding any agreement (if the book be published) between the printer and publisher thereof, be delivered by the printer at such place and to such officer as the Local Government shall, by notification in the official Gazette, from time to time direct, and free of expense to the Government, as follows, that is to say† :—

* This Part has been substituted for the original Part III. (relating to the delivery to the Local Government of all published books, &c., and to the payment therefor and disposal of the copies) by the Press and Registration of Books Act (1867) Amendment Act (X. of 1890), s. 4.

† In Burma the Deputy Commissioner is the officer to whom, and his office the place at which, a copy of each book is under this section to be delivered, see Notification No. G. D. 28, dated 27th July 1892, at p. 25 of the Burma Rules Manual, Ed. 1897.

For the officers to whom, and the places at which, in the Presidency of Bombay, copies of each book are to be delivered, see Notification No. 994, dated 16th March 1891, at p. 31 of the Bombay List of Local Rules and Orders, Ed. 1896.

In the North-Western Provinces, the Magistrate of the District is to receive all copies, and under s. 11 to send them to the Superintendent of the Government Press at Allahabad, see North-Western Provinces List of Local Rules and Orders, Ed. 1894, p. 32.

(*a*) in any case, within one calendar month after the day on which any such book shall first be delivered out of the press, one such copy, and

(*b*) if within one calendar year from such day the Local Government shall require the printer to deliver other such copies not exceeding two in number, then within one calendar month after the day on which any such requisition shall be made by the Local Government on the printer, another such copy, or two other such copies as the Local Government may direct,

the copies so delivered being bound, sewed, or stitched together, and upon the best paper on which any copies of the book shall be printed or lithographed.

The publisher or other person employing the printer shall, at a reasonable time before the expiration of the said month, supply him with all maps, prints, and engravings, finished and coloured as aforesaid, which may be necessary to enable him to comply with the requirements aforesaid.

Nothing in the former part of this section shall apply to—

(i) any second or subsequent edition of a book in which edition no additions or alterations either in the letter-press or in the maps, prints, or other engravings belonging to the book have been made, and a copy of the first or some preceding edition of which book has been delivered under this Act, or

(ii) any periodical work published in conformity with the rules laid down in section 5 of this Act.

Receipt for copies delivered under last foregoing section.

**10.** The officer to whom a copy of a book is delivered under the last foregoing section shall give to the printer a receipt in writing therefor.

Disposal of copies delivered under section 9.

**11.** The copy delivered pursuant to clause (*a*) of the first paragraph of section 9 of this Act shall be disposed of as the Local Government shall from time to time determine.*

Any copy or copies delivered pursuant to clause (*b*) of the said paragraph shall be transmitted to the British Museum or the Secretary of State for India, or to the British Museum and the said Secretary of State, as the case may be.

## PART IV.

### PENALTIES.

Penalty for printing contrary to rule in section 3.

**12.** Whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in section 3 of this Act shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, or by simple imprisonment for a term not exceeding two years, or by both.

Penalty for keeping press without making declaration required by section 4.

**13.** Whoever shall keep in his possession any such press as aforesaid without making such a declaration as is required by section 4 of this Act shall, on conviction before a Magistrate, be punished by fine not exceeding five

* As to where copies in Burma are to be deposited, see Notification No. G. D. 123, dated 13th June 1890, at p. 26 of the Burma Rules Manual, Ed. 1897; in the North-Western Provinces, see Notification quoted at p. 32 of the North-Western Provinces List of Local Rules and Orders, Ed. 1894, p. 32.

thousand rupees, or by simple imprisonment for a term not exceeding two years, or by both.

**Punishment for making false statement.**

**14.** Any person who shall, in making any declaration under the authority of this Act, make a statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees and imprisonment for a term not exceeding two years.

**Penalty for printing or publishing periodicals without conforming to rules.**

**15.** Whoever shall print or publish any such periodical work as is hereinbefore described without conforming to the rules hereinbefore laid down, or whoever shall print or publish, or shall cause to be printed or published, any such periodical work, knowing that the said rules have not been observed with respect to that work, shall, on conviction before a Magistrate, be punished with fine not exceeding five thousand rupees, or imprisonment for a term not exceeding two years, or both.

**Penalty for not delivering books, or not supplying printer with maps.**

**16.*** If any printer of any such book as is referred to in section 9 of this Act shall neglect to deliver copies of the same pursuant to that section, he shall, for every such default, forfeit to the Government such sum, not exceeding fifty rupees, as a Magistrate having jurisdiction in the place where the book was printed may, on the application of the officer to whom the copies should have been delivered, or of any person authorized by that officer in this behalf, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the copies which the printer ought to have delivered.

If any publisher or other person employing any such printer shall neglect to supply him, in the manner prescribed in the second paragraph of section 9 of this Act, with the maps, prints or engravings which may be necessary to enable him to comply with the provisions of that section, such publisher or other person shall, for every such default, forfeit to the Government such sum, not exceeding fifty rupees, as such a Magistrate as aforesaid may, on such an application as aforesaid, determine to be, in the circumstances, a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the maps, prints, or engravings which such publisher or other person ought to have supplied.

**Recovery of forfeitures and disposal thereof and of fines.**

**17.*** Any sum forfeited to the Government under the last foregoing section may be recovered under the warrant of the Magistrate determining the sum, or of his successor in office, in the manner authorized by the Code of Criminal Procedure for the time being in force, and within the period prescribed by the Indian Penal Code for the levy of a fine.

All fines or forfeitures under this Part of this Act shall, when recovered, be disposed of as the Local Government shall from time to time direct.

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* Ss. 16 and 17 have been substituted for the original sections by the Press and Registration of Books Act (1867) Amendment Act (X. of 1890), s. 5.

## PART V.

### REGISTRATION OF BOOKS.

Registration of memoranda of books.

**18.** There shall be kept at such office, and by such officer, as the Local Government shall appoint in this behalf,* a book to be called a Catalogue of Books printed in British India, wherein shall be registered a memorandum of every book which shall have been delivered "pursuant to clause (*a*) of the first paragraph of section 9" of this Act.†

Contents of memorandum.

Such memorandum shall (so far as may be practicable) contain the following particulars (that is to say):—

(1) the title of the book and the contents of the title-page, with a translation into English of such title and contents, when the same are not in the English language:

(2) the language in which the book is written:

(3) the name of the author, translator, or editor of the book, or any part thereof:

(4) the subject:

(5) the place of printing, and the place of publication:

(6) the name or firm of the printer, and the name or firm of the publisher:

(7) the date of issue from the press or of the publication:

(8) the number of sheets, leaves, or pages:

(9) the size:

(10) the first, second, or other number of the edition:

(11) the number of copies of which the edition consists:

(12) whether the book is printed or lithographed:

(13) the price at which the book is sold to the public: and

(14) the name and residence of the proprietor of the copyright or of any portion of such copyright.

Registration of memorandum.

Such memorandum shall be made and registered in the case of each book as soon as practicable after the delivery of the "copy thereof pursuant to clause (*a*) of the first paragraph of section 9."‡

Effect of registration.

Every registration under this section shall, upon payment of the sum of two rupees to the officer keeping the said catalogue, be deemed to be an entry in the book of registry kept under Act No. XX of 1847 *(for the encouragement of learning in the Territories subject to the Government of the East India Company, by defining, and providing for the enforcement of, the right called Copyright therein)*; and the provisions contained in that Act as to the said book of registry shall apply, *mutatis mutandis*, to the said catalogue.

Act XX of 1847 applied.

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* For notification directing by whom and where the catalogue of books under this section is to be kept in Burma, see Burma Rules Manual, Ed. 1897, p. 26.

† In s. 18, the words, letter, and figure quoted have been substituted for the words and figure "pursuant to section 9" by the Press and Registration of Books Act (1867) Amendment Act (X. of 1890), s. 6.

‡ In s. 18, the words, letter, and figure quoted have been substituted for the words "copies thereof in manner aforesaid" by the Press and Registration of Books Act (1867) Amendment Act (X. of 1890), s. 6.

1867. Act 25.

Publication of memoranda registered.

Sending copies.

**19.** The memoranda registered during each quarter in the said catalogue shall be published in the local Gazette as soon as may be after the end of such quarter, and a copy of the memoranda so published shall be sent to the said Secretary of State and to the Secretary to the Government of India in the Home Department respectively.

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## PART VI.

### MISCELLANEOUS.

Power to make rules.

**20.** The Local Government shall have power to make such rules* as may be necessary or desirable for carrying out the objects of this Act, and from time to time to repeal, alter, and add to such rules.

Publication.

All such rules, and all repeals and alterations thereof, and additions thereto, shall be published in the local Gazette.

Power to exclude any class of books from operation of Act.

**21.** The Governor-General of India in Council may, by notification in the *Gazette of India*, exclude any class of books from the operation of the whole or any part or parts of this Act.†

**22** [*Continuance of parts of Act.*] *Repealed by the Press and Registration of Books Act (1867) Amendment Act (X. of 1890), s. 7.*

**23.** [*Commencement.*] *Repealed by the Repealing Act (XIV. of 1870).*

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### RULINGS UNDER THE PRINTING PRESSES AND NEWSPAPERS ACT.

ON the prosecution of the editor of a newspaper for defamation under s. 500 of the Penal Code by publishing a libel in his paper, an attested copy of a declaration made by the editor under s. 5 of Act XXV. of 1867 to the effect that he was the printer and publisher of the newspaper was produced in evidence by the complainant. The editor having been convicted by the Magistrate, the Sessions Court on appeal quashed the conviction, on the ground that there was no evidence that the editor was the writer of the libel, or permitted its publication. *Held* that, in the absence of proof to the contrary, the declaration was *prima-facie* proof of publication by the editor. *Held* also that it would be a sufficient answer to the charge if the editor proved that the libel was published in his absence and without his knowledge, and that he had in good faith entrusted the temporary management of the newspaper during his absence to a competent person.—RAMASAMI v. LOKANADA, I. L. R., 9 Mad. 387 [Collins, C.J., and Muttusami Ayyar J. April 12, 1886.]

A NEWSPAPER was printed and published, bearing the following words: "Printed and published at Cochin for the Malabar Economic Company at the Company's Goshree-Vilasam Press." *Held* that these words did not satisfy the requirements of Act XXV. of 1867. s. 3.—QUEEN-EMPRESS v. HARI SHENOY. I. L. R., 16 Mad. 443. [Muttusami Ayyar, J. Mar 2, July 21, 24, 1893.]

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* For rules made under this power for—

(1) Assam, see the Assam Manual of Local Rules and Orders, Ed. 1893, pp. 10 to 12.

(2) Bombay, see the Bombay List of Local Rules and Orders, Ed. 1896, p. 32.

(3) Burma, see the Burma Rules Manual, Ed. 1897, p. 26.

(4) Central Provinces, see the Central Provinces List of Local Rules and Orders, Ed. 1896, p. 14.

(5) Madras, see the Madras List of Local Rules and Orders, Ed. 1894, p. 8.

† For exemptions under s. 21, see Notifications quoted at p. 54 of the List of General Rules and Orders made under enactments applying to British India. These Notifications are also quoted at p. 19 of the Burma Laws List, Ed. 1897.

# ACT NO. XI. OF 1890.

## THE PREVENTION OF CRUELTY TO ANIMALS ACT.*

RECEIVED THE G.-G.'S ASSENT ON THE 21ST MARCH 1890.

*An Act for the Prevention of Cruelty to Animals.*

WHEREAS it is expedient to make further provision for the prevention of cruelty to animals; It is hereby enacted as follows:—

Preamble.

Title, extent, and commencement, and supersession of other enactments.

**1.** (*1*) This Act may be called the "Prevention of Cruelty to Animals Act, 1890."

(*2*) This section extends to the whole of British India; and the Local Government may, by notification in the official Gazette, extend, on and from a date to be specified in the notification, the whole or any part of the rest of this Act to any such local area as it thinks fit.†

(*3*) When any part of this Act has been extended under sub-section (*2*) to a local area, the Local Government may, by notification in the official Gazette, direct that the whole or any part of any other enactment in force in the local area for the prevention of cruelty to animals shall, except as regards anything done, or any offence committed, or any fine or penalty incurred, or any proceedings commenced, cease to have effect in the local area, and such whole or part shall cease to have effect accordingly, until the Local Government, by a like notification, otherwise directs.

(*4*) The Local Government may cancel or vary a notification under sub-section (*2*) or sub-section (*3*).

Definitions.

**2.** In this Act, unless there is something repugnant in the subject or context,—

(*1*) "animal" means any domestic or captured animal; and

(*2*) "street" includes any way, road, lane, square, court, alley, passage, or open space, whether a thoroughfare or not, to which the public have access.

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* For Statement of Objects and Reasons, see Gazette of India, 1890, Pt. V., p. 4; for Report of the Select Committee, see *ibid*, p. 95; and for Proceedings in Council, see *ibid*, Pt. VI., pp. 4, 10, and 62.

This Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act (XIII. of 1898). [It had previously been extended there under Act XIV. of 1874, see Gazette of India, 1898, Pt. I., p. 94.]

The Act has been extended, by Notification under s. 5 of the Scheduled Districts Act (XIV. of 1874), to British Baluchistan, see Gazette of India, 1892, Pt. II., p. 367.

It has been declared in force in the Santhal Parganas by Notification under s. 3 of the Santhal Parganas Settlement Regulation (III. of 1872) as amended by the Santhal Parganas Laws Regulation (III. of 1886), see Calcutta Gazette, 1892, Pt. I., p. 448.

† As to the extension of the rest of the Act to places in—

(*1*) Assam, see Assam Gazette, 1897, Pt. II., pp. 169 and 170:

(*2*) Ajmere-Merwara, see Gazette of India, 1897, Pt. II., p. 771:

(*3*) The Bombay Presidency, see Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, pp. 544 and 545:

(*4*) Burma, see Burma Laws List, Ed. 1897, p. 308:

(*5*) Central Provinces, see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 58.

(*6*) N.-W. P. and Oudh, see N.-W. P. and Oudh List of Local Rules and Orders, Ed. 1894, pp. 149 and 150, and N.-W. P. and Oudh Gazette, 1897, Pt. I., p. 1194.

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Penalty for cruelty to animals in public places, and for sale in such places of animals killed with unnecessary cruelty.

**3.** If any person in any street or in any other place, whether open or closed, to which the public have access, or within sight of any person in any street or in any such other place,—

(*a*) cruelly and unnecessarily beats, overdrives, overloads, or otherwise ill-treats any animal, or

(*b*) binds or carries any animal in such a manner or position as to subject the animal to unnecessary pain or suffering, or

(*c*) offers, exposes, or has in his possession for sale, any live animal which is suffering pain by reason of mutilation, starvation, or other ill-treatment, or any dead animal which he has reason to believe to have been killed in an unnecessarily cruel manner,

he shall be punished with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

Penalty for practising phúká.

**4.** If any person performs upon any cow the operation called phúká, he shall be punished with fine which may extend to one hundred rupees, or with imprisonment which may extend to three months, or with both.

Penalty for killing animals with unnecessary cruelty anywhere.

**5.** If any person kills any animal in an unnecessarily cruel manner, he shall be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to six months, or with both.

Penalty for employing anywhere animals unfit for labour.

**6.** (*1*) If any person employs in any work or labour any animal which, by reason of any disease, infirmity, wound, sore, or other cause, is unfit to be so employed, or permits any such unfit animal in his possession or under his control, to be so employed, he shall be punished with fine which may extend to one hundred rupees.

(*2*) The Local Government may, by general or special order, appoint places to be infirmaries for the treatment and care of animals in respect of which offences against sub-section (*1*) have been committed.

(*3*) The Magistrate before whom a prosecution for such an offence has been instituted may direct that the animal in respect of which the offence is alleged or proved to have been committed shall be sent for treatment and care to an infirmary, and be there detained until it is in his opinion, or in the opinion of some other Magistrate, again fit for the work or labour on which it has been ordinarily employed.

(*4*) The cost of the treatment, feeding, and watering of the animal in the infirmary, shall be payable by the owner of the animal according to such scale of rates as the District Magistrate, or, in the case of an infirmary in a Presidency-town, the Commissioner of Police, may from time to time prescribe.

(*5*) If the owner refuses or neglects to pay such cost and to remove the animal within such time as a Magistrate may prescribe, the Magistrate may direct that the animal be sold, and that the proceeds of the sale be applied to the payment of such cost.

(*6*) The surplus, if any, of the proceeds of the sale, shall, on application made by the owner within two months after the date of the sale, be paid to him, but the owner shall not be liable to make any payment in excess of the proceeds of the sale.

**Penalty for permitting diseased animals to go at large, or to die in public places.**

**7.** If any person wilfully permits any animal, of which he is the owner, to go at large in any street while the animal is affected with contagious or infectious disease, or, without reasonable excuse, permits any diseased or disabled animal, of which he is the owner, to die in any street, he shall be punished with fine which may extend to one hundred rupees.

**Search-warrants.**

**8.** (*1*) If a Magistrate of the first class, Sub-divisional Magistrate, Commissioner of Police, or District Superintendent of Police, upon information in writing, and after such inquiry as he thinks necessary, has reason to believe that an offence against section 4, section 5, or section 6, is being or is about to be or has been committed in any place, he may either himself enter and search, or, by his warrant, authorize any police-officer above the rank of a constable to enter and search, the place.

(*2*) The provisions of the Code of Criminal Procedure, 1882,* relating to searches under that Code, shall, so far as those provisions can be made applicable, apply to a search under sub-section (*1*).

**Limitation for prosecutions.**

**9.** A prosecution for an offence against this Act shall not be instituted after the expiration of three months from the date of the commission of the offence.

**Destruction of suffering animals.**

**10.** When any Magistrate, Commissioner of Police, or District Superintendent of Police has reason to believe that an offence against this Act has been committed in respect of any animal, he may direct the immediate destruction of the animal if, in his opinion, its sufferings are such as to render such a direction proper.

**Saving with respect to religious rites or usages.**

**11.** Nothing in this Act shall render it an offence to kill any animal in a manner required by the religion or religious rites and usages of any race, sect, tribe, or class.

**Provision supplementary to section 1 with respect to extent of Act.**

**12.** Notwithstanding anything in section 1, sections 9, 10, and 11, shall extend to every local area in which any section of this Act constituting an offence is for the time being in force.

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* See now the Code of Criminal Procedure (Act V. of 1898).

# ACT NO. III. OF 1900.

## THE PRISONERS ACT.

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## SCHEDULES.

# ACT NO. III. OF 1900.

## THE PRISONERS ACT.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*Received His Excellency's assent on the 2nd February 1900.*

*An Act to consolidate the Law relating to Prisoners confined by Order of a Court.*

WHEREAS it is expedient to consolidate the law relating to prisoners confined by order of a Court; It is hereby enacted as follows:—

### PART I.

PRELIMINARY.

Short title, extent, and commencement.

**1.** (*1*) This Act may be called the Prisoners Act, 1900.

(*2*) It extends to the whole of British India, inclusive of British Baluchistan, the Santhal Parganas, and the Pargana of Spiti; and

(*3*) It shall come into force at once.

Definitions.

**2.** In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "Court" includes a Coroner and any officer lawfully exercising civil, criminal, or revenue jurisdiction; and

(*b*) "prison" includes any place which has been declared by the Local Government, by general or special order, to be a subsidiary jail.

### PART II.

GENERAL.

Officers in charge of prisons to detain persons duly committed to their custody.

**3.** The officer in charge of a prison shall receive and detain all persons duly committed to his custody, under this Act or otherwise, by any Court according to the exigency of any writ, warrant, or order by which such person has been committed, or until such person is discharged or removed in due course of law.

Officers in charge of prisons to return writs, &c., after execution or discharge.

**4.** The officer in charge of a prison shall forthwith, after the execution of every such writ, order, or warrant as aforesaid, other than a warrant of commitment for trial, or after the discharge of the person committed thereby, return such writ, order, or warrant to the Court by which the same was issued or made, together with a certificate, endorsed thereon and signed by him, showing how the same has been executed, or why the person committed thereby has been discharged rom custody before the execution thereof.

### PART III.

PRISONERS IN THE PRESIDENCY-TOWNS.

Warrants, &c., to be directed to police-officers.

**5.** Every writ or warrant for the arrest of any person issued by the High Court in the exercise of its ordinary, extraordinary, or other criminal jurisdiction, shall be directed to, and executed by, a police-officer within the local limits of such jurisdiction.

Power for Local Governments to appoint Superintendents of Presidency prisons.

**6.** The Local Government may appoint officers who shall have authority to receive and detain prisoners committed to their custody under this Part.

*Explanation.*—Any officer so appointed, by whatever designation he may be styled, is hereinafter referred to as "the Superintendent."

Delivery of persons sentenced to imprisonment or death by High Court.

**7.** Where any person is sentenced by the High Court in the exercise of its original criminal jurisdiction to imprisonment or to death, the Court shall cause him to be delivered to the Superintendent together with its warrant, and such warrant shall be executed by the Superintendent, and returned by him to the High Court when executed.

Delivery of persons sentenced to transportation or penal servitude by High Court.

**8.** Where any person is sentenced by the High Court in the exercise of its original criminal jurisdiction to transportation or penal servitude, the Court shall cause him to be delivered for intermediate custody to the Superintendent, and the transportation or penal servitude of such person shall be deemed to commence from such delivery.

Delivery of persons committed by High Court in execution of a decree or for contempt.

**9.** Where any person is committed by the High Court, whether in execution of a decree or for contempt of Court, or for any other cause, the Court shall cause him to be delivered to the Superintendent, together with its warrant of commitment.

Delivery of persons sentenced by Presidency Magistrates.

**10.** Where any person is sentenced by a Presidency Magistrate to imprisonment, or is committed to prison for failure to find security to keep the peace, or to be of good behaviour, the Magistrate shall cause him to be delivered to the Superintendent, together with his warrant.

Delivery of persons committed for trial by HighCourt.

**11.** Every person committed by a Magistrate, Justice of the Peace, or Coroner for trial by the High Court in the exercise of its original criminal jurisdiction, shall be delivered to the Superintendent, together with a warrant of commitment, directing the Superintendent to produce such person before the Court for trial; and the Superintendent shall, as soon as practicable, cause such person to be taken before the Court at a criminal session thereof, together with the warrant of commitment, in order that he may be dealt with according to law.

Custody pending hearing by High Court under section 350 of the Code of Civil Procedure of application for insolvency.

**12.** The High Court may, pending the hearing, under section 350 of the Code of Civil Procedure,* of any application for a declaration of insolvency, cause the judgment-debtor concerned to be delivered to the Superintendent, subject to the provisions as to release on security of section 349 of the said Code, and the Superintendent shall detain the said judgment-debtor in safe custody until he is re-delivered to an officer of the High Court for the purpose of being taken before it in pursuance of its order, or until he is released in due course of law.

Delivery of persons arrested in pursuance of warrant of High Court or Civil Court in Presidency-town.

**13.** (*1*) Every person arrested in pursuance of a writ, warrant, or order of the High Court in the exercise of its original civil jurisdiction, or in pursuance of a warrant of any Civil Court established in a Presidency-town under any law or enactment for the time being in force, or in pursu-

* Act XIV. of 1882.

ance of a warrant issued under section 5, shall be brought without delay before the Court by which, or by a Judge of which, the writ, warrant, or order, was issued, awarded, or made, or before a Judge thereof, if the said Court, or a Judge thereof, is then sitting for the exercise of original jurisdiction.

(*2*) If the said Court, or a Judge thereof, is not then sitting for the exercise of original jurisdiction, such person, arrested as aforesaid, shall, unless a Judge of the said Court otherwise directs, be delivered to the Superintendent for intermediate custody, and shall be brought before the said Court, or a Judge thereof, at the next sitting of the said Court, or of a Judge thereof, for the exercise of original jurisdiction, in order that such person may be dealt with according to law; and the said Court or Judge shall have power to make or award all necessary orders or warrants for that purpose.

## PART IV.

### PRISONERS OUTSIDE THE PRESIDENCY-TOWNS.

References in this Part to prisons, &c., to be construed as referring also to Reformatory Schools.

**14.** In this Part all references to prisons or to imprisonment or confinement shall be construed as referring also to Reformatory Schools or to detention therein.

Power for officers in charge of prisons to give effect to sentences of certain Courts.

**15.** (*1*) Officers in charge of prisons outside the Presidency-towns may give effect to any sentence or order or warrant for the detention of any person passed or issued—

(*a*) by any Court or tribunal acting, whether within or without British India, under the general or special authority of Her Majesty, or of the Governor-General in Council, or of any Local Government, or

(*b*) by any Court or tribunal in the territories of any Native Prince or State in India—

(*i*) if the presiding Judge, or if the Court or tribunal consists of two or more Judges, at least one of the Judges is an officer of the British Government authorized to sit as such Judge by the Native Prince or State, or by the Governor-General in Council, and

(*ii*) if the reception, detention, or imprisonment in British India, or in any province of British India, of persons sentenced by any such Court or tribunal, has been authorized by general or special order by the Governor-General in Council or the Local Government, as the case may be, or

(*c*) by any other Court or tribunal in the territories of any Native Prince or State in India, with the previous sanction of the Governor-General in Council or of the Local Government in the case of each such sentence, order, or warrant.

(*2*) Where a Court or tribunal of such a Native Prince or State has passed a sentence which cannot be executed without the concurrence of an officer of the British Government, and such sentence has been considered on the merits, and confirmed by any such officer specially authorized in that behalf, such sentence, and any order or warrant issued in pursuance thereof, shall be deemed to be the sentence, order, or warrant of a Court or tribunal acting under the authority of the Governor-General in Council.

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Warrant of officer of such Court to be sufficient authority.

**16.** A warrant under the official signature of an officer of such Court or tribunal as is referred to in section 15 shall be sufficient authority for holding any person in confinement, or for sending any person for transportation, in pursuance of the sentence passed upon him.

Procedure where officer in charge of prison doubts the legality of warrant sent to him for execution under this Part.

**17.** (*1*) Where an officer in charge of a prison doubts the legality of a warrant or order sent to him for execution under this Part, or the competency of the person whose official seal or signature is affixed thereto to pass the sentence and issue the warrant or order, he shall refer the matter to the Local Government, by whose order on the case he and all other public officers shall be guided as to the future disposal of the prisoner.

(*2*) Pending a reference made under sub-section (*1*), the prisoner shall be detained in such manner, and with such restrictions or mitigations, as may be specified in the warrant or order.

Execution in British India of certain capital sentences not ordinarily executable there.

**18.** (*1*) Where a British Court, exercising, in or with respect to territory beyond the limits of British India, jurisdiction which the Governor-General in Council has in such territory,—

(*a*) has sentenced any person to death, and,

(*b*) being of opinion that such sentence should, by reason of there being in such territory no secure place for the confinement of such person, or no suitable appliances for his execution in a decent and humane manner, be executed in British India, has issued its warrant for the execution of such sentence to the officer in charge of a prison in British India,

such officer shall, on receipt of the warrant, cause the execution to be carried out at such place as may be prescribed therein in the same manner, and subject to the same conditions, in all respects as if it were a warrant duly issued under the provisions of section 381 of the Code of Criminal Procedure, 1898.*

(*2*) The prisons of which the officers in charge are to execute sentences under any such warrants as aforesaid shall be such as the Governor-General in Council, or a Local Government authorized by the Governor-General in Council in this behalf, may, by general or special order, direct.

(*3*) A Court shall be deemed to be a British Court for the purposes of this section if the presiding Judge, or if the Court consists of two or more Judges, at least one of the Judges, is an officer of the British Government authorized to act as such Judge by any Native Prince or State in India, or by the Governor-General in Council:

Provided that every warrant issued under this sub-section by any such tribunal shall, if the tribunal consists of more than one Judge, be signed by a Judge who is an officer of the British Government authorized as aforesaid.

## PART V.

### PERSONS UNDER SENTENCE OF PENAL SERVITUDE.

Persons under sentence of penal servitude how to be dealt with.

**19.** (*1*) Every person under sentence of penal servitude may be confined in such prison within British India as the Governor-General in Council, by general order, directs, and may, while so confined, be kept to hard labour, and, until he

* Act V. of 1898.

can conveniently be removed to such prison, be imprisoned, with or without hard labour, and dealt with in all other repects as persons under sentence of rigorous imprisonment may, for the time being, by law be dealt with.

(*2*) The time of such intermediate imprisonment, and the time of removal from one prison to another, shall be taken and reckoned in discharge or part discharge of the term of the sentence.

**Enactments respecting persons under sentence of transportation or imprisonment with hard labour applied to persons under sentence of penal servitude.**

**20.** Every enactment now in force in British India with respect to persons under sentence of transportation, or under sentence of imprisonment with hard labour, shall, so far as is consistent with this Act, be construed to apply to persons under sentence of penal servitude.

**Power to grant license to person sentenced to penal servitude.**

**21.** (*1*) The Governor-General in Council may grant to any person under sentence of penal servitude a license to be at large within British India or in such part thereof as is in such license expressed, during such portion of his term of penal servitude, and upon such conditions, as the Governor-General in Council may think fit.

(*2*) The Governor-General in Council may revoke or alter any license granted under sub-section (*1*).

**Licensee to be allowed to go at large.**

**22.** So long as any license granted under section 21, sub-section (*1*), continues in force and unrevoked, the licensee shall not be liable to imprisonment or penal servitude by reason of his sentence, but shall be allowed to go and remain at large according to the terms of the license.

**Apprehension of convict where license revoked.**

**23.** In case of the revocation of any such license as aforesaid, any Secretary to the Government of India may, by order in writing, signify to any Justice of the Peace or Magistrate that the license has been revoked, and require him to issue a warrant for the arrest of the licensee, and such Justice or Magistrate shall issue his warrant accordingly.

**Execution of warrant.**

**24.** A warrant issued under section 23 may be executed by any officer to whom it is directed or delivered for that purpose in any part of British India, and shall have the same force in any place within British India as if it had been originally issued or subsequently endorsed by the Justice of the Peace or Magistrate or other authority having jurisdiction in the place where it is executed.

**Licensee when arrested to be brought up for re-commitment.**

**25.** (*1*) When the licensee, for whose arrest a warrant has been issued under section 23, is arrested thereunder, he shall be brought, as soon as conveniently may be, before the Justice or Magistrate by whom the warrant was issued, or before some other Justice or Magistrate of the same place, or before a Justice or Magistrate having jurisdiction in the district in which the licensee has been arrested.

(*2*) Such Justice or Magistrate as aforesaid shall thereupon make out a warrant under his hand and seal for the re-commitment of the licensee to the prison from which he was released under the license.

**Re-commitment.**

**26.** When a warrant has been issued under section 25, sub-section (*2*), the licensee shall be re-committed accordingly, and shall thereupon be liable to be kept in penal servitude for such further term as, with the time during which he may have been imprisoned

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under the original sentence and the time during which he may have been at large under an unrevoked license, is equal to the term mentioned in the original sentence.

Penalty for breach of condition of the license.

**27.** If a license is granted under section 21 upon any condition specified therein, and the licensee—

(*a*) violates any condition so specified, or

(*b*) goes beyond the limits so specified, or

(*c*) knowing of the revocation of the license, neglects forthwith to surrender himself, or conceals himself, or endeavours to avoid arrest,

he shall be liable, upon conviction, to be sentenced to penal servitude for a term not exceeding the full term of penal servitude mentioned in the original sentence.

## PART VI.

### Removal of Prisoners.

References in this Part to prisons, &c., to be construed as referring also to Reformatory Schools.

**28.** In this Part, all references to prisons or to imprisonment or confinement shall be construed as referring also to Reformatory Schools or to detention therein.

Removal of prisoners from one prison to another in the same province.

**29.** Where any person is, or has been, sentenced to imprisonment or transportation by any Court, or, in default of giving security for keeping the peace or maintaining good behaviour, has been committed to, or is detained in, prison under section 123 of the Code of Criminal Procedure, 1898,* the Local Government or (subject to its orders and under its control) the Inspector-General of Prisons may order his removal during the period for which he has been sentenced to imprisonment or transportation, or the security has been ordered to be given, as the case may be, from the prison in which he is confined to any other prison within the province.

Lunatic prisoners how to be dealt with.

**30.** (*1*) Where it appears to the Local Government that any person detained or imprisoned under any order or sentence of any Court is of unsound mind, the Local Government may, by a warrant setting forth the grounds of belief that the person is of unsound mind, order his removal to a lunatic asylum or other place of safe custody within the province, there to be kept and treated as the Local Government directs during the remainder of the term for which he has been ordered or sentenced to be detained or imprisoned, or, if, on the expiration of that term, it is certified by a medical officer that it is necessary for the safety of the prisoner or others that he should be further detained under medical care or treatment, then until he is discharged according to law.

(*2*) Where it appears to the Local Government that the prisoner has become of sound mind, the Local Government shall, by a warrant directed to the person having charge of the prisoner, if still liable to be kept in custody, remand him to the prison from which he was removed, or to another prison within the province, or, if the prisoner is no longer liable to be kept in custody, order him to be discharged.

(*3*) The provisions of section 9 of the Lunatic Asylums Act, 1858,† shall apply to every person confined in a lunatic asylum under sub-section (*1*) after the

* Act V. of 1898. † Act XXXVI. of 1858.

expiration of the term for which he was ordered or sentenced to be detained or imprisoned; and the time during which a prisoner is confined in a lunatic asylum under that sub-section shall be reckoned as part of the term of detention or imprisonment which he may have been ordered or sentenced by the Court to undergo. Act 8.

(4) In any case in which a Local Government is competent under sub-section (1) to order the removal of a prisoner to a lunatic asylum or other place of safe custody within the province, the Governor-General in Council may order his removal to any lunatic asylum or other place of safe custody in any part of British India; and the provisions of this section, respecting the custody, detention, remand, and discharge of a prisoner removed by order of a Local Government, shall, so far as they can be made applicable, apply to a prisoner removed by order of the Governor-General in Council.

Removal of prisoners from territories under one Local Government to territories under another.

**31.** When any person is or has been sentenced to imprisonment or transportation by any Court, or, in default of giving security for maintaining good behaviour, has been committed to, or is detained in, prison under section 123 of the Code of Criminal Procedure, 1898,* the Governor-General in Council may order his removal during the period for which he has been sentenced to imprisonment or transportation, or the security has been ordered to be given, as the case may be, from the prison in which he is confined to any other prison in British India.

## PART VII.

### PERSONS UNDER SENTENCE OF TRANSPORTATION.

Appointment of places for confinement of persons under sentence of transportation and removal thereto.

**32.** The Governor-General in Council may appoint places within British India to which persons under sentence of transportation shall be sent; and the Local Government, or some officer duly authorized in this behalf by the Local Government, shall give orders for the removal of such persons to the places so appointed, except when sentence of transportation is passed on a person already undergoing transportation under a sentence previously passed for another offence.

## PART VIII.

### DISCHARGE OF PRISONERS.

Release, on recognizance, by order of High Court, of prisoner recommended for pardon.

**33.** Any Court established under the Indian High Courts Act, 1861,† may, in any case in which it has recommended to Her Majesty the granting of a free pardon to any prisoner, permit him to be at liberty on his own recognizance.

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* Act V. of 1898.

† Stat. 24 & 25 Vict., c. 104.

## PART IX.

### PROVISIONS FOR REQUIRING THE ATTENDANCE OF PRISONERS AND OBTAINING THEIR EVIDENCE.

*Attendance of Prisoners in Court.*

References in this Part to prisons, &c., to be construed as referring also to Reformatory Schools.

**34.** In this Part, all references to prisons or to imprisonment or confinement shall be construed as referring also to Reformatory Schools or to detention therein.

Power for Civil Courts to require appearance of prisoner to give evidence.

**35.** Subject to the provisions of section 39, any Civil Court may, if it thinks that the evidence of any person confined in any prison within the local limits of its appellate jurisdiction, if it is a High Court, or, if it is not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, is material in any matter pending before it, make an order in the form set forth in the first schedule, directed to the officer in charge of the prison.

District Judge in certain cases to countersign orders made under section 35.

**36.** (*1*) Where an order under section 35 is made in any civil matter pending—

(*a*) in a Court subordinate to the District Judge, or

(*b*) in a Court of Small Causes outside a Presidency-town,

it shall not be forwarded to the officer to whom it is directed, or acted upon by him, until it has been submitted to, and countersigned by,—

(*i*) the District Judge to which the Court is subordinate, or

(*ii*) the District Judge within the local limits of whose jurisdiction the Court of Small Causes is situate.

(*2*) Every order submitted to the District Judge under sub-section (*1*) shall be accompanied by a statement, under the hand of the Judge of the subordinate Court or Court of Small Causes, as the case may be, of the facts which, in his opinion, render the order necessary, and the District Judge may, after considering such statement, decline to countersign the order.

Power for certain Criminal Courts to require attendance of prisoner to give evidence or answer to charge.

**37.** Subject to the provisions of section 39, any Criminal Court may, if it thinks that the evidence of any person confined in any prison within the local limits of its appellate jurisdiction, if it is a High Court, or, if it is not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, is material in any matter pending before it, or if a charge of an offence against such person is made or pending, make an order in the form set forth in the first or second schedule, as the case may be, directed to the officer in charge of the prison :

Provided that, if such Criminal Court is inferior to the Court of a Magistrate of the first class, the order shall be submitted to, and countersigned by, the District Magistrate to whose Court such Criminal Court is subordinate, or within the local limits of whose jurisdiction such Criminal Court is situated.

Order to be transmitted through Magistrate of the district or sub-division in which person is confined.

**38.** Where any person, for whose attendance an order as in this Part provided is made, is confined in any district other than that in which the Court making or countersigning the order is situate, the order shall be sent by the Court by which it is made or countersigned to the District

or Sub-Divisional Magistrate within the local limits of whose jurisdiction the person is confined, and that Magistrate shall cause it to be delivered to the officer in charge of the prison in which the person is confined. 1900. Act 3.

Procedure where removal is desired of person confined in Presidency-town or more than one hundred miles from place where evidence is required.

**39.** (*1*) Where a person is confined in a prison within a Presidency-town, or in a prison more than one hundred miles distant from the place where any Court, subordinate to a High Court, in which his evidence is required, is held, the Judge or presiding officer of the Court in which the evidence is so required shall, if he thinks that such person should be removed under this Part for the purpose of giving evidence in such Court, and if the prison is within the local limits of the appellate jurisdiction of the High Court to which such Court is subordinate, apply in writing to the High Court, and the High Court may, if it thinks fit, make an order in the form set forth in the first schedule directed to the officer in charge of the prison.

(*2*) The High Court making an order under sub-section (*1*) shall send it to the District or Sub-Divisional Magistrate within the local limits of whose jurisdiction the person named therein is confined, or, in the case of a person confined in a prison within a Presidency-town, to the Commissioner of Police, and such Magistrate or Commissioner shall cause it to be delivered to the officer in charge of the prison in which the person is confined.

Persons confined beyond limits of appellate jurisdiction of High Court.

**40.** Where a person is confined in a prison beyond the local limits of the appellate jurisdiction of a High Court, any Judge of such Court may, if he thinks that such person should be removed under this Part for the purpose of answering a charge of an offence, or of giving evidence in any criminal matter, in such Court, or in any Court subordinate thereto, apply in writing to the Local Government of the territories within which the prison is situate, and the Local Government may, if it thinks fit, direct that the person be so removed, subject to such rules regulating the escort of prisoners as the Governor-General in Council may prescribe.

Prisoner to be brought up.

**41.** Upon delivery of any order under this Part to the officer in charge of the prison in which the person named therein is confined, that officer shall cause him to be taken to the Court in which his attendance is required, so as to be present in the Court at the time in such order mentioned, and shall cause him to be detained in custody in or near the Court until he has been examined, or until the Judge or presiding officer of the Court authorizes him to be taken back to the prison in which he was confined.

Power to Government to exempt certain prisoners from operation of this Part.

**42.** The Governor-General in Council or the Local Government may, by notification in the *Gazette of India* or the local official Gazette, as the case may be, direct that any person or any class of persons shall not be removed from the prison in which he or they may be confined; and thereupon, and so long as such notification remains in force, the provisions of this Part, other than those contained in sections 44 to 46, shall not apply to such person or class of persons.

Officer in charge of prison when to abstain from carrying out orders.

**43.** In any of the following cases, that is to say,—

(*a*) where the person named in any order made under section 35, section 37, or section 39, appears to be, from sickness or other infirmity, unfit to be removed, the officer in charge of the prison in which he is confined shall apply to the District or Sub-Divisional Magistrate within the local limits of whose jurisdiction the prison is situate, and

1908. Act 5.

if such Magistrate, by writing under his hand, declares himself to be of opinion that the person named in the order is, from sickness or other infirmity, unfit to be removed; or

(*b*) where the person named in any such order is under committal for trial; or

(*c*) where the person named in any such order is under a remand pending trial or pending a preliminary investigation; or

(*d*) where the person named in any such order is in custody for a period which would expire before the expiration of the time required for removing him under this Part, and for taking him back to the prison in which he is confined;

the officer in charge of the prison shall abstain from carrying out the order, and shall send to the Court from which the order has been issued a statement of the reason for so abstaining:

Provided that such officer as aforesaid shall not so abstain where—

(*i*) the order has been made under section 37; and

(*ii*) the person named in the order is confined under committal for trial, or under a remand pending trial or pending a preliminary investigation, and does not appear to be, from sickness or other infirmity, unfit to be removed; and

(*iii*) the place where the evidence of the person named in the order is required is not more than five miles distant from the prison in which he is confined.

*Commissions for Examination of Prisoners.*

Commissions for examination of prisoners.

**44.** In any of the following cases, that is to say,—

(*a*) where it appears to any Civil Court that the evidence of a person confined in any prison within the local limits of the appellate jurisdiction of such Court, if it is a High Court, or, if it is not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, who, for any of the causes mentioned in section 42 or section 43, cannot be removed, is material in any matter pending before it; or

(*b*) where it appears to any such Court as aforesaid that the evidence of a person confined in any prison so situate and more than ten miles distant from the place at which such Court is held, is material in any such matter; or

(*c*) where the District Judge declines, under section 36, to countersign an order for removal;

the Court may, if it thinks fit, issue a commission, under the provisions of the Code of Civil Procedure,* for the examination of the person in the prison in which he is confined.

Commissions for examination of prisoners beyond limits of appellate jurisdiction of High Court.

**45.** Where it appears to a High Court that the evidence of a person confined in a prison beyond the local limits of its appellate jurisdiction is material in any civil matter pending before it or before any Court subordinate to it, the High Court may, if it thinks fit, issue a commission, under

* Act XIV. of 1882.

the provisions of the Code of Civil Procedure,* for the examination of the person in the prison in which he is confined.

**46.** Every commission for the examination of a person issued under section 44 or section 45 shall be directed to the District Judge within the local limits of whose jurisdiction the prison in which the person is confined is situate, and the District Judge shall commit the execution of the commission to the officer in charge of the prison, or to such other person as he may think fit.

Commission how to be directed.

*Service of Process on Prisoners.*

**47.** When any process directed to any person confined in any prison is issued from any Criminal or Revenue Court, it may be served by exhibiting to the officer in charge of the prison the original of the process, and depositing with him a copy thereof.

Process how served on prisoners.

**48.** (*1*) Every officer in charge of a prison upon whom service is made under section 47 shall, as soon as may be, cause the copy of the process deposited with him to be shown and explained to the person to whom it is directed, and shall thereupon endorse upon the process and sign a certificate to the effect that such person as aforesaid is confined in the prison under his charge, and has been shown and had explained to him a copy of the process.

Process served to be transmitted at prisoner's request.

(*2*) Such certificate as aforesaid shall be *primâ-facie* evidence of the service of the process, and, if the person to whom the process is directed, requests that the copy shown and explained to him be sent to any other person, and provides the cost of sending it by post, the officer in charge of the prison shall cause it to be so sent.

*Miscellaneous.*

**49.** For the purposes of this Part, the Courts of Small Causes established in the Presidency-towns and the Courts of Presidency Magistrates shall be deemed to be subordinate to the High Court of Judicature at Fort William, Madras, or Bombay, as the case may be.†

Application of Part in certain cases.

**50.** No order in any civil matter shall be made by a Court under any of the provisions of this Part until the amount of the costs and charges of the execution of such order (to be determined by the Court) is deposited in such Court:

Deposit of costs.

Provided that, if, upon any application for such order, it appears to the Court to which the application is made that the applicant has not sufficient means to meet the said costs and charges, the Court may pay the same out of any fund applicable to the contingent expenses of such Court, and every sum so expended may be recovered by the Government from any person ordered by the Court to pay the same, as if it were costs in a suit recoverable under the Code of Civil Procedure.*

Power to make rules under this Part.

**51.** (*1*) The Local Government, and in cases arising under section 40, the Governor-General in Council, may make rules—

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* Act XIV. of 1882.

† The second and third paras. of s. 49 have been repealed by the Lower Burma Courts Act (VI. of 1900).

1900. 1914.

(*a*) for regulating the escort of prisoners to and from Courts in which their attendance is required, and for their custody during the period of such attendance:

(*b*) for regulating the amount to be allowed for the costs and charges of such escort; and

(*c*) for the guidance of officers in all other matters connected with the enforcement of this Part.

(*z*) All rules made under sub-section (*r*) shall be published in the local official Gazette or the *Gazette of India*, as the case may be, and shall, from the date of such publication, have the same force as if enacted by this Act.

**Power to declare who shall be deemed officer in charge of prison.**

**52.** The Local Government may declare what officer shall, for the purposes of this Part, be deemed to be the officer in charge of a prison.

**Repeals.**

**53.** The enactments mentioned in the third schedule are hereby repealed to the extent specified in the last column thereof.

## THE FIRST SCHEDULE.

(*See sections 35 and 37.*)

Court of . . . . . .

To the officer in charge of the . . . . . (*state name of prison*).

You are hereby required to produce . . . . . , now a prisoner in . . . . . , under safe and sure conduct before the Court of . . . . . at . . . . . on the . . . . . day of . . . . . next by . . . . of the clock in the forenoon of the same day, there to give evidence in a matter now pending before the said Court, and after the said . . . . . has then and there given his evidence before the said Court, or the said Court has dispensed with his further attendance, cause him to be conveyed under safe and sure conduct back to the prison.

The . . . . . day of . . . . . .

*A. B.*

(Countersigned) *C. D.*

## THE SECOND SCHEDULE.

(*See section 37.*)

Court of . . . . . .

To the officer in charge of the . . . . . (*state name of prison*).

You are hereby required to produce . . . . . , now a prisoner in . . . . . , under safe and sure conduct before the Court of . . . . . at . . . . . on the . . . . . day of . . . . . next by . . . . . of the clock in the forenoon of the same day, there to answer a charge now pending before the said Court, and, after such charge has been disposed of, or the said Court has dispensed with his further attendance, cause him to be conveyed under safe and sure conduct back to the said prison.

The . . . . . day of . . . . . .

*A. B.*

(Countersigned) *C. D.*

## THE THIRD SCHEDULE.

(*See section 53.*)

| Year. | No. | Tittle. | Extent of repeal. |
|---|---|---|---|
| 1869 | XV. | The Prisoners' Testimony Act, 1869. | The whole Act. |
| 1871 | V. | The Prisoners Act, 1871. | The whole Act, except section 15.* |
| 1882 | IX. | The Prisoners Act Amendment Act, 1882. | The whole Act. |
| 1886 | X. | The Indian Criminal Law Amendment Act, 1886. | Section 25. |
| 1889 | XI. | The Lower Burma Courts Act, 1889. | Section 98. |
| 1891 | XII. | The Repealing and Amending Act, 1891. | So much as relates to Act V. of 1871. |
| 1893 | V. | The Foreign Jurisdiction (Capital Sentences) Act, 1893. | The whole Act. |
| 1894 | VII. | The Prisoners Act (1871) Amendment Act, 1894. | The whole Act. |
| 1897 | VIII. | The Reformatory Schools Act, 1897. | Section 30. |

* S. 15 runs as follows :—

*Warrants under Regulations for confinement of State Prisoners.*

15. Any warrant of commitment under Regulation III. of 1818 of the Bengal Code *(for the confinement of State Prisoners)*, Regulation II. of 1819 of the Madras Code *(for the confinement of State Prisoners)*, and Regulation XXV. of 1827 of the Bombay Code *(for the confinement of State Prisoners, and for the attachment of the lands of Chieftains and others for Reasons of State)*, may be directed to the Superintendent in the same manner as the same might have been directed to the Sheriff under Act No. XXXIV. of 1850 *(for the better custody of State Prisoners)* and Act No. III. of 1858 *(to amend the law relating to the arrest and detention of State Prisoners)*.

# ACT NO. IX. OF 1894.*

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*Received the G.-G.'s assent on the 22nd March 1894.*

*An Act to amend the Law relating to Prisons.*

WHEREAS it is expedient to amend the law relating to prisons in British India, and to provide rules for the regulation of such prisons; It is hereby enacted as follows:—

## CHAPTER I.

### PRELIMINARY.

Title, extent, and commencement.

**1.** (*1*) This Act may be called "The Prisons Act, 1894."

(*2*) It extends to the whole of British India, inclusive of * * * † British Baluchistan, the Santhal Parganas, and the Pargana of Spiti: and

(*3*) It shall come into force on the first day of July 1894.

(*4*) Nothing in this Act shall apply to civil jails in the Presidency of Bombay outside the city of Bombay, and those jails shall continue to be administered under the provisions of sections 9 to 16 (both inclusive) of Bombay Act II. of 1874 as amended by subsequent enactments.

Repeal.

**2.**‡ (*1*) On and after the said first day of July 1894, the enactments mentioned in the schedule shall be repealed to the extent specified in the fourth column thereof.

(*2*) But all rules and appointments made, directions given, and orders issued, under any of those enactments, shall, so far as they are consistent with this Act, be deemed to have been respectively made, given, and issued under this Act.

(*3*) Any enactment or document referring to any of those enactments shall, so far as may be, be construed to refer to this Act, or to the corresponding portion thereof.

Definitions.

**3.** In this Act—

(*1*) "prison" means any jail or place used permanently or temporarily, under the general or special orders of a Local Government, for the detention of prisoners, and includes all lands and buildings appurtenant thereto, but does not include—

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* For Statement of Objects and Reasons, see Gazette of India, 1894, Pt. V., p. 14; for Report of the Select Committee, see *ibid*, p. 63; and for Proceedings in Council, see *ibid*, Pt. VI., pp. 10, 21, 93 126, and 139.

The Act was declared in force in Upper Burma by the Upper Burma Laws Act (XIII. of 1898).

† In cl. (*2*) the words, "Upper Burma," have here been repealed by the Burma Laws Act (XIII. of 1898)—See the Fifth Schedule.

‡ So much of s. 2 and of the schedule as relates to the Upper Burma Laws Act (XX. of 1886) has been repealed by the Burma Laws Act (XIII. of 1898)—See the Fifth Schedule.

(*a*) any place for the confinement of prisoners who are exclusively in the custody of the police;

(*b*) any place specially appointed by the Local Government under section 541 of the Code of Criminal Procedure, 1882;* or

(*c*) any place which has been declared by the Local Government, by general or special order, to be a subsidiary jail:

(*2*) "criminal prisoner" means any prisoner duly committed to custody under the writ, warrant, or order of any Court or authority exercising criminal jurisdiction, or by order of a Court-martial:

(*3*) "convicted criminal prisoner" means any criminal prisoner under sentence of a Court or Court-martial, and includes a person detained in prison under the provisions of Chapter VIII. of the Code of Criminal Procedure, 1882,* or under the Prisoners Act, 1871:

(*4*) "civil prisoner" means any prisoner who is not a criminal prisoner:

(*5*) "remission system" means the rules for the time being in force regulating the award of marks to, and the consequent shortening of sentences of prisoners in jails:

(*6*) "history-ticket" means the ticket exhibiting such information as is required in respect of each prisoner by this Act or the rules thereunder:

(*7*) "Inspector-General" means the Inspector-General of Prisons:

(*8*) "Medical Subordinate" means an Assistant Surgeon, Apothecary, or qualified Hospital Assistant: and

(*9*) "prohibited article" means an article the introduction or removal of which into or out of a prison is prohibited by any rule under this Act.

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## CHAPTER II.

### MAINTENANCE AND OFFICERS OF PRISONS.

**Accommodation for prisoners.**

**4.** The Local Government shall provide, for the prisoners in the territories under such Government, accommodation in prisons constructed and regulated in such manner as to comply with the requisitions of this Act in respect of the separation of prisoners.

**Inspector-General.**

**5.** An Inspector-General shall be appointed for the territories subject to each Local Government, and shall exercise, subject to the orders of the Local Government, the general control and superintendence of all prisons situated in the territories under such Government.

**Officers of prisons.**

**6.** For every prison there shall be a Superintendent, a Medical Officer (who may also be the Superintendent), a Medical Subordinate, a Jailer, and such other officers as the Local Government thinks necessary:

Provided that the Governor of Bombay in Council may, with the previous sanction of the Governor-General in Council, declare by order in writing that in any prison specified in the order the office of Jailer shall be held by the person appointed to be Superintendent.

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* Superseded by the new Code of Criminal Procedure (Act V. of 1898).

1894. Act 9.

**7.** Whenever it appears to the Inspector-General that the number of prisoners in any prison is greater than can conveniently or safely be kept therein, and it is not convenient to transfer the excess number to some other prison,

Temporary accommodation for prisoners.

or whenever, from the outbreak of epidemic disease within any prison, or for any other reason, it is desirable to provide for the temporary shelter and safe custody of any prisoners,

provision shall be made, by such officer and in such manner as the Local Government may direct, for the shelter and safe custody in temporary prisons of so many of the prisoners as cannot be conveniently or safely kept in the prison.

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## CHAPTER III.

### DUTIES OF OFFICERS.

*Generally.*

**8.** All officers of a prison shall obey the directions of the Superintendent; all officers subordinate to the Jailer shall perform such duties as may be imposed on them by the Jailer with the sanction of the Superintendent, or be prescribed by rules under section 60.

Control and duties of officers of prisons.

**9.** No officer of a prison shall sell or let, nor shall any person in trust for, or employed by, him, sell or let, or derive any benefit from selling or letting, any article to any prisoner, or have any money or other business dealings, directly or indirectly, with any prisoner.

Officers not to have business dealings with prisoners.

**10.** No officer of a prison shall, nor shall any person in trust for, or employed by, him, have any interest, direct or indirect, in any contract for the supply of the prison: nor shall he derive any benefit, directly or indirectly, from the sale or purchase of any article on behalf of the prison, or belonging to a prisoner.

Officers not to be interested in prison-contracts.

*Superintendent.*

**11.** (*1*) Subject to the orders of the Inspector-General, the Superintendent shall manage the prison in all matters relating to discipline, labour, expenditure, punishment, and control.

Superintendent.

(*2*) Subject to such general or special directions as may be given by the Local Government, the Superintendent of a prison, other than a central prison or a prison situated in a presidency-town, shall obey all orders not inconsistent with this Act or any rule thereunder which may be given respecting the prison by the District Magistrate, and shall report to the Inspector-General all such orders and the action taken thereon.

**12.** The Superintendent shall keep, or cause to be kept, the following records:—

Records to be kept by Superintendent.

(*1*) a register of prisoners admitted;

(*2*) a book showing when each prisoner is to be released;

(*3*) a punishment book for the entry of the punishments inflicted on prisoners for prison-offences;

(4) a visitors' book for the entry of any observations made by the visitors touching any matters connected with the administration of the prison;

(5) a record of the money and other articles taken from prisoners;

and all such other records as may be prescribed by rules under section 59 or section 60.

*Medical Officer.*

Duties of Medical Officer.

**13.** Subject to the control of the Superintendent, the Medical Officer shall have charge of the sanitary administration of the prison, and shall perform such duties as may be prescribed by rules made by the Local Government under section 60.

Medical Officer to report in certain cases.

**14.** Whenever the Medical Officer has reason to believe that the mind of a prisoner is, or is likely to be, injuriously affected by the discipline or treatment to which he is subjected, the Medical Officer shall report the case in writing to the Superintendent, together with such observations as he may think proper.

This report, with the orders of the Superintendent thereon, shall forthwith be sent to the Inspector-General for information.

Report on death of prisoner.

**15.** On the death of any prisoner, the Medical Officer shall forthwith record in a register the following particulars, so far as they can be ascertained, namely:—

(1) the day on which the deceased first complained of illness, or was observed to be ill,

(2) the labour, if any, on which he was engaged on that day,

(3) the scale of his diet on that day,

(4) the day on which he was admitted to hospital,

(5) the day on which the Medical Officer was first informed of the illness,

(6) the nature of the disease,

(7) when the deceased was last seen before his death by the Medical Officer or Medical Subordinate,

(8) when the prisoner died, and

(9) (in cases where a *post-mortem* examination is made) an account of the appearances after death,

together with any special remarks that appear to the Medical Officer to be required.

*Jailer.*

Jailer.

**16.** (1) The Jailer shall reside in the prison, unless the Superintendent permits him in writing to reside elsewhere.

(2) The Jailer shall not, without the Inspector-General's sanction in writing, be concerned in any other employment.

Jailer to give notice of death of prisoner.

**17.** Upon the death of a prisoner, the Jailer shall give immediate notice thereof to the Superintendent and the Medical Subordinate.

**18.** The Jailer shall be responsible for the safe custody of the records to be kept under section 12, for the commitment warrants and all other documents confided to his care, and for the money and other articles taken from prisoners.

Responsibility of Jailer.

**19.** The Jailer shall not be absent from the prison for a night without permission in writing from the Superintendent; but, if absent without leave for a night from unavoidable necessity, he shall immediately report the fact and the cause of it to the Superintendent.

Jailer to be present at night.

**20.** Where a Deputy Jailer or Assistant Jailer is appointed to a prison, he shall, subject to the orders of the Superintendent, be competent to perform any of the duties, and be subject to all the responsibilities, of a Jailer, under this Act or any rule thereunder.

Powers of Deputy and Assistant Jailers.

*Subordinate Officers.*

**21.** The officer acting as gate-keeper, or any other officer of the prison, may examine anything carried in or out of the prison, and may stop and search, or cause to be searched, any person suspected of bringing any prohibited article into or out of the prison, or of carrying out any property belonging to the prison, and, if any such article or property be found, shall give immediate notice thereof to the Jailer.

Duties of gate-keeper.

**22.** Officers subordinate to the Jailer shall not be absent from the prison without leave from the Superintendent, or from the Jailer.

Subordinate officers not to be absent without leave.

**23.** Prisoners who have been appointed as officers of prisons shall be deemed to be public servants within the meaning of the Indian Penal Code.

Convict officers.

## CHAPTER IV.

### Admission, Removal, and Discharge of Prisoners.

**24.** (*1*) Whenever a prisoner is admitted into prison, he shall be searched, and all weapons and prohibited articles shall be taken from him.

Prisoners to be examined on admission.

(*2*) Every criminal prisoner shall also, as soon as possible after admission, be examined under the general or special orders of the Medical Officer, who shall enter, or cause to be entered, in a book to be kept by the Jailer, a record of the state of the prisoner's health, and of any wounds or marks on his person, the class of labour he is fit for if sentenced to rigorous imprisonment, and any observations which the Medical Officer thinks fit to add.

(*3*) In the case of female prisoners, the search and examination shall be carried out by the matron under the general or special orders of the Medical Officer.

**25.** All money or other articles in respect whereof no order of a competent Court has been made, and which may, with proper authority, be brought into the prison by any criminal prisoner, or sent to the prison for his use, shall be placed in the custody of the Jailer.

Effects of prisoners.

Removal and discharge of prisoners.

**26.** (*1*) All prisoners, previously to being removed to any other prison, shall be examined by the Medical Officer.

(*2*) No prisoner shall be removed from one prison to another unless the Medical Officer certifies that the prisoner is free from any illness rendering him unfit for removal.

(*3*) No prisoner shall be discharged against his will from prison, if labouring under any acute or dangerous distemper, nor until, in the opinion of the Medical Officer, such discharge is safe.

## CHAPTER V.

### Discipline of Prisoners.

Separation of prisoners.

**27.** The requisitions of this Act with respect to the separation of prisoners are as follows:—

(*1*) in a prison containing female as well as male prisoners, the females shall be imprisoned in separate buildings, or separate parts of the same building, in such manner as to prevent their seeing, or conversing or holding any intercourse with, the male prisoners;

(*2*) in a prison where male prisoners under the age of eighteen are confined, means shall be provided for separating them altogether from the other prisoners, and for separating those of them who have arrived at the age of puberty from those who have not;

(*3*) unconvicted criminal prisoners shall be kept apart from convicted criminal prisoners; and

(*4*) civil prisoners shall be kept apart from criminal prisoners.

Association and segregation of prisoners.

**28.** Subject to the requirements of the last-foregoing section, convicted criminal prisoners may be confined, either in association, or individually in cells, or partly in one way and partly in the other.

Solitary confinement.

**29.** No cell shall be used for solitary confinement unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison; and every prisoner so confined in a cell for more than twenty-four hours, whether as a punishment or otherwise, shall be visited, at least once a day, by the Medical Officer or Medical Subordinate.

Prisoners under sentence of death.

**30.** (*1*) Every prisoner under sentence of death shall, immediately on his arrival in the prison after sentence, be searched by, or by order of, the Jailer, and all articles shall be taken from him which the Jailer deems it dangerous or inexpedient to leave in his possession.

(*2*) Every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed, by day and by night, under the charge of a guard.

## CHAPTER VI.

### Food, Clothing, and Bedding of Civil and Unconvicted Criminal Prisoners.

Maintenance of certain prisoners from private sources.

**31.** A civil prisoner or an unconvicted criminal prisoner shall be permitted to maintain himself, and to purchase or receive from private sources at proper hours, food, clothing, bedding, or other necessaries, but subject to examination, and to such rules as may be approved by the Inspector-General.

Restriction on transfer of food and clothing between certain prisoners.

**32.** No part of any food, clothing, bedding, or other necessaries belonging to any civil or unconvicted criminal prisoner shall be given, hired, or sold to any other prisoner; and any prisoner transgressing the provisions of this section shall lose the privilege of purchasing food or receiving it from private sources, for such time as the Superintendent thinks proper.

Supply of clothing and bedding to civil and unconvicted criminal prisoners.

**33.** (*1*) Every civil prisoner and unconvicted criminal prisoner unable to provide himself with sufficient clothing and bedding shall be supplied by the Superintendent with such clothing and bedding as may be necessary.

(*2*) When any civil prisoner has been committed to prison in execution of a decree in favour of a private person, such person, or his representative, shall, within forty-eight hours after the receipt by him of a demand in writing, pay to the Superintendent the cost of the clothing and bedding so supplied to the prisoner; and in default of such payment the prisoner may be released.

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## CHAPTER VII.

### Employment of Prisoners.

Employment of civil prisoners.

**34.** (*1*) Civil prisoners may, with the Superintendent's permission, work and follow any trade or profession.

(*2*) Civil prisoners finding their own implements, and not maintained at the expense of the prison, shall be allowed to receive the whole of their earnings; but the earnings of such as are furnished with implements, or are maintained at the expense of the prison, shall be subject to a deduction, to be determined by the Superintendent, for the use of implements and the cost of maintenance.

Employment of criminal prisoners.

**35.** (*1*) No criminal prisoner sentenced to labour, or employed on labour at his own desire, shall, except on an emergency, with the sanction in writing of the Superintendent, be kept to labour for more than nine hours in any one day.

(*2*) The Medical Officer shall, from time to time, examine the labouring prisoners while they are employed, and shall, at least once in every fortnight, cause to be recorded, upon the history-ticket of each prisoner employed on labour, the weight of such prisoner at the time.

(*3*) When the Medical Officer is of opinion that the health of any prisoner suffers from employment on any kind or class of labour, such prisoner shall not be employed on that labour, but shall be placed on such other kind or class of labour as the Medical Officer may consider suited for him.

1894. Act 9.

**38.** Provision shall be made by the Superintendent for the employment (as long as they so desire) of all criminal prisoners sentenced to simple imprisonment; but no prisoner not sentenced to rigorous imprisonment shall be punished for neglect of work excepting by such alteration in the scale of diet as may be established by the rules of the prison in the case of neglect of work by such a prisoner.

Employment of criminal prisoners sentenced to simple imprisonment.

## CHAPTER VIII.

### Health of Prisoners.

**37.** (*1*) The names of prisoners desiring to see the Medical Subordinate, or appearing out of health in mind or body, shall, without delay, be reported by the officer in immediate charge of such prisoners to the Jailer.

Sick prisoners.

(*2*) The Jailer shall, without delay, call the attention of the Medical Subordinate to any prisoner desiring to see him, or who is ill, or whose state of mind or body appears to require attention, and shall carry into effect all written directions given by the Medical Officer or Medical Subordinate respecting alterations of the discipline or treatment of any such prisoner.

**38.** All directions given by the Medical Officer or Medical Subordinate in relation to any prisoner, with the exception of orders for the supply of medicines or directions relating to such matters as are carried into effect by the Medical Officer himself or under his superintendence, shall be entered day by day in the prisoner's history-ticket, or in such other record as the Local Government may by rule direct, and the Jailer shall make an entry in its proper place stating in respect of each direction the fact of its having been or not having been complied with, accompanied by such observations, if any, as the Jailer thinks fit to make, and the date of the entry.

Record of directions of Medical Officers.

**39.** In every prison a hospital or proper place for the reception of sick prisoners shall be provided.

Hospital.

## CHAPTER IX.

### Visits to Prisoners.

**40.** Due provision shall be made for the admission, at proper times and under proper restrictions, into every prison, of persons with whom civil or unconvicted criminal prisoners may desire to communicate, care being taken that, so far as may be consistent with the interests of justice, prisoners under trial may see their duly qualified legal advisers without the presence of any other person.

Visits to civil and unconvicted criminal prisoners.

**41.** (*1*) The Jailer may demand the name and address of any visitor to a prisoner, and, when the Jailer has any ground for suspicion, may search any visitor, or cause him to be searched, but the search shall not be made in the presence of any prisoner, or of another visitor.

Search of visitors.

(*2*) In case of any such visitor refusing to permit himself to be searched, the Jailer may deny him admission; and the grounds of such proceeding, with the particulars thereof, shall be entered in such record as the Local Government may direct.

## CHAPTER X.

### OFFENCES IN RELATION TO PRISONS.

**42.** Whoever, contrary to any rule under section 60, introduces or removes, or attempts by any means whatever to introduce or remove into or from any prison, or supplies or attempts to supply to any prisoner outside the limits of a prison, any prohibited article,

Penalty for introduction or removal of prohibited articles into or from prison and communication with prisoners.

and every officer of a prison who, contrary to any such rule, knowingly suffers any such article to be introduced into, or removed from, any prison, to be possessed by any prisoner, or to be supplied to any prisoner outside the limits of a prison,

and whoever, contrary to any such rule, communicates, or attempts to communicate, with any prisoner,

and whoever abets any offence made punishable by this section,

shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, or to both.

**43.** When any person, in the presence of any officer of a prison, commits any offence specified in the last-foregoing section, and refuses, on demand of such officer, to state his name and residence, or gives a name or residence which such officer knows, or has reason to believe, to be false, such officer may arrest him, and shall, without unnecessary delay, make him over to a police-officer, and thereupon such police-officer shall proceed as if the offence had been committed in his presence.

Power to arrest for offence under section 42.

**44.** The Superintendent shall cause to be affixed, in a conspicuous place outside the prison, a notice in English and the Vernacular, setting forth the acts prohibited under section 42 and the penalties incurred by their commission.

Publication of penalties.

## CHAPTER XI.

### PRISON OFFENCES.

**45.** The following acts are declared to be prison-offences when committed by a prisoner:—

Prison offences.

(1) such wilful disobedience to any regulation of the prison as shall have been declared by rules made under section 59 to be a prison-offence;

(2) any assault or use of criminal force;

(3) the use of insulting or threatening language;

(4) immoral or indecent or disorderly behaviour;

(5) wilfully disabling himself from labour;

(6) contumaciously refusing to work;

(7) filing, cutting, altering, or removing handcuffs, fetters, or bars without due authority;

(8) wilful idleness or negligence at work by any prisoner sentenced to rigorous imprisonment;

1894. Act 9.

(9) wilful mismanagement of work by any prisoner sentenced to rigorous imprisonment;

(10) wilful damage to prison-property;

(11) tampering with or defacing history-tickets, records, or documents;

(12) receiving, possessing, or transferring any prohibited article;

(13) feigning illness;

(14) wilfully bringing a false accusation against any officer or prisoner;

(15) omitting or refusing to report, as soon as it comes to his knowledge, the occurrence of any fire, any plot or conspiracy, any escape, attempt or preparation to escape, and any attack or preparation for attack upon any prisoner or prison official; and

(16) conspiring to escape, or to assist in escaping, or to commit any other of the offences aforesaid.

**Punishment of such offences.**

**46.** The Superintendent may examine any person touching any such offence, and determine thereupon, and punish such offence by—

(1) a formal warning:

*Explanation.*—A formal warning shall mean a warning personally addressed to a prisoner by the Superintendent, and recorded in the punishment-book, and on the prisoner's history-ticket;

(2) change of labour to some more irksome or severe form;

(3) hard labour for a period not exceeding seven days in the case of convicted criminal prisoners not sentenced to rigorous imprisonment;

(4) such loss of privileges admissible under the remission system for the time being in force as may be prescribed by rules made by the Governor-General in Council:

(5) the substitution of gunny or other coarse fabric for clothing of other material, not being woollen, for a period which shall not exceed three months;

(6) imposition of handcuffs of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by the Governor-General in Council;

(7) imposition of fetters of such pattern and weight, in such manner, and for such period, as may be prescribed by rules made by the Governor-General in Council;

(8) separate confinement for any period not exceeding six months:

*Explanation.*—Separate confinement means such confinement, with or without labour, as secludes a prisoner from communication with, but not from sight of, other prisoners, and allows him not less than one hour's exercise per diem, and to have his meals in association with one or more other prisoners;

(9) penal diet, that is, restriction of diet in such manner, and subject to such conditions regarding labour, as may be prescribed by the Local Government:

Provided that such restriction of diet shall in no case be applied to a prisoner for more than ninety-six consecutive hours, and shall not

be repeated except for a fresh offence, nor until after an interval of one week;

(*10*) cellular confinement for any period not exceeding fourteen days:

Provided that after each period of cellular confinement an interval of not less duration than such period must elapse before the prisoner is again sentenced to cellular or solitary confinement:

*Explanation.*—Cellular confinement means such confinement, with or without labour, as entirely secludes a prisoner from communication with, but not from sight of, other prisoners;

(*11*) solitary confinement for any period not exceeding seven days:

Provided that, after each period of solitary confinement, an interval of not less duration than such period must elapse before the prisoner is again sentenced to solitary or cellular confinement:

*Explanation.*—Solitary confinement means such confinement, with or without labour, as entirely secludes the prisoner both from sight of, and communication with other prisoners:

(*12*) penal diet as defined in clause (*9*) combined with solitary confinement as defined in clause (*11*);

(*13*) whipping, provided that the number of stripes shall not exceed thirty:

Provided that nothing in this section shall render any female or civil prisoner liable to the imposition of any form of handcuffs or fetters, or to whipping.

**Plurality of punishments under section 46.**

**47.** Any two of the punishments enumerated in the last foregoing section may be awarded for any such offence in combination, subject to the following exceptions, namely:—

(*1*) formal warning shall not be combined with any other punishment except loss of privileges under clause (*4*) of that section;

(*2*) penal diet shall not be combined with change of labour under clause (*2*) of that section, nor shall any additional period of penal diet awarded singly be combined with any period of penal diet awarded in combination with solitary confinement;

(*3*) solitary confinement shall not be combined with cellular confinement, or with separate confinement, nor cellular confinement with separate confinement, so as to prolong the total period of seclusion to which the prisoner shall be liable;

(*4*) whipping shall not be combined with any other form of punishment, except cellular or separate confinement and loss of privileges admissible under the remission system.

**Award of punishments under sections 46 and 47.**

**48.** (*1*) The Superintendent shall have power to award any of the punishments enumerated in the two last foregoing sections, subject, in the case of separate confinement for a period exceeding one month, to the previous confirmation of the Inspector-General.

(*2*) No officer subordinate to the Superintendent shall have power to award any punishment whatever.

**Punishments to be in accordance with foregoing sections.**

**49.** Except by order of a Court of Justice, no punishment, other than the punishments specified in the foregoing sections, shall be inflicted on any prisoner, and no punishment shall be inflicted on any prisoner otherwise than in accordance with the provisions of those sections.

1894. Act 9.

Medical officer to certify to fitness of prisoner for punishment.

**50.** (*1*) No punishment of penal diet, either singly, or in combination, or of whipping, or of change of labour under section 46, clause (*2*), shall be executed until the prisoner to whom such punishment has been awarded has been examined by the Medical Officer, who, if he considers the prisoner fit to undergo the punishment, shall certify accordingly in the appropriate column of the punishment-book prescribed in section 12.

(*2*) If he considers the prisoner unfit to undergo the punishment, he shall, in like manner, record his opinion in writing, and shall state whether the prisoner is absolutely unfit for punishment of the kind awarded, or whether he considers any modification necessary.

(*3*) In the latter case he shall state what extent of punishment he thinks the prisoner can undergo without injury to his health.

Entries in punishment-book.

**51.** (*1*) In the punishment-book prescribed in section 12, there shall be recorded, in respect of every punishment inflicted, the prisoner's name, register number, and the class (whether habitual or not) to which he belongs, the prison-offence of which he was guilty, the date on which such prison-offence was committed, the number of previous prison-offences recorded against the prisoner, and the date of his last prison-offence, the punishment awarded, and the date of infliction.

(*2*) In the case of every serious prison-offence, the names of the witnesses proving the offence shall be recorded, and, in the case of offences for which whipping is awarded, the Superintendent shall record the substance of the evidence of the witnesses, the defence of the prisoner, and the finding, with the reasons therefor.

(*3*) Against the entries relating to each punishment the Jailer and Superintendent shall affix their initials as evidence of the correctness of the entries.

Procedure on committal of heinous offence.

**52.** If any prisoner is guilty of any offence against prison-discipline which, by reason of his having frequently committed such offences or otherwise, in the opinion of the Superintendent, is not adequately punishable by the infliction of any punishment which he has power under this Act to award, the Superintendent may forward such prisoner to the Court of the District Magistrate, or of any Magistrate of the first class having jurisdiction, together with a statement of the circumstances, and such Magistrate shall thereupon inquire into and try the charge so brought against the prisoner, and, upon conviction, may sentence him to imprisonment which may extend to one year, such term to be in addition to any term for which such prisoner was undergoing imprisonment when he committed such offence, or may sentence him to any of the punishments enumerated in section 46:

Provided that the District Magistrate may transfer the case for inquiry and trial to any Magistrate of the first class: and

Provided also that no person shall be punished twice for the same offence.

Whipping.

**53.** (*1*) No punishment of whipping shall be inflicted in instalments, or except in the presence of the Superintendent and Medical Officer or Medical Subordinate.

(*2*) Whipping shall be inflicted with a light ratan, not less than half an inch in diameter, on the buttocks, and, in case of prisoners under the age of sixteen, it shall be inflicted in the way of school discipline with a lighter ratan.

1894. Act 9.

**54.** (*1*) Every Jailer or officer of a prison subordinate to him who shall be guilty of any violation of duty, or wilful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous notice in writing of his intention for the period of two months, or who shall wilfully overstay any leave granted to him, or who shall engage without authority in any employment other than his prison-duty, or who shall be guilty of cowardice, shall be liable, on conviction before a Magistrate, to fine not exceeding two hundred rupees, or to imprisonment for a period not exceeding three months, or to both.

Offences by prison-subordinates.

(*2*) No person shall, under this section, be punished twice for the same offence.

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## CHAPTER XII.

### MISCELLANEOUS.

**55.** A prisoner, when being taken to or from any prison in which he may be lawfully confined, or whenever he is working outside, or is otherwise beyond the limits of any such prison, in or under the lawful custody or control of a prison-officer belonging to such prison, shall be deemed to be in prison, and shall be subject to all the same incidents as if he were actually in prison.

Extramural custody, control, and employment of prisoners.

**56.** Whenever the Superintendent considers it necessary (with reference either to the state of the prison or the character of the prisoners) for the safe custody of any prisoners that they should be confined in irons, he may, subject to such rules and instructions as may be laid down by the Inspector-General with the sanction of the Local Government, so confine them.

Confinement in irons.

**57.** (*1*) Prisoners under sentence of transportation may, subject to any rules made under section 60. be confined in fetters for the first three months after admission to prison.

Confinement of prisoners under sentence of transportation in irons.

(*2*) Should the Superintendent consider it necessary, either for the safe custody of the prisoner himself, or for any other reason, that fetters should be retained on any such prisoner for more than three months, he shall apply to the Inspector-General for sanction to their retention for the period for which he considers their retention necessary, and the Inspector-General may sanction such retention accordingly.

**58.** No prisoner shall be put in irons or under mechanical restraint by the Jailer of his own authority, except in case of urgent necessity, in which case notice thereof shall be forthwith given to the Superintendent.

Prisoners not to be ironed by Jailer except under necessity.

**59.** The Governor-General in Council may for any part of British India, and each Local Government with the previous sanction of the Governor-General in Council may, for the territories under its administration, make rules consistent with this Act—

Power to make rules.

(*1*) defining the acts which shall constitute prison-offences;

(*2*) determining the classification of prison-offences into serious and minor offences;

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(*g*) fixing the punishments admissible under this Act which shall be awardable for commission of prison-offences or classes thereof;

(*h*) declaring the circumstances in which acts constituting both a prison-offence and an offence under the Indian Penal Code may or may not be dealt with as a prison-offence;

(*i*) for the award of marks and the shortening of sentences;

(*j*) regulating the use of arms against any prisoner or body of prisoners in the case of an outbreak or attempt to escape;

(*k*) defining the circumstances, and regulating the conditions, under which prisoners in danger of death may be released;

(*l*) regulating the transfer, from one part of British India to another, of prisoners whose term of transportation or imprisonment is about to expire; and,

(*m*) generally, for carrying into effect the purposes of this Act.

Power of Local Government to make rules.

**60**. The Local Government may, subject to the control of the Governor-General in Council, make rules* consistent with this Act—

(*a*) for the classification of prisons, and description and construction of wards, cells, and other places of detention;

(*b*) for the regulation by numbers, length or character of sentences, or otherwise, of the prisoners to be confined in each class of prisons;

(*c*) for the government of prisons, and for the appointment, guidance, control, punishment, and dismissal of all officers appointed under this Act;

(*d*) as to the food, bedding, and clothing of criminal prisoners, and of civil prisoners maintained otherwise than at their own cost;

(*e*) for the employment, instruction, and control of convicts within or without prisons;

(*f*) for defining articles the introduction or removal of which into or out of prisons without due authority is prohibited;

(*g*) for classifying and prescribing the forms of labour, and regulating the periods of rest from labour;

(*h*) for regulating the disposal of the proceeds of the employment of prisoners;

(*i*) for regulating the confinement in fetters of prisoners sentenced to transportation;

(*j*) for the classification and the separation of prisoners;

(*k*) for regulating the confinement of convicted criminal prisoners under section 28;

(*l*) for the preparation and maintenance of history-tickets;

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* For rules made by the Government of Bombay for the classification and treatment of prisoners under Bom. Act II of 1874, which are kept in force by this Act, see Bombay List of Local Rules and Orders, Vol. I., Ed. 1897 pp. cxlix. and cliv.

For rules regarding Government prisons in the Central Provinces made under Act XXVI. of 1870, and kept in force by this Act, see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 59

For rules for the management and superintendence of jails in the Madras Presidency, see Madras List of Local Rules and Orders, Ed. 1898, p. 251; and for notification prescribing a new Jail Code, see *ibid.*

(*m*) for the selection and appointment of prisoners as officers of prisons;

(*n*) for rewards for good conduct;

(*o*) for regulating the transfer of prisoners whose term of transportation or imprisonment is about to expire;

(*p*) for the treatment, transfer, and disposal of criminal lunatics or recovered criminal lunatics confined in prisons;

(*q*) for regulating the transmission of appeals and petitions from prisoners and their communications with their friends;

(*r*) for the appointment and guidance of visitors of prisons;

(*s*) for extending any or all of the provisions of this Act, and of the rules thereunder to subsidiary jails or special places of confinement appointed under section 541 of the Code of Criminal Procedure, 1882,* and to the officers employed, and the prisoners confined, therein; and,

(*t*) generally, in regard to the admission, custody, employment, dieting, treatment, and release of prisoners, and for other purposes consistent with this Act.

**61.** Copies of rules, under sections 59 and 60, so far as they affect the government of prisons, shall be exhibited, both in English and in the Vernacular, in some place to which all persons employed within a prison have access.

Exhibition of copies of rules.

**62.** All or any of the powers and duties conferred and imposed by this Act on a Superintendent or Medical Officer may, in his absence, be exercised and performed by such other officer as the Local Government may appoint in this behalf either by name, or by his official designation.

Exercise of powers of Superintendent and Medical Officer.

## THE SCHEDULE.

ENACTMENTS REPEALED.

(*See section 2.*)

| Year. | No. | Title or short title. | Extent of repeal. |
|---|---|---|---|
| 1 | 2 | 3 | 4 |
| | | *Acts of Governor-General in Council.* | |
| 1856 ... | VIII. | An Act for the better control of the Jails within the Presidency of Bombay. | So much as has not been repealed. |
| 1870 ... | XXVI. | Prisons Act, 1870 ... ... | So much as has not been repealed. |
| 1874 ... | XV. ... | Laws Local Extent Act, 1874 ... | So much of Part (*b*) of the third schedule as relates to Act VIII. of 1856. |

* See now the Code of Criminal Procedure (Act V. of 1898).

THE SCHEDULE.—ENACTMENTS REPEALED—*contd.*

| Year. | No. | Title or short title. | Extent of repeal. |
|---|---|---|---|
| 1 | 2 | 3 | 4 |
| | | *Acts of Governor-General in Council*—concld. | |
| 1878 ... | XIV. ... | An Act to assimilate certain powers of the Local Governments of the North-Western Provinces and Oudh. | Section 2. |
| *1886** ... | *XX.* ... | *Upper Burma Laws Act, 1886* ... | *So much as relates to Act XXVI. of 1870.* |
| 1891 ... | XII. ... | Repealing and Amending Act, 1891... | So much of the second schedule as relates to Acts VIII. of 1856 and XXVI. 1870. |
| | | *Acts of the Governor of Fort St. George in Council.* | |
| 1869 ... | V. ... | Madras Jails Act, 1869 ... ... | So much as has not been repealed. |
| 1882 ... | VII. ... | Madras Jails Act Amendment Act, 1882. | The whole. |
| 1889 ... | II. ... | An Act to amend the Madras Jails Act, 1869. | The whole. |
| | | *Acts of the Governor of Bombay in Council.* | |
| 1874 ... | II. ... | An Act for the regulation of Jails in the City and Presidency of Bombay, and the enforcement of discipline therein. | So much as has not been repealed, except sections 9 to 16 (both inclusive) as amended by Bombay Act II. of 1882. |
| 1882 ... | II. ... | An Act to amend Bombay Act II. of 1874. | Section 3. |
| 1883 ... | IV. ... | An Act to amend the Law concerning the confinement of civil prisoners liable to imprisonment under the Criminal Procedure Code. | The whole. |
| 1887 ... | I. ... | An Act to further amend Bombay Act II. of 1874. | The whole. |

* This italicized entry, repealing that portion of the Upper Burma Laws Act (XX. of 1886) which relates to Act XXVI. of 1870, was repealed by the Burma Laws Act (XIII. of 1898).

THE SCHEDULE.—ENACTMENTS REPEALED—*concld.*

| Year. | No. | Title or short title. | Extent of repeal. |
|---|---|---|---|
| 1 | 2 | 3 | 4 |
| | | *Acts of the Lieutenant-Governor of Bengal in Council.* | |
| 1864 ... | II. ... | An Act for the regulation of Jails and the enforcement of discipline therein. | So much as has no been repealed. |
| 1865 ... | V. ... | An Act to amend Act II. of 1864, passed by the Lieutenant-Governor of Bengal in Council, and to extend the provisions thereof to the Presidency Jail. | So much as has not been repealed. |
| | | *Regulations made under the Statute 33 Victoria, Chapter 3.* | |
| 1872 ... | III. ... | Santhal Parganas Settlement Regulation. | So much of the schedule (as amended by Regulation III. of 1886) as relates to Bengal Acts II. of 1864 and V. of 1865. |
| 1874 ... | IX. ... | Arakan Hill District Laws Regulation, 1874. | So much as relates to Act XXVI. of 1870. |
| 1875 ... | II. | Assam Prisons Regulation, 1875 ... | The whole. |
| 1890 ... | I. ... | British Baluchistan Laws Regulation, 1890. | So much as relates to Act XXVI. of 1870. |

RULINGS UNDER THE REPEALED PRISONS ACT.

A SUPERINTENDENT of a jail has no power, under Act XXVI. of 1870, to imprison for one year a night watchman convicted before him on a charge of aiding and abetting the escape of a prisoner. Neither had he power under Reg. XIV. of 1816.—QUEEN *v.* SHEOUMBER LAL, 4 N.-W. P. 4. [Spankie, J. Jan. 10, 1872.]

*Per* SPANKIE, J., and Oldfield, J. (Stuart, C.J., doubting), that a havalat (lock-up) is a prison within the meaning of the Prisons Act. *Per* Stuart, C.J., that food is not an "article" within the meaning of s 45 of that Act. *Per* Stuart, C J, and Oldfield, J., that the conveyance of food into a havalat, not being expressly prohibited by the rules made by the Local Government under s. 54 of that Act for the management and discipline of prisons, is not "contrary to the regulations of the prisons" within the meaning of s. 45 of that Act, and is, therefore, not an offence punishable under that section *Held*, therefore, *per* Stuart, C.J., and Oldfield, J., that, where a person entered into a havalat with intent to convey or attempt to convey food to an under-trial prisoner, such act on his part did not amount to house-trespass within the meaning of s. 442 of the Penal Code, and it was not an Act punishable under s. 45 of the Prisons Act. *Per* Spankie, J., *contra*. *Per* Stuart, C.J., that the fact that such person had been tried for house-trespass and acquitted was no bar to his being tried subsequently for an offence under s. 45 of the Prisons Act.—EMPRESS *v.* LALAI, I. L. R., 2 All. 301. [Stuart, C.J., and Spankie and Oldfield, JJ. May 16, 1879.]

# ACT NO. IX. OF 1890.

## THE INDIAN RAILWAYS ACT, 1890.

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# ACT NO. IX. OF 1890.

## THE INDIAN RAILWAYS ACT, 1890.*

RECEIVED THE G.-G.'S ASSENT ON THE 21ST MARCH 1890.

*An Act to Consolidate, Amend, and Add to the Law relating to Railways in India.*

Preamble.

WHEREAS it is expedient to consolidate, amend, and add to the law relating to railways in India; It is hereby enacted as follows:—

### CHAPTER I.

#### PRELIMINARY.

Title, extent, and commencement.

**1.** (*1*) This Act may be called "The Indian Railways Act, 1890."

(*2*) It extends to the whole of British India, inclusive† (in so far as it has been or may be extended under the provisions of the Sindh-Pishin Railway Act, 1887) of British Baluchistan, and applies also to all subjects of Her Majesty within the dominions of Princes and States in India in alliance with Her Majesty, and to all native subjects of Her Majesty without and beyond British India and those dominions; and

(*3*) It shall come into force on the first day of May 1890.

Repeal.

**2.**‡ (*1*) On and from that day the enactments specified in the first schedule are repealed to the extent mentioned in the third column thereof.

(*2*) But all rules, declarations, and appointments made, sanctions and directions given, forms approved, powers conferred, and notifications published under any of those enactments, or under any enactment repealed by any of them, shall, so far as they are consistent with this Act, be deemed to have been respectively made, given, approved, conferred, and published under this Act.

(*3*) Any enactment or document referring to any of those enactments, or to any enactment repealed by any of them, shall, so far as may be, be construed to refer to this Act, or to the corresponding portion thereof.

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* For Statement of Objects and Reasons, see Gazette of India, 1888, p. 133; for the Report of the Select Committee, see *ibid*, 1890, Pt. V., p. 23, and for Debates in Council, see *ibid*, Pt. VI., 1888, pp. 124 and 137, and *ibid*, 1890, Pt. VI., pp. 15 and 48.

Act IX. of 1890 has been declared in force, by notification under the Scheduled Districts Act (XIV. of 1874), in the following Scheduled Districts, namely:—

Tarai Parganas, North-Western Provinces, see Gazette of India, 1890, Pt. I., p. 596; the Districts of Hazáribágh, Lohárdaga (including at this time the present District of Palamau, which was separated in 1894), and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum, see *ibid*, p. 859.

It has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act (XIII. of 1898). The Act was previously in force there *proprio vigore*.

It has been applied to the Santhál Parganas by notification under the Santhál Parganas Settlement Regulation (III. of 1872), s. 3, as amended by the Santhál Parganas Laws Regulation (III. of 1886), see Calcutta Gazette, 1890, Pt. I., p. 757.

† The words, "of Upper Burma and," have here been repealed by the Fifth Schedule to the Burma Laws Act (XIII. of 1898).

‡ So much of s. 2 and Sch. I. as relates to the Upper Burma Laws Act (XX. of 1886) has been repealed by the Burma Laws Act (XIII. of 1898), see the Fifth Schedule to the Burma Laws Act (XIII. of 1898).

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Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

(1) "tramway" means a tramway constructed under the Indian Tramways, Act, 1886, or any special Act relating to tramways:

(2) "ferry" includes a bridge of boats, pontoons, or rafts, a swing-bridge, a flying bridge, and a temporary bridge, and the approaches to, and landing-places of, a ferry:

(3) "inland water" means any canal, river, lake, or navigable water in British India:

(4) "railway" means a railway, or any portion of a railway, for the public carriage of passengers, animals, or goods, and includes—

(a) all land within the fences or other boundary-marks indicating the limits of the land appurtenant to a railway;

(b) all lines of rails, sidings, or branches worked over for the purposes of, or in connection with, a railway;

(c) all stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery, and other works constructed for the purposes of, or in connection with, a railway; and

(d) all ferries, ships, boats, and rafts which are used on inland waters for the purposes of the traffic of a railway, and belong to, or are hired or worked by, the authority administering the railway:

(5) "railway company" includes any persons, whether incorporated or not, who are owners or lessees of a railway, or parties to an agreement for working a railway:

(6) "railway administration" or "administration," in the case of a railway administered by the Government or a Native State, means the Manager of the railway, and includes the Government or the Native State, and, in the case of a railway administered by a railway company, means the railway company:

(7) "railway servant" means any person employed by a railway administration in connection with the service of a railway:

(8) "Inspector" means an Inspector of Railways appointed under this Act:

(9) "goods" includes inanimate things of every kind:

(10) "rolling-stock" includes locomotive engines, tenders, carriages, wagons, trucks, and trollies of all kinds:

(11) "traffic" includes rolling-stock of every description, as well as passengers, animals, and goods:

(12) "through traffic" means traffic which is carried over the railways of two or more railway administrations:

(13) "rate" includes any fare, charge, or other payment for the carriage of any passenger, animal, or goods:

(14) "terminals" includes charges in respect of stations, sidings, wharves, depôts, warehouses, cranes, and other similar matters, and of any services rendered thereat:

(15) "pass" means an authority given by a railway administration, or by an officer appointed by a railway administration in this behalf, and authorizing the person to whom it is given to travel as a passenger on a railway gratuitously:

(16) "ticket" includes a single ticket, a return ticket, and a season ticket:

(*17*) "maund" means a weight of three thousand two hundred tolas, each tola being a weight of one hundred and eighty grains Troy: and

(*18*) "Collector" means the chief officer in charge of the land-revenue administration of a district, and includes any officer specially appointed by the Local Government to discharge the functions of a Collector under this Act.

## CHAPTER II.

### INSPECTION OF RAILWAYS.

Appointment and duties of Inspectors.

**4.*** (*1*) The Governor-General in Council may appoint persons by name or by virtue of their office to be Inspectors of Railways.

(*2*) The duties of an Inspector of Railways shall be—

(*a*) to inspect railways with a view to determine whether they are fit to be opened for the public carriage of passengers, and to report thereon to the Governor-General in Council as required by this Act;

(*b*) to make such periodical or other inspections of any railway or of any rolling-stock used thereon as the Governor-General in Council may direct:

(*c*) to make inquiry under this Act into the cause of any accident on a railway;

(*d*) to perform such other duties as are imposed on him by this Act or any other enactment for the time being in force relating to railways.

Powers of Inspectors.

**5.** An Inspector shall, for the purpose of any of the duties which he is required or authorized to perform under this Act, be deemed to be a public servant within the meaning of the Indian Penal Code, and, subject to the control of the Governor-General in Council, shall, for that purpose, have the following powers, namely:—

(*a*) to enter upon and inspect any railway or any rolling-stock used thereon;

(*b*) by an order in writing under his hand addressed to the railway administration, to require the attendance before him of any railway servant, and to require answers or returns to such inquiries as he thinks fit to make from such railway servant or from the railway administration;

(*c*) to require the production of any book or document belonging to, or in the possession or control of, any railway administration (except a communication between a railway company and its legal advisers) which it appears to him to be necessary to inspect.

Facilities to be afforded to Inspectors.

**6.** A railway administration shall afford to the Inspector all reasonable facilities for performing the duties and exercising the powers imposed and conferred upon him by this Act.

* For persons appointed to be Inspectors of Railways under s. 4, see Government of India (Railway) Circular No. XV., dated Dec 4, 1888.

## CHAPTER III.

### CONSTRUCTION AND MAINTENANCE OF WORKS.

Authority of railway administrations to execute all necessary works.

**7.** (*1*) Subject to the provisions of this Act and, in the case of immoveable property not belonging to the railway administration, to the provisions of any enactment for the time being in force for the acquisition of land for public purposes and for companies, and subject also, in the case of a railway company, to the provisions of any contract between the company and the Government, a railway administration may, for the purpose of constructing a railway, or the accommodation or other works connected therewith, and, notwithstanding anything in any other enactment for the time being in force,—

(*a*) make or construct in, upon, across, under, or over any lands, or any streets, hills, valleys, roads, railways, or tramways, or any rivers, canals, brooks, streams, or other waters or any drains, water-pipes, gas-pipes, or telegraph lines, such temporary or permanent inclined planes, arches, tunnels, culverts, embankments, aqueducts, bridges, roads "lines of railway"* ways, passages, conduits, drains, piers, cuttings, and fences as the railway administration thinks proper;

(*b*) alter the course of any rivers, brooks, streams, or watercourses for the purpose of constructing and maintaining tunnels, bridges, passages, or other works over or under them, and divert or alter as well temporarily as permanently, the course of any rivers, brooks, streams, or watercourses, or any roads, streets or ways, or raise or sink the level thereof, in order the more conveniently to carry them over or under, or by the side of, the railway, as the railway administration thinks proper:

(*c*) make drains or conduits into, through, or under any lands adjoining the railway for the purpose of conveying water from or to the railway;

(*d*) erect and construct such houses, warehouses, offices, and other buildings, and such yards, stations, wharves, engines, machinery, apparatus, and other works and conveniences as the railway administration thinks proper;

(*e*) alter, repair, or discontinue such buildings, works, and conveniences as aforesaid, or any of them, and substitute others in their stead; and

(*f*) do all other acts necessary for making, maintaining, altering, or repairing, and using the railway.

(*2*) The exercise of the powers conferred on a railway administration by sub-section (*1*) shall be subject to the control of the Governor-General in Council.

Alteration of pipes, wires, and drains.

**8.** A railway administration may, for the purpose of exercising the powers conferred upon it by this Act, alter the position of any pipe for the supply of gas water, or compressed air, or the position of any electric wire, or of any drain not being a main drain:

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* The words quoted have been added by the Indian Railways Act (1890) Amendment Act (IX. of 1896), s. 1.

Provided that—

(*a*) when the railway administration desires to alter the position of any such pipe, wire, or drain, it shall give reasonable notice of its intention to do so, and of the time at which it will begin to do so, to the local authority* or company having control over the pipe, wire, or drain, or, when the pipe, wire, or drain, is not under the control of a local authority or company, to the person under whose control the pipe, wire, or drain is;

(*b*) a local authority, company, or person receiving notice under proviso (*a*) may send a person to superintend the work, and the railway administration shall execute the work to the reasonable satisfaction of the person so sent, and shall make arrangements for continuing, during the execution of the work, the supply of gas, water, compressed air, or electricity, or the maintenance of the drainage, as the case may be.

Temporary entry upon land for repairing or preventing accident.

**9.** (*1*) The Governor-General in Council may authorize any railway administration, in case of any slip or other accident happening or being apprehended to any cutting, embankment, or other work under the control of the railway administration, to enter upon any lands adjoining its railway for the purpose of repairing or preventing the accident, and to do all such works as may be necessary for the purpose.

(*2*) In case of necessity, the railway administration may enter upon the lands, and do the works aforesaid, without having obtained the previous sanction of the Governor-General in Council but in such a case shall, within seventy-two hours after such entry, make a report to the Governor-General in Council, specifying the nature of the accident or apprehended accident, and of the works necessary to be done, and the power conferred on the railway administration by this sub-section shall cease and determine, if the Governor-General in Council, after considering the report, considers that the exercise of the power is not necessary for the public safety.

Payment of compensation for damage caused by lawful exercise of powers under section 7, 8, or 9.

**10.** (*1*) A railway administration shall do as little damage as possible in the exercise of the powers conferred by any of the three last foregoing sections, and compensation shall be paid for any damage caused by the exercise thereof.

(*2*) A suit shall not lie to recover such compensation, but in case of dispute the amount thereof shall, on application to the Collector, be determined and paid in accordance, so far as may be, "with the provisions of sections 11 to 15, both inclusive, sections 18 to 34, both inclusive, and sections 53 and 54 of the Land Acquisition Act, 1894,† and the provisions of sections 51 and 52 of that Act shall apply to the award of compensation."‡

Accommodation works.

**11.** (*1*) A railway administration shall make and maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway, namely:—

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* For definition of "local authority," see s. 135 (5), *infra*, and the General Clauses Act (X of 1897), s. 3 (28).

† Act I. of 1894.

‡ In s. 10 the words and figures quoted have been substituted for the words and figures, "with the provisions of sections 11 to 15, both inclusive, of the Land Acquisition Act, 1870, and the provisions of sections 57 and 58 of that Act shall apply to the award of compensation," by the Indian Railways Act (1890) Amendment Act (IX. of 1896), s. 2.

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(*a*) such and so many convenient crossings, bridges, arches, culverts, and passages over, under, or by the sides of, or leading to or from, the railway, as may, in the opinion of the Governor-General in Council, be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway is made, and

(*b*) all necessary arches, tunnels, culverts, drains, watercourses, or other passages, over or under, or by the sides of, the railway, of such dimensions as will, in the opinion of the Governor-General in Council, be sufficient at all times to convey water as freely from or to the lands lying near or affected by the railway, as before the making of the railway, or as nearly so as may be.

(*2*) Subject to the other provisions of this Act, the works specified in clauses (*a*) and (*b*) of sub-section (*1*) shall be made during or immediately after the laying out or formation of the railway over the lands traversed thereby, and in such manner as to cause as little damage or inconvenience as possible to persons interested in the lands or affected by the works.

(*3*) The foregoing provisions of this section are subject to the following provisos, namely:—

(*a*) a railway administration shall not be required to make any accommodation works in such a manner as would prevent or obstruct the working or using of the railway, or to make any accommodation works with respect to which the owners and occupiers of the lands have agreed to receive, and have been paid, compensation in consideration of their not requiring the works to be made:

(*b*) save as hereinafter in this chapter provided, a railway administration shall not, except on the requisition of the Governor-General in Council, be compelled to defray the cost of executing any further or additional accommodation works for the use of the owners or occupiers of the lands after the expiration of ten years from the date on which the railway passing through the lands was first opened for public traffic:

(*c*) where a railway administration has provided suitable accommodation for the crossing of a road or stream, and the road or stream is afterwards diverted by the act or neglect of the person having the control thereof, the administration shall not be compelled to provide other accommodation for the crossing of the road or stream.

(*4*) The Governor-General in Council may appoint a time for the commencement of any work to be executed under sub-section (*1*), and if, for fourteen days next after that time, the railway administration fails to commence the work, or, having commenced it, fails to proceed diligently to execute it in a sufficient manner, the Governor-General in Council may execute it, and recover from the railway administration the cost incurred by him in the execution thereof.

Power for owner, occupier, or local authority to cause additional accommodation works to be made.

**12.** If an owner or occupier of any land affected by a railway considers the works made under the last foregoing section to be insufficient for the commodious use of the land, or if the Local Government or a local authority desires to construct a public road or other work across, under, or over a railway, he or it, as the case may be, may at any time require the railway administration to make, at his or its expense, such further accommodation works as he or it thinks necessary, and are agreed to by the railway administration, or as, in case of difference of opinion, may be authorized by the Governor-General in Council.

Fences, screens, gates, and bars.

**18.** The Governor-General in Council may require that, within a time to be specified in the requisition, or within such further time as he may appoint in this behalf,—

(*a*) boundary-marks or fences be provided or renewed by a railway administration for a railway or any part thereof, and for roads constructed in connection therewith;

(*b*) any works in the nature of a screen near to, or adjoining the side of, any public road constructed before the making of a railway, be provided or renewed by a railway administration for the purpose of preventing danger to passengers on the road by reason of horses or other animals being frightened by the sight or noise of the rolling-stock moving on the railway;

(*c*) suitable gates, chains, bars, stiles, or hand-rails be erected or renewed by a railway administration at places where a railway crosses a public road on the level;

(*d*) persons be employed by a railway administration to open and shut such gates, chains, or bars.

Over and under-bridges.

**14.** (*1*) Where a railway administration has constructed a railway across a public road on the level, the Governor-General in Council may at any time, if it appears to him necessary for the public safety, require the railway administration, within such time as he thinks fit, to carry the road either under or over the railway by means of a bridge or arch, with convenient ascents and descents, and other convenient approaches, instead of crossing the road on the level, or to execute such other works as, in the circumstances of the case, may appear to the Governor-General in Council to be best adapted for removing or diminishing the danger arising from the level-crossing.

(*2*) The Governor-General in Council may require, as a condition of making a requisition under sub-section (*1*), that the local authority, if any, which maintains the road, shall undertake to pay the whole of the cost to the railway administration of complying with the requisition, or such portion of the cost as the Governor-General in Council thinks just.

Removal of trees dangerous to or obstructing the working of a railway.

**15.** (*1*) In either of the following cases, namely:—

(*a*) where there is danger that a tree standing near a railway may fall on the railway so as to obstruct traffic,

(*b*) when a tree obstructs the view of any fixed signal,

the railway administration may, with the permission of any Magistrate, fell the tree, or deal with it in such other manner as will, in the opinion of the railway administration, avert the danger or remove the obstruction, as the case may be.

(*2*) In case of emergency, the power mentioned in sub-section (*1*) may be exercised by a railway administration without the permission of a Magistrate.

(*3*) Where a tree felled or otherwise dealt with under sub-section (*1*) or sub-section (*2*) was in existence before the railway was constructed, or the signal was fixed, any Magistrate may, upon the application of the persons interested in the tree, award to those persons such compensation as he thinks reasonable.

(*4*) Such an award, subject, where made in a presidency-town by any Magistrate other than the Chief Presidency Magistrate, or where made elsewhere by

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any Magistrate other than the District Magistrate, to revision by the Chief Presidency Magistrate or the District Magistrate, as the case may be, shall be final.

(5) A Civil Court shall not entertain a suit to recover compensation for any tree felled or otherwise dealt with under this section.

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## CHAPTER IV.

### OPENING OF RAILWAYS.

Right to use locomotives.

**16.*** (1) A railway administration may, with the previous sanction of the Governor-General in Council, use upon a railway locomotive engines or other motive power, and rolling-stock to be drawn or propelled thereby.

(2) But rolling-stock shall not be moved upon a railway by steam or other motive power until such general rules for the railway as may be deemed to be necessary have been made, sanctioned, and published under this Act.

Notice of intended opening of a railway.

**17.** (1) Subject to the provisions of sub-section (2), a railway administration shall, one month at least before it intends to open any railway for the public carriage of passengers, give to the Governor-General in Council notice in writing of its intention.

(2) The Governor-General in Council may in any case, if he thinks fit, reduce the period of, or dispense with, the notice mentioned in sub-section (1).

Sanction of the Government a condition precedent to the opening of a railway.

**18.** A railway shall not be opened for the public carriage of passengers until the Governor-General in Council, or an Inspector empowered by the Governor-General in Council in this behalf, has, by order, sanctioned the opening thereof for that purpose.

Procedure in sanctioning the opening of a railway.

**19.** (1) The sanction of the Governor-General in Council under the last foregoing section shall not be given until an Inspector has, after inspection of the railway, reported in writing to the Governor-General in Council,—

(a) that he has made a careful inspection of the railway and rolling-stock;

(b) that the moving and fixed dimensions prescribed by the Governor-General in Council have not been infringed;

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* For notifications sanctioning the use of motive power and rolling-stock on railways in—

(1) Assam, see Gazette of India, 1883, Pt. I., p. 21; *ibid*, 1885, Pt. I., p. 588; and *ibid*, 1893, Pt. I., p 178;

(2) Bengal, see Gazette of India, 1879, Pt. I., p. 428; *ibid*, 1880, Pt. I., p. 30; *ibid*, 1883, Pt. I., p. 21; *ibid*, 1884, Pt. I., p. 322; *ibid*, 1885, Pt. I., p. 580; *ibid*, 1888, Pt. I, p. 148; and others too numerous to be included in this foot-note;

(3) the Bombay Presidency, see Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, pp. cxliii. and cxliv.;

(4) Burma, see the Burma Laws List, Ed. 1897, p. 303;

(5) Central Provinces, see Gazette of India, 1885, Pt. I., p. 683, &c.;

(6) Madras, see Madras List of Local Rules and Orders, Vol. I., Ed. 1898, pp. 241 and 242;

(7) N.-W. P. and Oudh, see Gazette of India, 1879, Pt. I., p. 428; *ibid*, 1884, Pt. I., p 322; and *ibid*, 1895, Pt. I, p. 396, &c.;

(8) Punjab, see Gazette of India, 1879, Pt. I., p. 428; *ibid*, 1884, Pt. I., p. 322; *ibid*, 1885, Pt. I., p. 588, &c.

(*c*) that the weight of rails, strength of bridges, general structural character of the works, and the size of, and maximum gross load upon, the axles of any rolling-stock, are such as have been prescribed by the Governor-General in Council;

(*d*) that the railway is sufficiently supplied with rolling-stock;

(*e*) that general rules for the working of the railway, when opened for the public carriage of passengers, have been made, sanctioned, and published under this Act; and

(*f*) that, in his opinion, the railway can be opened for the public carriage of passengers without danger to the public using it.

(*2*) If, in the opinion of the Inspector, the railway cannot be so opened without danger to the public using it, he shall state that opinion together with the grounds therefor to the Governor-General in Council, and the Governor-General in Council may thereupon order the railway administration to postpone the opening of the railway.

(*3*) An order under the last foregoing sub-section must set forth the requirements to be complied with as a condition precedent to the opening of the railway being sanctioned, and shall direct the postponement of the opening of the railway until those requirements have been complied with, or the Governor-General in Council is otherwise satisfied that the railway can be opened without danger to the public using it.

(*4*) The sanction given under this section may be either absolute or subject to such conditions as the Governor General in Council thinks necessary for the safety of the public.

(*5*) When sanction for the opening of a railway is given subject to conditions, and the railway administration fails to fulfil those conditions, the sanction shall be deemed to be void, and the railway shall not be worked or used until the conditions are fulfilled to the satisfaction of the Governor-General in Council.

**20.** (*1*) The provisions of sections 17, 18, and 19, with respect to the opening of a railway, shall extend to the opening of the works mentioned in sub-section (*2*) when those works form part of, or are directly connected with, a railway used for the public carriage of passengers, and have been constructed after the inspection which preceded the first opening of the railway.

*Application of the provisions of the three last foregoing sections to material alterations of a railway.*

(*2*) The works referred to in sub-section (*1*) are additional lines of railway, deviation lines, stations, junctions, and crossings on the level, and any alteration or re-construction materially affecting the structural character of any work to which the provisions of sections 17, 18, and 19, apply, or are extended by this section.

**21.** When an accident has occurred resulting in a temporary suspension of traffic, and either the original line and works have been rapidly restored to their original standard, or a temporary diversion has been laid for the purpose of restoring communication, the original line and works so restored, or the temporary diversion, as the case may be, may, in the absence of the Inspector, be opened for the public carriage of passengers, subject to the following conditions, namely:—

*Exceptional provision.*

(*a*) that the railway servant in charge of the works undertaken by reason of the accident has certified in writing that the opening of the restored line and works, or of the temporary diversion, will not, in

his opinion, be attended with danger to the public using the line and works or the diversion ; and

(*b*) that notice by telegraph of the opening of the line and works or the diversion shall be sent, as soon as may be, to the Inspector appointed for the railway.

Power to make rules with respect to the opening of railways.

**22.** The Governor-General in Council may make rules defining the cases in which, and in those cases the extent to which, the procedure prescribed in sections 17 to 20 (both inclusive) may be dispensed with.

Power to close an opened railway.

**23.** (*1*) When, after inspecting any open railway used for the public carriage of passengers or any rolling-stock used thereon, an Inspector is of opinion that the use of the railway or of any specified rolling-stock will be attended with danger to the public using it, he shall state that opinion, together with the grounds therefor, to the Governor-General in Council ; and the Governor-General in Council may thereupon order that the railway be closed for the public carriage of passengers, or that the use of the rolling-stock so specified be discontinued, or that the railway or the rolling-stock so specified be used for the public carriage of passengers on such conditions only as the Governor-General in Council may consider necessary for the safety of the public.

(*2*) An order under sub-section (*1*) must set forth the grounds on which it is founded.

Re-opening of a closed railway.

**24.** (*1*) When a railway has been closed under the last foregoing section, it shall not be re-opened for the public carriage of passengers until it has been inspected, and its re-opening sanctioned, in accordance with the provisions of this Act.

(*2*) When the Governor-General in Council has ordered, under the last foregoing section, that the use of any specified rolling-stock be discontinued, that rolling-stock shall not be used until an Inspector has reported that it is fit for use, and the Governor-General in Council has sanctioned its use.

(*3*) When the Governor-General in Council has imposed under the last foregoing section any conditions with respect to the use of any railway or rolling-stock, those conditions shall be observed until they are withdrawn by the Governor-General in Council.

Delegation of powers under this chapter to Inspectors.

**25.** (*1*) The Governor-General in Council may, by general or special order, authorize the discharge of any of his functions under this chapter by an Inspector, and may cancel any sanction or order given by an Inspector discharging any such function, or attach thereto any condition which the Governor-General in Council might have imposed if the sanction or order had been given by himself.

(*2*) A condition imposed under sub-section (*1*) shall, for all the purposes of this Act, have the same effect as if it were attached to a sanction or order given by the Governor-General in Council.

## CHAPTER V.

### RAILWAY COMMISSIONS AND TRAFFIC FACILITIES.

*Railway Commissions.*

Constitution of Railway Commission.

**26.** (*1*) For the purposes of this chapter the Governor-General in Council shall, as occasion may in his opinion require, appoint a commission, styled a Railway Commission (in this Act referred to as the Commissioners), and consisting of one Law Commissioner and two Lay Commissioners.

(*2*) The Commissioners shall sit at such times and in such places as the Governor-General in Council appoints.

(*3*) The Law Commissioner shall be such Judge of the High Court having jurisdiction in reference to European British subjects under the Code of Criminal Procedure, 1882,* in the place where the Commissioners are to sit as, in the case of a High Court established under the Statute 24 and 25 Victoria, chapter 104,† the Chief Justice, or, in the case of the Chief Court of the Punjab, the Senior Judge, or, in the case of the Court of the Recorder of Rangoon the Chief Commissioner of Burma, may, on the request of the Governor-General in Council, assign by writing under his hand.

(*4*) The Lay Commissioners shall be appointed by the Governor-General in Council, and one at least of them shall be of experience in railway business.

Restriction of jurisdiction of Railway Commission to cases specially referred.

**27.** The Commissioners shall take cognizance of such cases only as are referred to them by the Governor-General in Council.

Reference of cases to Railway Commission.

**28.** In any of the following circumstances, namely:—

(*a*) where complaint is made to the Governor-General in Council of anything done or any omission made by a railway administration in violation or contravention of any provision of this chapter;

(*b*) where any difference which is under the provisions of any agreement required or authorized to be referred to arbitration arises between railway administrations, and the railway administrations apply to the Governor-General in Council to have it referred to the Commissioners;

(*c*) where any other difference, being a difference between railway administrations, or one to which a railway administration is a party, arises, and the parties thereto apply to the Governor-General in Council to have it referred to the Commissioners;

the Governor-General in Council may, if he thinks fit, refer the case to the Commissioners for decision.

Constitution of Railway Commission in session.

**29.** The three Commissioners shall attend at the hearing of any case referred to them for decision under this chapter, and the Law Commissioner shall preside at the hearing.

Powers of Railway Commission.

**30.** (*1*) In hearing any such case the Commissioners shall have all the powers which may be exercised in the hearing of an original civil suit by a High Court.

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* See now the Code of Criminal Procedure (Act V. of 1898).

† The Indian High Courts Act, 1861, printed Collection of Statutes relating to India, Vol. II., Ed. 1881, p. 713.

1890. Act 9.

(2) The decision shall, if the Commissioners differ in opinion, be in accordance with the opinion of the majority, and the final order in the case shall be by way of injunction, and not otherwise.

(3) At the hearing the Commissioners may permit any party to appear before them either by himself or by any legal practitioner entitled to practise in any High Court.

Appeals from orders of Railway Commission.

**31.** (1) An appeal shall not lie from any order of the Commissioners upon any question of fact on which two of the Commissioners are agreed.

(2) Subject to the provisions of sub-section (1), an appeal shall lie from an order of the Commissioners—

(a) where the Law Commissioner was the Recorder or Additional Recorder of Rangoon, to the High Court of Judicature at Fort William in Bengal, and

(b) in any other case, to the High Court of which the Law Commissioner was a member.

(3) Such an appeal must be presented within six months from the date of the order appealed from, and shall be heard by a bench of as many Judges, not being fewer than three, as the High Court may by rule prescribe.

(4) In the hearing of the appeal the High Court shall, subject to the other provisions of this chapter, have all the powers which it has as an Appellate Court under the Code of Civil Procedure, and may make any order which the Commissioners could have made.

Operation of orders of Railway Commission.

**32.** Notwithstanding any appeal to the High Court from an order of the Commissioners, the order shall, unless the Commissioners or the majority of them see fit to suspend it, continue in operation until it is reversed or varied by that Court.

Assessors.

**33.** (1) The Commissioners, in the exercise of their jurisdiction under this chapter, may from time to time, with the general or special sanction of the Governor-General in Council, call in one or more persons of engineering or other technical knowledge to act as assessors.

(2) There shall be paid to such persons such remuneration as the Governor-General in Council, upon the recommendation of the Commissioners, may direct.

Power of the Governor-General in Council to make rules for the purposes of this chapter.

**34.** The Governor-General in Council may make rules* regulating proceedings before the Commissioners, and enabling the Commissioners to carry into effect the provisions of this chapter, and prescribing fees to be taken in relation to proceedings before the Commissioners.

Costs of proceedings under this chapter.

**35.** The costs of and incidental to any proceedings before the Commissioners or the High Court under this chapter shall be in the discretion of the Commissioners or the High Court, as the case may be, and the payment of costs awarded by the Commissioners may be enforced by the Court, of which the Law Commissioner was a Judge, as if the payment had been ordered by a decree of a High Court.

* For such rules, see Gazette of India, 1892, Pt. I., p. 658.

**36.** (*1*) The Court of which the Law Commissioner was a Judge may, if it appears on the application of any person who was a party to the proceedings before the Commissioners, or on appeal before the High Court, or of the representative of any such person, that an injunction made under this chapter by the Commissioners or by a High Court has not been obeyed by the party enjoined, order such party to pay a sum not exceeding one thousand rupees for every day during which the injunction is disobeyed after the date of the order directing such payment.

Execution of order of Railway Commission and High Court.

(*2*) The payment of such sum may be enforced by the Court which made the order as if that Court had given a decree for the same, and the Court may direct that the whole or any part of the sum shall be paid to the person making the application under sub-section (*1*), or to the Government.

**37.** A document purporting to be signed by the Commissioners, or any of them, shall be received in evidence without proof of the signature, and shall, until the contrary is proved, be deemed to have been so signed, and to have been duly executed or issued by the Commissioners.

Evidence of documents.

**38.** The Commissioners shall, as soon as may be, after the disposal of each case referred to them, submit to the Governor-General in Council a special report on the case, and the Governor-General in Council shall cause the report to be published in such manner as he thinks fit for the information of persons interested in the subject-matter thereof.

Submission to the Governor-General in Council of special reports by Railway Commission.

**39.** Except for the purpose of the last foregoing section, a Railway Commission shall be deemed to be dissolved at the close of the last of the sittings of the Commissioners for the decision of the cases referred to them:

Dissolution of Railway Commission.

Provided that, on the application of any person who was a party to the proceedings before the Commissioners, or of the representative of any such person, the Governor-General in Council may, if he thinks fit, in any case in which the order passed by the Commissioners is not open to appeal, re-appoint the Commissioners for the purpose of hearing an application for a review of their decision, and of granting the same, and re-hearing the case if they think that the case should be re-heard.

**40.** Subject to the foregoing provisions of this chapter, and to any direction of Her Majesty in Council, an order of the Commissioners shall be final, and shall not be questioned in or restrained by any Court.

Finality of orders of Railway Commission subject to the foregoing provisions of this chapter.

**41.** Except as provided in this Act, no suit shall be instituted or proceeding taken for anything done or any omission made by a railway administration in violation or contravention of any provision of this chapter, or of any order made thereunder by the Commissioners, or by a High Court.

Bar of jurisdiction of ordinary Courts in certain matters cognizable by Railway Commission.

*Traffic Facilities.*

**42.** (*1*) Every railway administration shall, according to its powers, afford all reasonable facilities for the receiving, forwarding, and delivering of traffic upon and from the several railways belonging to or worked by it, and for the return of rolling-stock.

Duty of railway administrations to arrange for receiving and forwarding traffic without unreasonable delay, and without partiality.

1890. Act 9.

(2) A railway administration shall not make or give any undue or unreasonable preference or advantage to, or in favour of, any particular person or railway administration, or any particular description of traffic, in any respect whatsoever, or subject any particular person or railway administration, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

(3) A railway administration having or working railways which form part of a continuous line of railway communication, or having its terminus or station within one line of the terminus or station of another railway administration, shall afford all due and reasonable facilities for receiving and forwarding by one of such railways all the traffic arriving by the other at such terminus or station, without any unreasonable delay, and without any such preference or advantage, or prejudice or disadvantage as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways as a continuous line of communication, and so that all reasonable accommodation may, by means of such railways, be at all times afforded to the public in that behalf.

(4) The facilities to be afforded under this section shall include the due and reasonable receiving, forwarding, and delivering by every railway administration, at the request of any other railway administration, of through traffic to and from the railway of any other railway administration at through rates:

Provided as follows:—

(a) the railway administration requiring the traffic to be forwarded shall give written notice of the proposed through rate to each forwarding railway administration, stating both its amount and its apportionment, and the route by which the traffic is proposed to be forwarded. The proposed through rate for animals or goods may be per truck or per maund;

(b) each forwarding railway administration shall, within the prescribed period after the receipt of such notice by written notice inform the railway administration requiring the traffic to be forwarded whether it agrees to the rate, apportionment, and route, and, if it has any objection, what the grounds of the objection are;

(c) if, at the expiration of the prescribed period, no such objection has been sent by any forwarding railway administration, the rate shall come into operation at the expiration of that period;

(d) if an objection to the rate, apportionment, or route has been sent within the prescribed period, the Governor-General in Council may, if he thinks fit, on the request of any of the railway administrations, refer the case to the Commissioners for their decision;

(e) if the objection is to the granting of the rate or to the route, the Commissioners shall consider whether the granting of the rate is a due and reasonable facility in the interest of the public, and whether, regard being had to the circumstances, the route proposed is a reasonable route, and shall allow or refuse the rate accordingly, or fix such other rate as may seem to the Commissioners to be just and reasonable;

(f) if the objection is only to the apportionment of the rate, and the case has been referred to the Commissioners, the rate shall come into operation at the expiration of the prescribed period, but the decision of the Commissioners as to its apportionment shall be retrospective: in the case of any other objection, the operation of the rate

shall be suspended until the Commissioners make their order in the case;

(*g*) the Commissioners, in apportioning the through rate, shall take into consideration all the circumstances of the case, including any special expense incurred in respect of the construction, maintenance, or working of the route or any part of the route, as well as any special charges which any railway administration is entitled to make in respect thereof;

(*h*) the Commissioners shall not in any case compel any railway administration to accept lower mileage rates than the mileage rates which the administration may, for the time being, legally be charging for like traffic carried by a like mode of transit on any other line of communication between the same points, being the points of departure and arrival of the through route;

(*i*) subject to the foregoing provisions of this sub-section, the Commissioners shall have full power to decide that any proposed through rate is due and reasonable, notwithstanding that a less amount may be allotted to any forwarding railway administration out of the through rate than the maximum rate which the railway administration is entitled to charge, and to allow and apportion the through rate accordingly;

(*j*) the prescribed period mentioned in this sub-section shall be one month or such longer period as the Governor-General in Council may, by general or special order, prescribe.

Undue preference in case of unequal rates for like traffic or services.

**43.** (*1*) Whenever it is shown that a railway administration charges one trader or class of traders, or the traders in any local area, lower rates for the same or similar animals or goods, or lower rates for the same or similar services, than it charges to other traders or classes of traders, or to the traders in another local area, the burden of proving that such lower charge does not amount to an undue preference shall lie on the railway administration.

(*2*) In deciding whether a lower charge does or does not amount to an undue preference, the Commissioners may, so far as they think reasonable, in addition to any other considerations affecting the case, take into consideration whether such lower charge is necessary for the purpose of securing, in the interests of the public, the traffic in respect of which it is made.

Provision for facilities and equal treatment where ships or boats are used which are not part of a railway.

**44.** Where a railway administration is a party to an agreement for procuring the traffic of the railway to be carried on any inland water by any ferry, ship, boat, or raft which does not belong to, or is not hired or worked by, the railway administration, the provisions of the two last foregoing sections applicable to a railway shall extend to the ferry, ship, boat, or raft, in so far as it is used for the purposes of the traffic of the railway.

Terminals.

**45.** A railway administration may charge reasonable terminals.

Power of Railway Commission to fix terminals.

**46.** (*1*) The Governor-General in Council may, if he thinks fit, refer to the Commissioners for decision any question or dispute which may arise with respect to the terminals charged by a railway administration, and the Commissioners may thereupon decide what is a reasonable sum to be paid to the railway administration in respect of terminals.

1890. Act 9.

(2) In deciding the question or dispute, the Commissioners shall have regard only to the expenditure reasonably necessary to provide the accommodation in respect of which the terminals are charged, irrespective of the outlay which may have been actually incurred by the railway administration in providing that accommodation.

## CHAPTER VI.

### WORKING OF RAILWAYS.

*General.*

General rules.

**47.** (1) Every Railway Company, and, in the case of a railway administered by the Government, an officer to be appointed by the Governor-General in Council in this behalf, shall make general rules consistent with this Act for the following purposes, namely:—

(a) for regulating the mode in which, and the speed at which, rolling-stock used on the railway is to be moved or propelled;

(b) for providing for the accommodation and convenience of passengers, and regulating the carriage of their luggage;

(c) for declaring what shall be deemed to be, for the purposes of this Act, dangerous or offensive goods, and for regulating the carriage of such goods;

(d) for regulating the conditions on which the railway administration will carry passengers suffering from infectious or contagious disorders, and providing for the disinfection of carriages which have been used by such passengers;

(e) for regulating the conduct of the railway servants;*

(f) for regulating the terms and conditions on which the railway administration will warehouse or retain goods at any station on behalf of the consignee or owner; and,

(g) generally,† for regulating the travelling upon, and the use, working, and management of, the railway.

(2) The rules may provide that any person committing a breach of any of them shall be punished with fine which may extend to any sum not exceeding fifty rupees, and that, in the case of a rule made under clause (e) of sub-section (1), the railway servant shall forfeit a sum not exceeding one month's pay, which sum may be deducted by the railway administration from his pay.

(3) A rule made under this section shall not take effect until it has received the sanction of the Governor-General in Council, and been published in the *Gazette of India*:

Provided that, where the rule is in the terms of a rule which has already been published at length in the *Gazette of India*, a notification in that Gazette referring to the rule already published, and announcing the adoption thereof, shall be deemed a publication of a rule in the *Gazette of India* within the meaning of this sub-section.

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* For rules for the guidance of railway officials employed on lines administered by the Government, see Gazette of India, 1895, Pt. I., p. 173.

† For general rules made by the Director-General of Railways for all open lines of railway in British India administered by the Government, see Gazette of India, 1892, Pt. I., p. 239.

(*4*) The Governor-General in Council may cancel any rule made under this section, and the authority required by sub-section (*1*) to make rules thereunder may at any time, with the previous sanction of the Governor-General in Council, rescind or vary any such rule.*

(*5*) Every rule purporting to have been made for any railway under section 8 of the Indian Railways Act, 1879,† and appearing from the *Gazette of India* to be intended to apply to the railway at the commencement of this Act, shall, notwithstanding any irregularity in the making or publication of the rule, be deemed to have been made and to have taken effect under this section.

(*6*) Every railway administration shall keep at each station on its railway a copy of the general rules for the time being in force under this section on the railway, and shall allow any person to inspect it free of charge at all reasonable times.

Disposal of differences between railways regarding conduct of joint traffic.

**48.** Where two or more railway administrations, whose railways have a common terminus or a portion of the same line of rails in common, or form separate portions of one continued line of railway communication, are not able to agree upon arrangements for conducting at such common terminus, or at the point of junction between them, their joint traffic with safety to the public, the Governor-General in Council, upon the application of either or any of the administrations, may decide the matters in dispute between them so far as those matters relate to the safety of the public, and may determine whether the whole or what proportion of the expenses attending on such arrangements shall be borne by either or any of the administrations respectively.

Agreements with the Governor-General in Council for construction or lease of rolling-stock.

**49.** Any railway company, not being a company for which the Statute 42 and 43 Victoria, chapter 41,‡ provides, may, from time to time, make and carry into effect agreements with the Governor-General in Council for the construction of rolling-stock, plant, or machinery used on, or in connection with, railways, or for leasing or taking on lease any rolling-stock, plant, machinery, or equipments required for use on a railway, or for the maintenance of rolling-stock.

Powers of railway companies to enter into working agreements.

**50.** Any railway company, not being a company for which the Statute 42 and 43 Victoria, chapter 41, provides, may, from time to time, make with the Governor-General in Council, and carry into effect, or, with the sanction of the Governor-General in Council, make with any other railway administration, and carry into effect, any agreement with respect to any of the following purposes, namely:—

(*a*) the working, use, management, and maintenance of any railway;

(*b*) the supply of rolling-stock and machinery necessary for any of the purposes mentioned in clause (*a*), and of officers and servants for the conduct of the traffic of the railway;

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* For amendments—(*1*) in the general rules for all open lines of railway administered by the Governments, see Gazette of India, 1891, Pt. I., pp. 34, 36, 126, 359, and 528; (*2*) in the rules for the guidance of railway officials, see Gazette of India 1896, Pt I, pp. 422, 501, 516, 577, and 816; *ibid*, 1897, Pt. I., p. 167; and *ibid*, 1898, Pt. I., pp. 38 and 361.

† Act IV. of 1879 is repealed by s. 2 of this Act.

‡ The Indian Guaranteed Railways Act, 1879, printed in Collection of Statutes relating to India, Vol. II., p. 1154

(*c*) the payments to be made and the conditions to be performed with respect to such working, use, management, and maintenance;

(*d*) the interchange, accommodation, and conveyance of traffic being on, coming from, or intended for, the respective railways of the contracting parties, and the fixing, collecting, apportionment, and appropriation of the revenues arising from that traffic;

(*e*) generally, the giving effect to any such provisions or stipulations with respect to any of the purposes hereinbefore in this section mentioned as the contracting parties may think fit and mutually agree on:

Provided that the agreement shall not affect any of the rates which the railway administrations, parties thereto, are from time to time respectively authorized to demand and receive from any person: and that every person shall, notwithstanding the agreement, be entitled to the use and benefit of the railways of any railway administrations, parties to the agreement, on the same terms and conditions, and on payment of the same rates, as he would be if the agreement had not been entered into.

Establishment of ferries and roadways for accommodation of traffic.

**51.** Any railway company, not being a company for which the Statute 42 and 43 Victoria,* chapter 4, provides, may, from time to time, exercise, with the sanction of the Governor-General in Council, all or any of the following powers, namely:—

(*a*) it may establish, for the accommodation of the traffic of its railway, any ferry equipped with machinery and plant of good quality and adequate in quantity to work the ferry;

(*b*) it may work, for purposes other than the accommodation of the traffic of the railway, any ferry established by it under this section;

(*c*) it may provide and maintain, on any of its bridges, roadways for foot-passengers, cattle, carriages, carts, or other traffic;

(*d*) it may construct and maintain roads for the accommodation of traffic passing to or from its railway;

(*e*) it may provide and maintain any means of transport which may be required for the reasonable convenience of passengers, animals, or goods carried or to be carried on its railway:

(*f*) it may charge tolls on the traffic using such ferries, roadways, roads, or means of transport as it may provide under this section, according to tariffs to be arranged from time to time with the sanction of the Governor-General in Council.

Returns.

**52.** Every railway administration shall, in forms to be prescribed by the Governor-General in Council, prepare, half-yearly or at such intervals as the Governor-General in Council may prescribe, such returns of its capital and revenue transactions, and of its traffic, as the Governor-General in Council may require, and shall forward a copy of such returns to the Governor-General in Council at such times as he may direct.

* The Indian Guaranteed Railways Act, 1879, printed in Collection of Statutes relating to India, Vol. II., p. 1154.

*Carriage of Property.*



**53.** (*1*) Every railway administration shall determine the maximum load for every wagon or truck in its possession, and shall exhibit the words or figures representing the load so determined in a conspicuous manner on the outside of every such wagon or truck.

Maximum load for wagons.

(*2*) Every person owning a wagon or truck which passes over a railway shall similarly determine and exhibit the maximum load for the wagon or truck.

(*3*) The gross weight of any such wagon or truck bearing on the axles when the wagon or truck is loaded to such maximum load shall not exceed such limit as may be fixed by the Governor-General in Council for the class of axle under the wagon or truck.

**54.** (*1*) Subject to the control of the Governor-General in Council, a railway administration may impose conditions, not inconsistent with this Act, or with any general rule thereunder, with respect to the receiving, forwarding, or delivering of any animals or goods.

Power for railway administrations to impose conditions for working traffic.

(*2*) The railway administration shall keep at each station on its railway a copy of the conditions for the time being in force under sub-section (*1*) at the station, and shall allow any person to inspect it free of charge at all reasonable times.

(*3*) A railway administration shall not be bound to carry any animal suffering from any infectious or contagious disorder.

**55.** (*1*) If a person fails to pay, on demand made by or on behalf of a railway administration, any rate, terminal, or other charge due from him in respect of any animals or goods, the railway administration may detain the whole or any of the animals or goods, or, if they have been removed from the railway, any other animals or goods of such person then being in, or thereafter coming into, its possession.

Lien for rates, terminals, and other charges.

(*2*) When any animals or goods have been detained under sub-section (*1*), the railway administration may sell by public auction, in the case of perishable goods, at once, and, in the case of other goods or of animals, on the expiration of at least fifteen days' notice of the intended auction, published in one or more of the local newspapers, or, where there are no such newspapers, in such manner as the Governor-General in Council may prescribe, sufficient of such animals or goods to produce a sum equal to the charge; and all expenses of such detention, notice, and sale, including, in the case of animals, the expenses of the feeding, watering, and tending thereof.

(*3*) Out of the proceeds of the sale the railway administration may retain a sum equal to the charge and the expenses aforesaid, rendering the surplus, if any, of the proceeds, and such of the animals or goods (if any) as remain unsold, to the person entitled thereto.

(*4*) If a person, on whom a demand for any rate, terminal, or other charge due from him has been made, fails to remove from the railway, within a reasonable time, any animals or goods which have been detained under sub-section (*1*), or any animals or goods which have remained unsold after a sale under sub-section (*2*), the railway administration may sell the whole of them, and dispose of the proceeds of the sale, as nearly as may be, under the provisions of sub-section (*3*).

(*5*) Notwithstanding anything in the foregoing sub-sections, the railway administration may recover by suit any such rate, terminal, or other charge as aforesaid or balance thereof.

1890. Act 9.

Disposal of unclaimed things on a railway.

**56.** (*1*) When any animals or goods have come into the possession of a railway administration for carriage or otherwise, and are not claimed by the owner or other person appearing to the railway administration to be entitled thereto, the railway administration shall, if such owner or person is known, cause a notice to be served upon him requiring him to remove the animals or goods.

(*2*) If such owner or person is not known, or the notice cannot be served upon him, or he does not comply with the requisition in the notice, the railway administration may, within a reasonable time, subject to the provisions of any other enactment for the time being in force, sell the animals or goods, as nearly as may be, under the provisions of the last foregoing section, rendering the surplus, if any, of the proceeds of the sale to any person entitled thereto.

Power for railway administrations to require indemnity on delivery of goods in certain cases.

**57.** Where any animals, goods, or sale-proceeds in the possession of a railway administration are claimed by two or more persons, or the ticket or receipt given for the animals or goods is not forthcoming, the railway administration may withhold delivery of the animals, goods, or sale-proceeds until the person entitled in its opinion to receive them has given an indemnity, to the satisfaction of the railway administration, against the claims of any other person with respect to the animals, goods, or sale-proceeds.

Requisitions for written accounts of description of goods.

**58.** (*1*) The owner or person having charge of any goods which are brought upon a railway for the purpose of being carried thereon, and the consignee of any goods which have been carried on a railway, shall, on the request of any railway servant appointed in this behalf by the railway administration, deliver to such servant an account in writing signed by such owner or person, or by such consignee, as the case may be, and containing such a description of the goods as may be sufficient to determine the rate which the railway administration is entitled to charge in respect thereof.

(*2*) If such owner, person, or consignee refuses or neglects to give such an account, and refuses to open the parcel or package containing the goods, in order that their description may be ascertained, the railway administration may (*a*) in respect of goods which have been brought for the purpose of being carried on the railway, refuse to carry the goods, unless in respect thereof a rate is paid not exceeding the highest rate which may be in force at the time on the railway for any class of goods, or (*b*), in respect of goods which have been carried on the railway, charge a rate not exceeding such highest rate.

(*3*) If an account delivered under sub-section (*1*) is materially false with respect to the description of any goods to which it purports to relate, and which have been carried on the railway, the railway administration may charge, in respect of the carriage of the goods, a rate not exceeding double the highest rate which may be in force at the time on the railway for any class of goods.

(*4*) If any difference arises between a railway servant and the owner or person having charge, or the consignee, of any goods which have been brought to be carried, or have been carried, on a railway, respecting the description of goods of which an account has been delivered under this section, the railway servant may detain and examine the goods.

(*5*) If it appears from the examination that the description of the goods is different from that stated in an account delivered under sub-section (*1*), the person who delivered the account, or, if that person is not the owner of the goods, then that person and the owner, *jointly* and *severally*, shall be liable to pay to the

railway administration the cost of the detention and examination of the goods, and the railway administration shall be exonerated from all responsibility for any loss which may have been caused by the detention or examination thereof.

(*6*) If it appears that the description of the goods is not different from that stated in an account delivered under sub-section (*1*), the railway administration shall pay the cost of the detention and examination, and be responsible to the owner of the goods for any such loss as aforesaid.

Dangerous or offensive goods.

**59.** (*1*) No person shall be entitled to take with him, or to require a railway administration to carry, any dangerous or offensive goods upon a railway.

(*2*) No person shall take any such goods with him upon a railway without giving notice of their nature to the station-master or other railway servant in charge of the place where he brings the goods upon the railway, or shall tender or deliver any such goods for carriage upon a railway without distinctly marking their nature on the outside of the package containing them, or otherwise giving notice in writing of their nature to the railway servant to whom he tenders or delivers them.

(*3*) Any railway servant may refuse to receive such goods for carriage, and, when such goods have been so received without such notice as is mentioned in "sub-section (*2*)"* having to his knowledge been given, may refuse to carry them, or may stop their transit.

(*4*) If any railway servant has reason to believe any such goods to be contained in a package, with respect to the contents whereof such notice as is mentioned in sub-section (*2*) has not, to his knowledge, been given, he may cause the package to be opened for the purpose of ascertaining its contents.

(*5*) Nothing in this section shall be construed to derogate from the Indian Explosives Act, 1884, or any rule under that Act; and nothing in sub-sections (*1*), (*3*), and (*4*), shall be construed to apply to any goods tendered or delivered for carriage by order or on behalf of the Government, or to any goods which an officer, soldier, sailor, or police-officer, or a person enrolled as a volunteer under the Indian Volunteers Act, 1869, may take with him upon a railway in the course of his employment or duty as such.

Exhibition to the public of authority for quoted rates.

**60.** At every station at which a railway administration quotes a rate to any other station for the carriage of traffic other than passengers and their luggage, the railway servant appointed by the administration to quote the rate shall, at the request of any person, show to him, at all reasonable times, and without payment of any fee, the rate-books or other documents in which the rate is authorized by the administration or administrations concerned.

Requisitions on railway administrations for details of gross charges.

**61.** (*1*) Where any charge is made by, and paid to, a railway administration in respect of the carriage of goods over its railway, the administration shall, on the application of the person by whom, or on whose behalf, the charge has been paid, render to the applicant an account showing how much of the charge comes under each of the following heads, namely :—

(*a*) the carriage of the goods on the railway;

(*b*) terminals;

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* The words and figure quoted have been substituted for the words and figure "sub-section (*1*)" by the Indian Railways Act (1890) Amendment Act (IX. of 1896), s. 3.

(*c*) demurrage; and

(*d*) collection, delivery, and other expenses, but without particularizing the several items of which the charge under each head consists.

(*2*) The application under sub-section (*1*) must be in writing, and be made to the railway administration within one month after the date of the payment of the charge by or an behalf of the applicant, and the account must be rendered by the administration within two months after the receipt of the application.

*Carriage of Passengers.*

Communication between passengers and railway servants in charge of trains.

**62.** The Governor-General in Council may require any railway administration to provide and maintain in proper order, in any train worked by it which carries passengers, such efficient means of communication between the passengers and the railway servants in charge of the train as the Governor-General in Council has approved.

Maximum number of passengers for each compartment.

**63.** Every railway administration shall fix, subject to the approval of the Governor-General in Council, the maximum number of passengers which may be carried in each compartment of every description of carriage, and shall exhibit the number so fixed in a conspicuous manner inside or outside each compartment in English, or in one or more of the vernacular languages in common use in the territory traversed by the railway, or both in English and in one or more of such vernacular languages, as the Governor-General in Council, after consultation with the railway administration, may determine.

Reservation of compartments for females.

**64.** (*1*) On and after the first day of January 1891, every railway administration shall, in every train carrying passengers, reserve for the exclusive use of females one compartment at least of the lowest class of carriage forming part of the train.

(*2*) One such compartment so reserved shall, if the train is to run for a distance exceeding fifty miles, be provided with a closet.

Exhibition of time tables and tables of fares at stations.

**65.** Every railway administration shall cause to be posted in a conspicuous and accessible place at every station on its railway in English, and in a vernacular language in common use in the territory where the station is situate, a copy of the time-tables for the time being in force on the railway, and lists of the fares chargeable for travelling from the station where the lists are posted to every place for which card-tickets are ordinarily issued to passengers at that station.

Supply of tickets on payment of fares.

**66.** (*1*) Every person desirous of travelling on a railway shall, upon payment of his fare, be supplied with a ticket, specifying the class of carriage for which, and the place from, and the place to which, the fare has been paid, and the amount of the fare.

(*2*) The matters required by sub-section (*1*) to be specified on a ticket shall be set forth—

(*a*) if the class of carriage to be specified thereon is the lowest class, then in a vernacular language in common use in the territory traversed by the railway, and

(*b*) if the class of carriage to be so specified is any other than the lowest class, then in English.

Provision for case in which tickets have been issued for trains not having room available for additional passengers.

**67.** (*1*) Fares shall be deemed to be accepted, and tickets to be issued, subject to the condition of there being room available in the train for which the tickets are issued.

(*2*) A person to whom a ticket has been issued, and for whom there is not room available in the train for which the ticket was issued, shall, on returning the ticket within three hours after the departure of the train, be entitled to have his fare at once refunded.

(*3*) A person for whom there is not room available in the class of carriage for which he has purchased a ticket, and who is obliged to travel in a carriage of a lower class, shall be entitled, on delivering up his ticket, to a refund of the difference between the fare paid by him and the fare payable for the class of carriage in which he travelled.

Probibition against travelling without pass or ticket.

**68.** No person shall, without the permission of a railway servant, enter any carriage on a railway for the purpose of travelling therein as a passenger, unless he has with him a proper pass or ticket.

Exhibition and surrender of passes and tickets.

**69.** Every passenger by railway shall, on the requisition of any railway servant appointed by the railway administration in this behalf, present his pass or ticket to the railway servant for examination, and, at or near the end of the journey for which the pass or ticket was issued, or in the case of a season pass or ticket, at the expiration of the period for which it is current, deliver up the pass or ticket to the railway servant.

Return and season tickets.

**70.** A return ticket or season ticket shall not be transferable, and may be used only by the person for whose journey to and from the places specified thereon it was issued.

Power to refuse to carry persons suffering from infectious or contagious disorder.

**71.** (*1*) A railway administration may refuse to carry, except in accordance with the conditions prescribed under section 47, sub-section (*1*), clause (*d*), a person suffering from any infectious or contagious disorder.

(*2*) A person suffering from such a disorder shall not enter or travel upon a railway without the special permission of the station-master or other railway servant in charge of the place where he enters upon the railway.

(*3*) A railway servant giving such permission as is mentioned in sub-section (*2*) must arrange for the separation of the person suffering from the disorder from other persons being or travelling upon the railway.

## CHAPTER VII.

### RESPONSIBILITY OF RAILWAY ADMINISTRATIONS AS CARRIERS.

Measure of the general responsibility of a railway administration as a carrier of animals and goods.

**72.** (*1*) The responsibility of a railway administration for the loss, destruction, or deterioration of animals or goods delivered to the administration to be carried by railway shall, subject to the other provisions of this Act, be that of a bailee under sections 151, 152, and 161 of the Indian Contract Act, 1872.

(*2*) An agreement purporting to limit that responsibility shall, in so far as it purports to effect such limitation, be void, unless it—

1890. Act 9.

(*a*) is in writing signed by or on behalf of the person sending or delivering to the railway administration the animals or goods, and

(*b*) is otherwise in a form approved by the Governor-General in Council.*

(*3*) Nothing in the Common Law of England, or in the Carriers Act, 1865, regarding the responsibility of common carriers with respect to the carriage of animals or goods, shall affect the responsibility as in this section defined of a railway administration.

Further provision with respect to the liability of a railway administration as a carrier of animals.

**73.** (*1*) The responsibility of a railway administration under the last foregoing section for the loss, destruction, or deterioration of animals delivered to the administration to be carried on a railway shall not, in any case, exceed, in the case of elephants or horses, five hundred rupees a head, or, in the case of "mules,"† camels, or horned cattle, fifty rupees a head, or, in the case of "donkeys,"† sheep, goats, dogs, or other animals, ten rupees a head, unless the person sending or delivering them to the administration caused them to be declared or declared them, at the time of their delivery for carriage by railway, to be respectively of higher value than five hundred, fifty, or ten rupees a head, as the case may be.

(*2*) Where such higher value has been declared, the railway administration may charge, in respect of the increased risk, a percentage upon the excess of the value so declared over the respective sums aforesaid.

(*3*) In every proceeding against a railway administration for the recovery of compensation for the loss, destruction, or deterioration of any animal, the burden of proving the value of the animal, and, where the animal has been injured, the extent of the injury shall lie upon the person claiming the compensation.

Further provision with respect to the liability of a railway administration as a carrier of luggage.

**74.** A railway administration shall not be responsible for the loss, destruction, or deterioration of any luggage belonging to, or in charge of, a passenger, unless a railway servant has booked and given a receipt therefor.

Further provision with respect to the liability of a railway administration as a carrier of articles of special value.

**75.** (*1*) When any articles mentioned in the second schedule are contained in any parcel or package delivered to a railway administration for carriage by railway, and the value of such articles in the parcel or package exceeds one hundred rupees, the railway administration shall not be responsible for the loss, destruction, or deterioration of the parcel or package, unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared, or declared them at the time of the delivery of the parcel or package for carriage by railway, and, if so required by the administration, paid or engaged to pay a percentage on the value so declared by way of compensation for increased risk.

(*2*) When any parcel or package of which the value has been declared under sub-section (*1*) has been lost or destroyed, or has deteriorated, the compensation recoverable in respect of such loss, destruction, or deterioration shall not exceed the value so declared, and the burden of proving the value so declared to have been the true value shall, notwithstanding anything in the declaration, lie on the person claiming the compensation.

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* For risk-note forms prescribed under this clause, see Gazette of India, 1898, Pt. I., p. 282.

† The words quoted have been inserted by the Indian Railways Act (1890) Amendment (IX. of 1896), s. 4.

(g) A railway administration may make it a condition of carrying a parcel declared to contain any article mentioned in the second schedule, that a railway servant authorized in this behalf has been satisfied by examination or otherwise that the parcel actually contains the article declared to be therein.

Burden of proof in suits in respect of loss of animals or goods.

**76.** In any suit against a railway administration for compensation for loss, destruction, or deterioration of animals or goods delivered to a railway administration for carriage by railway, it shall not be necessary for the plaintiff to prove how the loss, destruction, or deterioration was caused.

Notification of claims to refund of overcharges, and to compensation for losses.

**77.** A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway, or to compensation for the loss, destruction, or deterioration of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the railway administration within six months from the date of the delivery of the animals or goods for carriage by railway.

Exoneration from responsibility in case of goods falsely described.

**78.** Notwithstanding anything in the foregoing provisions of this chapter, a railway administration shall not be responsible for the loss, destruction, or deterioration of any goods with respect to the description of which an account materially false has been delivered under sub-section (*i*) of section 58 if the loss, destruction, or deterioration is in any way brought about by the false account, nor in any case for an amount exceeding the value of the goods if such value were calculated in accordance with the description contained in the false account.

Settlement of compensation for injuries to officers, soldiers, and followers on duty.

**79.** Where an officer, soldier, or follower, while being or travelling as such on duty upon a railway belonging to, and worked by, the Government, loses his life, or receives any personal injury in such circumstances that, if he were not an officer, soldier, or follower being or travelling as such on duty upon the railway, compensation would be payable under Act No. XIII. of 1855,* or to him, as the case may be, the form and amount of the compensation to be made in respect of the loss of his life or his injury shall, where there is any provision in this behalf in the military regulations to which he was, immediately before his death, or is, subject, be determined in accordance with those regulations, and not otherwise.

Suits for compensation for injury to through-booked traffic.

**80.** Notwithstanding anything in any agreement purporting to limit the liability of a railway administration with respect to traffic while on the railway of another administration, a suit for compensation for loss of the life of, or personal injury to, a passenger, or for loss, destruction, or deterioration of animals or goods, where the passenger was, or the animals or goods were, booked through over the railways of two or more railway administrations, may be brought either against the railway administration from which the passenger obtained his pass or purchased his ticket, or to which the animals or goods were delivered by the consignor thereof, as the case may be, or against the railway administration on whose railway the loss, injury, destruction, or deterioration occurred.

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* The Indian Fatal Accidents Act (XIII. of 1855).

1890.
Act 9.

**81.** [*Limitation of liability of railway administration in respect of traffic on inland waters by vessel not being part of railway.*] *Repealed by the Indian Railways Act (IX. of 1896), s. 5.*

Limitation of liability of railway administration in respect of accidents at sea.

**82.** (*1*) When a railway administration contracts to carry passengers, animals, or goods partly by railway and partly by sea, a condition exempting the railway administration from responsibility for any loss of life, personal injury, or loss of or damage to animals or goods, which may happen, during the carriage by sea, from the act of God, the King's enemies, fire, accidents from machinery, boilers, and steam, and all and every other dangers and accidents of the seas, rivers, and navigation of whatever nature and kind soever, shall, without being expressed, be deemed to be part of the contract, and, subject to that condition, the railway administration shall, irrespective of the nationality or ownership of the ship used for the carriage by sea, be responsible for any loss of life, personal injury, or loss of or damage to animals or goods, which may happen during the carriage by sea, to the extent to which it would be responsible under the Merchant Shipping Act, 1854,* and the Merchant Shipping Act Amendment Act, 1862, if the ship were registered under the former of those Acts, and the railway administration were owner of the ship, and not to any greater extent.

(*2*) The burden of proving that any such loss, injury, or damage as is mentioned in sub-section (*1*), happened during the carriage by sea, shall lie on the railway administration.

## CHAPTER VIII.

### ACCIDENTS.

Report of railway accidents.

**83.** When any of the following accidents occurs in the course of working a railway, namely:—

(*a*) any accident attended with loss of human life, or with grievous hurt as defined in the Indian Penal Code, or with serious injury to property;

(*b*) any collision between trains of which one is a train carrying passengers;

(*c*) the derailment of any train carrying passengers, or of any part of such a train;

(*d*) any accident of a description usually attended with loss of human life, or with such grievous hurt as aforesaid, or with serious injury to property;

(*e*) any accident of any other description which the Governor-General in Council may notify in this behalf in the *Gazette of India*;

the railway administration working the railway, and, if the accident happens to a train belonging to any other railway administration, the other railway administration also, shall, without unnecessary delay, send notice of the accident to the Local Government, and to the Inspector appointed for the railway; and the station-master nearest to the place at which the accident occurred, or, where there is no station-master, the railway servant in charge of the section of the railway on which the accident occurred, shall, without unnecessary delay, give notice of the acci-

* See now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

dent to the Magistrate of the district in which the accident occurred, and to the officer in charge of the police-station within the local limits of which it occurred, or to such other Magistrate and police-officer as the Governor-General in Council appoints in this behalf.

**Power to make rules regarding notices of, and inquiries into, accidents.**

**84.** The Governor-General in Council may make rules,* consistent with this Act and any other enactment for the time being in force, for all or any of the following purposes, namely:—

(*a*) for prescribing the forms of the notices mentioned in the last foregoing section, and the particulars of the accident which those notices are to contain;

(*b*) for prescribing the class of accidents of which notice is to be sent by telegraph immediately after the accident has occurred;

(*c*) for prescribing the duties of railway servants, police-officers, Inspectors, and Magistrates on the occurrence of an accident.

**Submission of return of accidents.**

**85.** Every railway administration shall send to the Governor-General in Council a return of accidents occurring upon its railway, whether attended with personal injury or not, in such form and manner, and at such intervals of time, as the Governor-General in Council directs.†

**Provision for compulsory medical examination of person injured in railway accident.**

**86.** Whenever any person injured by an accident on a railway claims compensation on account of the injury, any Court or person having, by law or consent of parties, authority to determine the claim, may order that the person injured be examined by some duly-qualified medical practitioner named in the order, and not being a witness on either side, and may make such order with respect to the costs of the examination as it or he thinks fit.

## CHAPTER IX.

### PENALTIES AND OFFENCES.

*Forfeitures by Railway Companies.*

**Penalty for default in compliance with requisition under section 13.**

**87.** If a railway company fails to comply with any requisition made under section 13, it shall forfeit to the Government the sum of two hundred rupees for the default, and a further sum of fifty rupees for every day after the first during which the default continues.

**Penalty for contravention of section 16, 18, 19, 20, 21, or 24.**

**88.** If a railway company moves any rolling-stock upon a railway by steam or other motive power in contravention of section 16, sub-section (*2*), or opens or uses any railway or work in contravention of section 18, section 19, section 20, or section 21, or re-opens any railway, or uses any rolling-stock, in contravention of section 24, it shall forfeit to the Government the sum of two hundred rupees for every day during which the motive power, railway, work, or rolling-stock, is used in contravention of any of those sections.

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* For rules under s. 84 as to notices of accidents occurring in the course of working a railway, see Gazette of India, 1895, Pt. I., pp. 366 and 498.

† For rules as to returns of accidents to be submitted by railway administrations to Government, see Gazette of India, 1895, Pt I., p. 366; and *ibid*, 1898, Pt. I., p. 737.

1890. Act 9.

**89.** If a railway company fails to comply with the provisions of section 47, sub-section (*6*), section 54, sub-section (*2*), or section 65, with respect to the books or other documents to be kept open to inspection, or conspicuously posted at stations on its railway, it shall forfeit to the Government the sum of fifty rupees for every day during which the default continues.

Penalty for not having certain documents kept or exhibited at stations under section 47, 54, or 65.

**90.** If a railway company fails to comply with the provisions of section 47 with respect to the making of general rules, it shall forfeit to the Government the sum of fifty rupees for every day during which the default continues.

Penalty for not making rules as required by section 47.

**91.** If a railway company refuses or neglects to comply with any decision of the Governor-General in Council under section 48, it shall forfeit to the Government the sum of two hundred rupees for every day during which the refusal or neglect continues.

Penalty for failure to comply with decision under section 48.

**92.** If a railway company fails to comply with the provisions of section 52 or section 85 with respect to the submission of any return, it shall forfeit to the Government the sum of fifty rupees for every day during which the default continues after the fourteenth day from the date prescribed for the submission of the return.

Penalty for delay in submitting returns under section 52 or 85.

**93.** If a railway company contravenes the provisions of section 53 or section 63, with respect to the maximum load to be carried in any wagon or truck, or the maximum number of passengers to be carried in any compartment, or the exhibition of such load on the wagon or truck, or of such number in or on the compartment, or knowingly suffers any person owning a wagon or truck passing over its railway to contravene the provisions of the former of those sections, it shall forfeit to the Government the sum of twenty rupees for every day during which either section is contravened.

Penalty for neglect of provisions of section 53 or 63 with respect to carrying capacity of rolling-stock.

**94.** If a railway company fails to comply with any requisition of the Governor-General in Council under section 62 for the provision and maintenance in proper order, in any train worked by it which carries passengers, of such efficient means of communication as the Governor-General in Council has approved, it shall forfeit to the Government the sum of twenty rupees for each train run in disregard of the requisition.

Penalty for failure to comply with requisition under section 62 for maintenance of means of communication between passengers and railway servants.

**95.** If a railway company fails to comply with the requirements of section 64 with respect to the reservation of compartments for females or the provision of closets therein, it shall forfeit to the Government the sum of twenty rupees for every train in respect of which the default occurs.

Penalty for failure to reserve compartments for females under section 64.

**96.** If a railway company omits to give such notice of an accident as is required by section 83 and the rules for the time being in force under section 84, it shall forfeit to the Government the sum of one hundred rupees for every day during which the omission continues.

Penalty for omitting to give the notices of accidents required by section 83 and under section 84.

**97.** (*1*) When a railway company has, through any act or omission, forfeited any sum to the Government under the foregoing provisions of this chapter, the sum shall be recoverable

Recovery of penalties.

by suit in the District Court having jurisdiction in the place where the act or omission or any part thereof occurred.

(*a*) The suit must be instituted with the previous sanction of the Governor-General in Council, and the plaintiff therein shall be the Secretary of State for India in Council.

(*b*) The Governor-General in Council may remit the whole or any part of any sum forfeited by a railway company to the Government under the foregoing provisions of this chapter.

Alternative or supplementary character of remedies afforded by the foregoing provisions of this chapter.

**98.** Nothing in those provisions shall be construed to preclude the Government from resorting to any other mode of proceeding instead of, or in addition to, such a suit as is mentioned in the last foregoing section, for the purpose of compelling a railway company to discharge any obligation imposed upon it by this Act.

*Offences by Railway Servants.*

Breach of duty imposed by section 60.

**99.** If a railway servant whose duty it is to comply with the provisions of section 60 negligently or wilfully omits to comply therewith, he shall be punished with fine which may extend to twenty rupees.

Drunkenness.

**100.** If a railway servant is in a state of intoxication while on duty, he shall be punished with fine which may extend to fifty rupees, or, where the improper performance of the duty would be likely to endanger the safety of any person travelling or being upon a railway, with imprisonment for a term which may extend to one year, or with fine, or with both.

Endangering the safety of persons.

**101.** If a railway servant, when on duty, endangers the safety of any person—

(*a*) by disobeying any general rule made, sanctioned, published, and notified under this Act, or

(*b*) by disobeying any rule or order which is not inconsistent with any such general rule, and which such servant was bound by the terms of his employment to obey, and of which he had notice, or

(*c*) by any rash or negligent act or omission,

he shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to five hundred rupees, or with both.

Compelling passengers to enter carriages already full.

**102.** If a railway servant compels, or attempts to compel, or causes, any passenger to enter a compartment which already contains the maximum number of passengers exhibited therein or thereon under section 63, he shall be punished with fine which may extend to twenty rupees.

Omission to give notice of accident.

**103.** If a station-master or a railway servant in charge of a section of a railway omits to give such notice of an accident as is required by section 83 and the rules for the time being in force under section 84, he shall be punished with fine which may extend to fifty rupees.

Obstructing level-crossings.

**104.** If a railway servant unnecessarily—

(*a*) allows any rolling-stock to stand across a place where the railway crosses a public road on the level, or

(*b*) keeps a level-crossing closed against the public,

he shall be punished with fine which may extend to twenty rupees.

False returns.

**105.** If any return which is required by this Act is false in any particular to the knowledge of any person who signs it, that person shall be punished with fine which may extend to five hundred rupees, or with imprisonment which may extend to one year, or with both.

*Other Offences.*

Giving false account of goods.

**106.** If a person requested under section 58 to give an account with respect to any goods gives an account which is materially false, he, and, if he is not the owner of the goods, the owner also, shall be punished with fine which may extend to ten rupees for every maund or part of a maund of the goods, and the fine shall be in addition to any rate or other charge to which the goods may be liable.

Unlawfully bringing dangerous or offensive goods upon a railway.

**107.** If, in contravention of section 59, a person takes with him any dangerous or offensive goods upon a railway, or tenders or delivers any such goods for carriage upon a railway, he shall be punished with fine which may extend to five hundred rupees, and shall also be responsible for any loss, injury, or damage, which may be caused by reason of such goods having been so brought upon the railway.

Needlessly interfering with means of communication in a train.

**108.** If a passenger, without reasonable and sufficient cause, makes use of, or interferes with, any means provided by a railway administration for communication between passengers and the railway servants in charge of a train, he shall be punished with fine which may extend to fifty rupees.

Entering compartment reserved or already full, or resisting entry into a compartment not full.

**109.** (*1*) If a passenger, having entered a compartment which is reserved by a railway administration for the use of another passenger, or which already contains the maximum number of passengers exhibited therein or thereon under section 63, refuses to leave it when required to do so by any railway servant, he shall be punished with fine which may extend to twenty rupees.

(*2*) If a passenger resists the lawful entry of another passenger into a compartment not reserved by the railway administration for the use of the passenger resisting, or not already containing the maximum number of passengers exhibited therein or thereon under section 63, he shall be punished with fine which may extend to twenty rupees.

Smoking.

**110.** (*1*) If a person, without the consent of his fellow-passengers (if any) in the same compartment, smokes in any compartment except a compartment specially provided for the purpose, he shall be punished with fine which may extend to twenty rupees.

(*2*) If any person persists in so smoking after being warned by any railway servant to desist, he may, in addition to incurring the liability mentioned in sub-section (*1*), be removed by any railway servant from the carriage in which he is travelling.

Defacing public notices.

**111.** If a person, without authority in this behalf, pulls down, or wilfully injures, any board or document set up or posted by order of a railway administration on a railway or any

rolling-stock, or obliterates or alters any of the letters or figures upon any such board or document, he shall be punished with fine which may extend to fifty rupees.

**Fraudulently travelling or attempting to travel without proper pass or ticket.**

**112.** If a person, with intent to defraud a railway administration,—

(*a*) enters, in contravention of section 68, any carriage on a railway, or

(*b*) uses or attempts to use a single pass or single ticket which has already been used on a previous journey, or, in the case of a return ticket, a half thereof which has already been so used,

he shall be punished with fine which may extend to one hundred rupees in addition to the amount of single fare for any distance which he may have travelled.

**Travelling without pass or ticket, or with insufficient pass or ticket, or beyond authorized distance.**

**113.** (*1*) If a passenger travels in a train without having a proper pass or a proper ticket with him, or, being in or having alighted from a train, fails or refuses to present for examination, or to deliver up, his pass or ticket immediately on requisition being made therefor under section 69, he shall be liable to pay, on the demand of any railway servant appointed by the railway administration in this behalf, the excess charge hereinafter in this section mentioned, in addition to the ordinary single fare for the distance which he has travelled, or, where there is any doubt as to the station from which he started, the ordinary single fare from the station from which the train originally started, or, if the tickets of passengers travelling in the train have been examined since the original starting of the train, the ordinary single fare from the place where the tickets were examined, or, in case of their having been examined more than once, where last examined.

(*2*) If a passenger travels or attempts to travel in or on a carriage, or by a train, of a higher class than that for which he has obtained a pass or purchased a ticket, or travels in or on a carriage beyond the place authorized by his pass or ticket, he shall be liable to pay, on the demand of any railway servant appointed by the railway administration in this behalf, the excess charge hereinafter in this section mentioned, in addition to any difference between any fare paid by him and the fare payable in respect of such journey as he has made.

(*3*) The excess charge referred to in sub-section (*1*) and sub-section (*2*) shall,—

(*a*) where the passenger has, immediately after incurring the charge, and before being detected by a railway servant, notified to the railway servant on duty with the train the fact of the charge having been incurred, be one rupee, two annas, or eight annas, and

(*b*) in any other case, be six rupees, one rupee, or three rupees,

according as the passenger is travelling or has travelled, or has attempted to travel, in a carriage of the highest class, or in a carriage of the lowest class, or in a carriage of any other class or kind:

Provided that such excess charge shall in no case exceed,—

(*a*) where the liability to pay it arises under sub-section (*1*), the amount of the ordinary single fare which the passenger incurring the charge is liable to pay under that sub-section, or

(*b*) where such liability arises under sub-section (*2*), the amount of the difference between the fare paid by the passenger incurring the charge and the fare payable in respect of such journey as he has made.

(4) If a passenger liable to pay the excess charge and fare mentioned in sub-section (1), or the excess charge and any difference of fare mentioned in sub-section (2), fails or refuses to pay the same on demand being made therefor under one or other of those sub-sections as the case may be, the sum payable by him shall, on application made to any Magistrate by any railway servant appointed by the railway administration in this behalf, be recovered by the Magistrate from the passenger as if it were a fine* imposed on the passenger by the Magistrate, and shall, as it is recovered, be paid to the railway administration.

Transferring return half of return ticket.

**114.** If a person sells or attempts to sell, or parts or attempts to part with the possession of, "any half" † of a return ticket in order to enable any other person to travel therewith, or purchases such half of a return ticket, he shall be punished with fine which may extend to fifty rupees, and, if the purchaser of such half of a return ticket travels or attempts to travel therewith, he shall be punished with an additional fine which may extend to the amount of the single fare for the‡ journey authorized by the ticket.

Disposal of fines under the two last foregoing sections.

**115.** That portion of any fine imposed under section 112 or the last foregoing section which represents the single fare therein mentioned shall, as the fine is recovered, be paid to the railway administration before any portion of the fine is credited to the Government.

Altering or defacing pass or ticket.

**116.** If a passenger wilfully alters or defaces his pass or ticket so as to render the date, number, or any material portion thereof illegible, he shall be punished with fine which may extend to fifty rupees.

Being or suffering person to travel on railway with infectious or contagious disorder.

**117.** (1) If a person suffering from an infectious or contagious disorder enters or travels upon a railway in contravention of section 71, sub-section (2), he, and any person having charge of him upon the railway when he so entered or travelled thereon, shall be punished with fine which may extend to twenty rupees, in addition to the forfeiture of any fare which either of them may have paid, and of any pass or ticket which either of them may have obtained or purchased, and may be removed from the railway by any railway servant.

(2) If any such railway servant as is referred to in section 71, sub-section (2), knowing that a person is suffering from any infectious or contagious disorder, wilfully permits the person to travel upon a railway without arranging for his separation from other passengers, he shall be punished with fine which may extend to one hundred rupees.

Entering carriage in motion, or otherwise improperly travelling on a railway.

**118.** (1) If a passenger enters or leaves, or attempts to enter or leave, any carriage while the train is in motion, or elsewhere than at the side of the carriage adjoining the platform or other place appointed by the railway administration for passengers to enter or leave the carriage, or opens the side-door of any carriage while the train is in motion, he shall be punished with fine which may extend to twenty rupees.

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* As to procedure for recovery of fines, see ss. 386 to 389 of the Code of Criminal Procedure (Act V. of 1898).

† The words quoted have been substituted for the words, "the return-half," by s. 6 of the Indian Railways Act (1890) Amendment Act (IX. of 1896).

‡ The word "return" has here been omitted by s. 6 of the Indian Railways Act (1890) Amendment Act (IX. of 1896).

(*a*) If a passenger, after being warned by a railway servant to desist, persists in travelling on the roof, steps, or footboard of any carriage, or on an engine, or in any other part of a train not intended for the use of passengers, he shall be punished with fine which may extend to fifty rupees, and may be removed from the railway by any railway servant.

Entering carriage or other place reserved for females.

**119.** If a male person, knowing a carriage, compartment, room, or other place to be reserved by a railway administration for the exclusive use of females, enters the place without lawful excuse, or, having entered it, remains therein after having been desired by any railway servant to leave it, he shall be punished with fine which may extend to one hundred rupees, in addition to the forfeiture of any fare which he may have paid, and of any pass or ticket which he may have obtained or purchased, and may be removed from the railway by any railway servant.

Drunkenness or nuisance on a railway.

**120.** If a person in any railway carriage or upon any part of a railway,—

(*a*) is in a state of intoxication, or

(*b*) commits any nuisance or act of indecency, or uses obscene or abusive language, or

(*c*) wilfully and without lawful excuse, interferes with the comfort of any passenger, or extinguishes any lamp,

he shall be punished with fine which may extend to fifty rupees, in addition tot he forfeiture of any fare which he may have paid, and of any pass or ticket which he may have obtained or purchased, and may be removed from the railway by any railway servant.

Obstructing railway servant in his duty.

**121.** If a person wilfully obstructs or impedes any railway servant in the discharge of his duty, he shall be punished with fine which may extend to one hundred rupees.

Trespass and refusal to desist from trespass.

**122.** (*1*) If a person unlawfully enters upon a railway, he shall be punished with fine which may extend to twenty rupees.

(*2*) If a person so entering refuses to leave the railway on being requested to do so by any railway servant, or by any other person on behalf of the railway administration, he shall be punished with fine which may extend to fifty rupees, and may be removed from the railway by such servant or other person.

Disobedience of omnibus drivers to directions of railway servants.

**123.** If a driver or conductor of a tramcar, omnibus, carriage, or other vehicle, while upon the premises of a railway, disobeys the reasonable directions of any railway servant or police-officer, he shall be punished with fine which may extend to twenty rupees.

Opening or not properly shutting gates.

**124.** In either of the following cases, namely:—

(*a*) if a person, knowing or having reason to believe that an engine or train is approaching along a railway, opens any gate set up on either side of the railway across a road, or passes or attempts to pass, or drives or takes, or attempts to drive or take, any animal, vehicle, or other thing across the railway;

(*b*) if, in the absence of a gatekeeper, a person omits to shut and fasten such a gate as aforesaid as soon as he and any animal, vehicle, or other thing under his charge have passed through the gate,

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the person shall be punished with fine which may extend to fifty rupees.

Cattle-trespass.

**125.** (*1*) The owner or person in charge of any cattle straying on a railway provided with fences suitable for the exclusion of cattle shall be punished with fine which may extend to five rupees for each head of cattle, in addition to any amount which may have been recovered, or may be recoverable, under the Cattle Trespass Act, 1871.

(*2*) If any cattle are wilfully driven, or knowingly permitted to be, on any railway otherwise than for the purpose of lawfully crossing the railway, or for any other lawful purpose, the person in charge of the cattle, or, at the option of the railway administration, the owner of the cattle, shall be punished with fine which may extend to ten rupees for each head of cattle, in addition to any amount which may have been recovered, or may be recoverable, under the Cattle Trespass Act, 1871.

(*3*) Any fine imposed under this section may, if the Court so directs, be recovered in manner provided by section 25 of the Cattle Trespass Act, 1871.

(*4*) The expression "public road" in sections 11 and 26 of the Cattle Trespass Act, 1871, shall be deemed to include a railway, and any railway servant may exercise the powers conferred on officers of police by the former of those sections.

(*5*) The word "cattle" has the same meaning in this section as in the Cattle-Trespass Act, 1871.

Maliciously wrecking or attempting to wreck a train.

**126.** If a person unlawfully—

(*a*) puts or throws upon or across any railway any wood, stone, or other matter or thing, or

(*b*) takes up, removes, loosens, or displaces any rail, sleeper, or other matter or thing belonging to any railway, or

(*c*) turns, moves, unlocks, or diverts any points or other machinery belonging to any railway, or

(*d*) makes, or shows, or hides, or removes any signal or light upon or near to any railway, or

(*e*) does or causes to be done, or attempts to do, any other act or thing in relation to any railway,

with intent, or with knowledge that he is likely, to endanger the safety of any person travelling or being upon the railway, he shall be punished with transportation for life, or with imprisonment for a term which may extend to ten years.

Maliciously hurting or attempting to hurt persons travelling by railway.

**127.** If a person unlawfully throws, or causes to fall or strike at, against, into, or upon any rolling-stock forming part of a train, any wood, stone, or other matter or thing, with intent, or with knowledge that he is likely, to endanger the safety of any person being in or upon such rolling-stock, or in or upon any other rolling-stock forming part of the same train, he shall be punished with transportation for life, or with imprisonment for a term which may extend to ten years.

Endangering safety of persons travelling by railway by wilful act or omission.

**128.** If a person, by any unlawful act, or by any wilful omission or neglect, endangers or causes to be endangered the safety of any person travelling or being upon any railway, or obstructs or causes to be obstructed, or attempts to obstruct, any rolling-stock upon any railway, he shall be punished with imprisonment for a term which may extend to two years.

**129.** If a person rashly or negligently does any act, or omits to do what he is legally bound to do, and the act or omission is likely to endanger the safety of any person travelling or being upon a railway, he shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

Endangering safety of persons travelling by railway by rash or negligent act or omission.

**130.** (*1*) If a minor under the age of twelve years is, with respect to any railway, guilty of any of the acts or omissions mentioned or referred to in any of the four last foregoing sections, he shall be deemed, notwithstanding anything in section 82 or section 83 of the Indian Penal Code, to have committed an offence, and the Court convicting him may, if it thinks fit direct that the minor, if a male, shall be punished with whipping, or may require the father or guardian of the minor to execute, within such time as the Court may fix, a bond binding himself, in such penalty as the Court directs, to prevent the minor from being again guilty of any of those acts or omissions.

Special provision with respect to the commission by children of acts endangering safety of persons travelling by railway.

(*2*) The amount of the bond, if forfeited, shall be recoverable by the Court as if it were a fine imposed by itself.*

(*3*) If a father or guardian fails to execute a bond under sub-section (*1*) within the time fixed by the Court, he shall be punished with fine which may extend to fifty rupees.

*Procedure.*

**131.** (*1*) If a person commits any offence mentioned in section 100, 101, 119, 120, 121, 126, 127, 128, or 129, or in section 130, sub-section (*1*), he may be arrested, without warrant or other written authority, by any railway servant or police-officer, or by any other person whom such servant or officer may call to his aid.

Arrest for offences against certain sections.

(*2*) A person so arrested shall, with the least possible delay, be taken before a Magistrate having authority to try him, or commit him for trial.

**132.** (*1*) If a person commits any offence under this Act, other than an offence mentioned in the last foregoing section, or fails or refuses to pay any excess charge or other sum demanded under section 113, and there is reason to believe that he will abscond, or his name and address are unknown, and he refuses on demand to give his name and address, or there is reason to believe that the name or address given by him is incorrect, any railway servant or police-officer, or any other person whom such railway servant or police officer may call to his aid, may, without warrant or other written authority, arrest him.

Arrest of persons likely to abscond or unknown.

(*2*) The person arrested shall be released on his giving bail, or, if his true name and address are ascertained, on his executing a bond without sureties, for his appearance before a Magistrate when required.

(*3*) If the person cannot give bail, and his true name and address are not ascertained, he shall, with the least possible delay, be taken before the nearest Magistrate having jurisdiction.

(*4*) The provisions of Chapters XXXIX. and XLII. of the Code of Criminal Procedure, 1882,† shall, so far as may be, apply to bail given, and bonds executed, under this section.

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* See ss. 386 to 389 of the Code of Criminal Procedure (Act V. of 1898).

† See now the Code of Criminal Procedure (Act V. of 1898).

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Magistrate having jurisdiction under Act.

**183.** No Magistrate other than a Presidency Magistrate, or than a Magistrate whose powers are not less than those of a Magistrate of the second class, shall try any offence under this Act.

Place of trial.

**184.** (*1*) Any person committing any offence against this Act or any rule thereunder shall be triable for such offence in any place in which he may be, or which the Local Government may notify in this behalf, as well as in any other place in which he might be tried under any law for the time being in force.

(*2*) Every notification under sub-section (*1*) shall be published in the local official Gazette, and a copy thereof shall be exhibited for the information of the public in some conspicuous place at each of such railway stations as the Local Government may direct.

## CHAPTER X.

### SUPPLEMENTAL PROVISIONS.

Taxation of railways by local authority.

**185.** Notwithstanding anything to the contrary in any enactment, or in any agreement or award based on any enactment, the following rules shall regulate the levy of taxes in respect of railways and from railway administrations in aid of the funds of local authorities, namely:—

(*1*) A railway administration shall not be liable to pay any tax in aid of the funds of any local authority,* unless the Governor-General in Council has, by notification in the official Gazette, declared the railway administration to be liable to pay the tax.†

(*2*) While a notification of the Governor-General in Council under clause (*1*) of this section is in force, the railway administration shall be liable to pay to the local authority either the tax mentioned in the notification, or, in lieu thereof, such sum, if any, as an officer appointed in this behalf by the Governor-General in Council may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

(*3*) The Governor-General in Council may, at any time, revoke or vary a notification under clause (*1*) of this section.

(*4*) Nothing in this section is to be construed as debarring any railway administration from entering into a contract with any local authority for the supply of water or light, or for the scavenging of railway premises, or for any other service which the local authority may be rendering, or be prepared to render, within any part of the local area under its control.

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* For definition of "local authority," see sub-s. (*5*), *infra*, and the General Clauses Act (X. of 1897), s. 3 (*28*).

† (*1*) For notification under s. 135, declaring every railway administration to be liable to pay every tax which it is lawfully required to pay by or on behalf of any local authority in aid of the funds of such authority, see Gazette of India, 1890, Pt. I., p. 438.

(*2*) For continuation-notification declaring such administrations liable to pay certain taxes in aid of the funds of every local authority in respect of certain matters, see Gazette of India, 1893, Pt. I., p. 190.

(*3*) For notification imposing water-rates on the East Indian Railway in respect of certain municipalities, see Gazette of India, 1893 and 1894, Pt. I., pp. 358 and 438, respectively.

(5) "Local authority" in this section means a local authority as defined in the General Clauses Act, 1887,* and includes any authority legally entitled to, or entrusted with, the control or management of any fund for the maintenance of watchmen, or for the conservancy of a river.

Restriction on execution against railway property.

**136.** (1) None of the rolling stock, machinery, plant, tools, fittings, materials, or effects used or provided by a railway administration for the purpose of the traffic on its railway, or of its stations or workshops, shall be liable to be taken in execution of any decree or order of any Court "or of any local authority or person having by law power to attach or distrain property or otherwise to cause property to be taken in execution,"† without the previous sanction of the Governor-General in Council.

(2) Nothing in sub-section (1) is to be construed as affecting the authority of any Court to attach the earnings of a railway in execution of a decree or order.

Railway servants to be public servants for the purposes of Chapter IX. of the Indian Penal Code.

**137.** (1) Every railway servant shall be deemed to be a public servant for the purposes of Chapter IX. of the Indian Penal Code.

(2) In the definition of "legal remuneration" in section 161 of that Code, the word "Government" shall, for the purposes of sub-section (1), be deemed to include any employer of a railway servant as such.

(3) A railway servant shall not—

(a) purchase or bid for, either in person or by agent, in his own name or in that of another, or jointly or in shares with others, any property put up to auction under section 55 or section 56, or

(b) in contravention of any direction of the railway administration in this behalf, engage in trade.

(4) Notwithstanding anything in section 21 of the Indian Penal Code, a railway servant shall not be deemed to be a public servant for any of the purposes of that Code except those mentioned in sub-section (1).

Procedure for summary delivery to railway administration of property detained by a railway servant.

**138.** If a railway servant is discharged or suspended from his office, or dies, absconds, or absents himself, and he or his wife or widow, or any of his family or representatives, refuses or neglects, after notice in writing for that purpose, to deliver up to the railway administration, or to a person appointed by the railway administration in this behalf, any station, dwelling-house, office, or other building, with its appurtenances, or any books, papers, or other matters, belonging to the railway administration, and in the possession or custody of such railway servant at the occurrence of any such event as aforesaid, any Magistrate of the first class may, on application made by or on behalf of the railway administration, order any police-officer, with proper assistance, to enter upon the building, and remove any person found therein, and take possession thereof, or to take possession of the books, papers, or other matters, and to deliver the same to the railway administration or a person appointed by the railway administration in that behalf.

Mode of signifying communications from the Governor-General in Council.

**139.** Any notice, determination, direction, requisition, appointment, expression of opinion, approval, or sanction to be given or signified on the part of the Governor-General in Council, for any of the purposes of, or in relation to,

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* See now the General Clauses Act (X. of 1897), s. 3 (*28*).

† In s. 136 (1) the words quoted have been inserted by the Indian Railways Act (1890) Amendment Act (IX. of 1896), s. 7.

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this Act, or any of the powers or provisions therein contained, shall be sufficient and binding, if in writing signed by a Secretary, Deputy Secretary, Under-Secretary, or Assistant Secretary, to the Government of India, or by any other officer or servant authorized to act on behalf of the Governor-General in Council in respect of the matters to which the same may relate, and the Governor-General in Council shall not in any case be bound in respect of any of the matters aforesaid unless by some writing signed in manner aforesaid.

Service of notices on railway administrations.

**140.** Any notice or other document required or authorized by this Act to be served on a railway administration may be served, in the case of a railway administered by the Government or a Native State, on the Manager, and, in the case of a railway administered by a railway company, on the Agent in India of the railway company—

(*a*) by delivering the notice or other document to the Manager or Agent, or

(*b*) by leaving it at his office, or

(*c*) by forwarding it by post in a prepaid letter addressed to the Manager or Agent at his office, and registered under Part III. of the Indian Post Office Act, 1866.*

Service of notices by railway administrations.

**141.** Any notice or other document required or authorized by this Act to be served on any person by a railway administration may be served—

(*a*) by delivering it to the person, or

(*b*) by leaving it at the usual or last-known place of abode of the person, or

(*c*) by forwarding it by post in a prepaid letter addressed to the person at his usual or last known place of abode, and registered under Part III. of the Indian Post Office Act, 1866.*

Presumption where notice is served by post.

**142.** Where a notice or other document is served by post, it shall be deemed to have been served at the time when the letter containing it would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the letter containing the notice or other document was properly addressed and registered.

Provisions with respect to rules.

**143.** (*1*) A rule under section 22, section 34, or section 84, or the cancellation, rescission, or variation of a rule under any of those sections, or under section 47, sub-section (*4*), shall not take effect until it has been published in the *Gazette of India*.

(*2*) Where any rule made under this Act, or the cancellation, rescission, or variation of any such rule, is required by this Act to be published in the *Gazette of India*, it shall, besides being so published, be further notified to persons affected thereby in such manner as the Governor-General in Council, by general or special order, directs.

(*3*) The Governor-General in Council may cancel or vary any rule made by him under this Act.

Delegation of powers of Governor-General in Council.

**144.** (*1*) The Governor-General in Council may, by notification in the *Gazette of India*, invest, absolutely or subject to conditions, any Local Government with any of the pow-

* See now the Indian Post Office Act (VI. of 1898).

ers or functions of the Governor-General in Council under this Act with respect to any railway, and may, by that or a like notification, declare what Local Government shall, for the purposes of the exercise of powers or functions so conferred, be deemed to be the Local Government in respect of the railway.*

(*2*) The provisions of section 139 with respect to proceedings of the Governor-General in Council shall, so far as they can be made applicable, apply to proceedings of a Local Government exercising the powers, or discharging the functions, of the Governor-General in Council in pursuance of a notification under sub-section (*1*).

Representation of Managers and Agents of Railways in Courts.

**145.** (*1*) The Manager of a railway administered by the Government or a Native State, and the Agent in India of a railway administered by a railway company, may, by instrument in writing, authorize any railway servant or other person to act for or represent him in any proceeding before any Civil, Criminal, or other Court.

(*2*) A person authorized by a Manager or Agent to conduct prosecutions on behalf of a railway administration shall, notwithstanding anything in section 495 of the Code of Criminal Procedure, 1882,† be entitled to conduct such prosecutions without the permission of the Magistrate.

Power to extend Act to steam-tramways.

**146.** The Governor-General in Council may, by notification in the *Gazette of India*, extend this Act or any portion thereof to any tramway worked by steam or other mechanical power.‡

Power to exempt railways from Act.

**147.** The Governor-General in Council may, by a like notification, exempt any railway from any of the provisions of this Act.§

Matters supplemental to the definition of "railway" and "railway servant."

**148.** (*1*) For the purposes of section 3, clauses (*5*), (*6*), and (*7*), and sections 4 to 19 (both inclusive), 47 to 52 (both inclusive), 59, 79, 83 to 92 (both inclusive), 96, 97, 98, 100, 101, 103, 104, 107, 111, 122, 124 to 132 (both inclusive), 134 to 138 (both inclusive), 140, 141, 144, 145, and 147, the word "railway," whether it occurs alone or as a prefix to another word, has reference to a railway or portion of a railway under construction, and to a railway or portion of a railway not used for the public carriage of passengers, animals, or goods, as well as to a railway falling within the definition of that word in section 3, clause (*4*).

(*2*) For the purposes of sections 5, 21, 83, 100, 101, 103, 104, 121, 122, 125, and 137, sub-sections (*1*), (*2*), and (*4*), and section 138, the expression "railway servant" includes a person employed upon a railway in connection with the service thereof by a person fulfilling a contract with the railway administration.

Amendment of the Indian Penal Code.

**149.** In sections 194 and 195 of the Indian Penal Code, for the words, "by this Code or the law of England," the words, "by the law of British India or England," shall be substituted.

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* For notification delegating certain powers and functions vested in the Governor-General in Council to Local Governments, see Gazette of India, 1890, Pt. I., p. 438.

† See now the Code of Criminal Procedure (Act V. of 1898).

‡ For notifications extending the Act to certain steam-tramways, see Gazette of India, 1898, Pt. I., pp. 408 and 481.

§ For notification exempting the Barsi Light Railway Company from the provision of s. 85 of this Act, see Gazette of India, 1896, Pt. I., p. 303.

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Amendment of the Sindh-Pishin Railway Act, 1887.

**150.** For that portion of the preamble to the Sindh-Pishin Railway Act, 1887, which begins with the words, "so far as it applies," and ends with the words, "in its entirety," the words, "should apply in its entirety to that part of the Sindh-Pishin section of the North-Western Railway which lies beyond the Province of Sindh," shall be substituted.

## THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(*See section 2.*)

| Number and year. | Title. | Extent of repeal. |
|---|---|---|
| | *Acts of the Governor-General in Council.* | |
| III. of 1865 ... | Carriers Act, 1865 ... ... | Section 7 (so far as it relates to railways) and section 10. |
| IV. of 1879 ... | Indian Railways Act, 1879 ... | The whole. |
| IV. of 1883 ... | Indian Railways Act, 1883 ... | The whole. |
| XI. of 1886 ... | Indian Tramways Act, 1886 ... | Section 49. |
| *XX. of 1886** ... | *Upper Burma Laws Act, 1886* ... | *So much as relates to Acts IV. of 1879 and IV. of 1883.* |
| | *Act of the Lieutenant-Governor of Bengal in Council.* | |
| II. of 1882. ... | Bengal Embankments Act, 1882 ... | Section 16, and in section 17 the proviso to the first paragraph of that section, the words, "or under the section last preceding" and the words, "or railroad," wherever they occur." |

* The italicized portion has been repealed by the Burma Laws Act (XIII. of 1898).—see the Fifth Schedule to the Act.

## THE SECOND SCHEDULE.

### ARTICLES TO BE DECLARED AND INSURED.

(*See section 75.*)

(*a*) gold and silver, coined or uncoined, manufactured or unmanufactured;

(*b*) plated articles;

(*c*) cloths and tissue and lace of which gold or silver forms part, not being the uniform or part of the uniform of an officer, soldier, sailor, police-officer, or person enrolled as a volunteer under the Indian Volunteers Act, 1869, or of any public officer, British or foreign, entitled to wear uniform;

(*d*) pearls, precious stones, jewellery, and trinkets;

(*e*) watches, clocks, and timepieces of any description;

(*f*) Government securities;

(*g*) Government stamps;

(*h*) bills of exchange, hundis, promissory-notes, bank-notes, and orders or other securities for payment of money;

(*i*) maps, writings, and title-deeds;

(*j*) paintings, engravings, lithographs, photographs, carvings, sculpture, and other works of art;

(*k*) art-pottery, and all articles made of glass, china, or marble;

(*l*) silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials;

(*m*) shawls;

(*n*) lace and furs;

(*o*) opium;

(*p*) ivory, ebony, coral, and sandalwood;

(*q*) musk, sandalwood oil, and other essential oils used in the preparation of *itr* or other perfume;

(*r*) musical and scientific instruments;

(*s*) any article of special value which the Governor-General in Council may, by notification in the *Gazette of India*, add to this schedule.*

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### CRIMINAL RULINGS UNDER FORMER RAILWAY ACTS.

The drunkenness of a guard or under-guard in charge of a railway-train or any part thereof is an offence included in s. 35 of Act XVIII. of 1862; but the High Court has no jurisdiction to try a prisoner charged with such offence where he was removed from his post at a place outside the local limits, although the train thereupon proceeded with him to Madras.—REG. *v.* MALONY; REG. *v.* JONES, 1 Mad. H. C. R. 193. [Scotland, C.J., and Bittleston, J. Feb. 3. 1863.]

A passenger by railway travelling in a carriage of higher class than that for which he has paid fare is not guilty of cheating under s. 417 of the Penal Code, but is indictable under the Railways Act (XVIII. of 1854).—REG. *v.* DAYABHAI PARJARAM, 1 Bom H. C. R. 140. [Couch and Tucker, JJ. Jan. 15, 1864.]

*Held* that a conviction by a Magistrate, F. P., under s. 26 of the Railways Act, was illegal for want of jurisdiction.—REG. *v.* LAKSHMAN BALAJI, 3 Bom. H. C. R. 10. [Couch, C.J., and Newton, J. June 13, 1866.]

A conviction and sentence by a Magistrate, F P., under the Railways Act, reversed, there being no complaint made before the Magistrate, as required by the Code of Cri-

* For articles added to this schedule by notification, see Gazette of India, 1894, and 1896, Pt. I., pp. 370 and 914 respectively.

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minal Procedure.—REG. *v.* LARKINS, 4 Bom. H. C. R. 4. [Couch, C.J., and Newton, J. July 18, 1867.]

Where some coolies were employed in assisting a ballast train into motion at a railway-station, and one of them, after pushing the train, in getting up on the train, or in attempting to do so, fell, and was so injured that he afterwards lost his life, *held* that the evidence did not show that it was the duty of the guard to see that no one got up on the train when in motion.—QUEEN *v.* R. FLOOD, 8 W. R. 43. [Jackson and Hobhouse, JJ. July 22, 1867.]

Magistrates of all grades are, under Mad. Act III. of 1865, competent to try persons charged with offences under s. 26 of the Railways Act (XVIII. of 1854).—Pro., April 2, 1868, 4 Mad. H. C. R. Ap. 9.

A notice prohibiting general traffic over certain level-crossings on a railway, provided for particular villages, forbidden, as not falling within the scope of Reg. XII. of 1827, s. 19, cls. 1, 6.—In the Matter of a Prohibitory Notice under Reg. XII. of 1827, s. 19, cl. 6. [Lloyd and Kemball, JJ. April 25, 1871.]

S. 34 of Act XVIII. of 1854 prescribes the mode in which fines levied under that Act are to be recovered. It is only on the return of the warrant of distress unsatisfied, or on the Magistrate being otherwise satisfied that no sufficient distress exists, that imprisonment can be imposed.—Pro., Nov. 13, 1871, 6 Mad. H. C. R. Ap. 37.

A railway-watchman was charged before a Head Assistant Magistrate with an offence under s. 26 of Act XVIII. of 1854. That charge was dismissed, but the Sessions Judge ordered a fresh trial. *Held* that, in so doing, the Sessions Judge acted without jurisdiction.—Pro., Nov. 20, 1871, 6 Mad. H. C. R. Ap. 41.

Accused was tried and convicted by a Sub-Magistrate of an offence under s. 25 of Act XVIII. of 1854, punishable with transportation for life or imprisonment for any term not exceeding seven years. Upon a reference, *held* that, by virtue of Mad. Act III. of 1865, the Sub-Magistrate had jurisdiction, that Act not being repealed by the schedule attached to Act VIII. of 1869.—Pro., June 29, 1872, 7 Mad. H. C. R. Ap. 8.

The prisoner, a servant of a railway company, was convicted under s. 29 of Act XXV. of 1871, of endangering the lives of the persons in a certain train by negligence. There was no evidence that the safety of any persons in any train had been endangered by his neglect of duty. On the contrary, by reason of precautions taken by other persons any possible danger which might have resulted from his neglect was avoided. *Held* that he could not be convicted and punished under s. 29 of Act XXV. of 1871.—QUEEN *v.* MANPHOOL, 5 N.-W. P. 240. [Pearson, J. Aug. 11, 1873.]

By s. 35 of the Railways Act, district police-officers in the Presidency of Bombay could punish, to the extent of the powers conferred upon them in petty offences, any offence made punishable under the Act, by fine not exceeding Rs. 20. But s. 5 of Reg. XII. of 1827 (authorizing the appointment of district police-officers), and s. 41 of the same Regulation (defining the limit of their jurisdiction), being both repealed by Act XVII. of 1862, *held* that a Subordinate Magistrate had no jurisdiction to impose a fine under s. 17 of the Railways Act.—REG. *v.* TRIBHUVAN ISHWAR, 3 BOM. H. C. R. 54. [Couch, C.J., and Newton, J. Feb. 6, 1879.]

Liability to conviction under s. 26 of the Railways Act, 1879, arises, not from the consequences directly referable to the breach of the rule, but because of the danger which the breach of the rule entails.—SNELL *v.* QUEEN, I. L. R., 6 Mad 201. [Turner, C.J., and Kindersley, J. Feb. 9, 1883.]

K, knowing that he was suffering from cholera, entered a train as a passenger without informing the Railway Company's servants of his condition. M, knowing of K's condition, bought K's ticket, and travelled with him. *Held* that K was properly convicted under s. 269 of the Penal Code of negligently doing an act which was, and which he had reason to believe was, likely to spread infection of a disease dangerous to life, and M of abetment of K's offence.—QUEEN-EMPRESS *v.* KRISHNAPPA, I. L. R., 7 Mad. 276. [Turner, C.J., and Kernan, J. Dec. 14, 1883.]

A passenger who has obtained a monthly ticket is liable to be called upon to produce it at any time on the journey which it covers; and, if he does not so produce it, he is liable under ss. 17 and 31 of the Railways Act to pay the fare for the journey between the stations for which his ticket was issued. The order under s 31, in case of his refusal to pay it, should be one merely for recovery of the amount due as the fare, and not an order to pay such sum or any other sum *as if it were a fine. A passenger who has* such a ticket which is still in force, and in his possession, cannot be said to be travelling without a ticket within the meaning of s. 31, merely because he does not happen to have the ticket with him, and therefore cannot produce it when called upon

to do so.—IN THE MATTER OF THE PETITION OF E. G. BUSKIN; IN THE MATTER OF THE PETITION OF C. F. THOMAS; E. W. HART *v.* E. G. BUSKIN; E. W. HART *v.* C. F. THOMAS, I. L. R., 12 Cal. 192. [Wilson and Ghose, JJ. Sep. 2, 1885.]

S. 113, sub-s. (*4*), of the Indian Railways Act (IX. of 1890), which directs that, on failure to pay on demand excess charge and fare when due, the amount shall, on application, be recovered by a Magistrate as if it were a fine, does not authorize the Magistrate to impose imprisonment in default. The excess charge and fare, referred to in the section, is not a fine, though it may be recovered as such.—QUEEN-EMPRESS *v.* KUTRAPA, I. L. R., 18 Bom. 440. [Candy and Fulton, JJ. Aug. 14, 1893.]

When the owner of cattle which have been allowed to stray upon a railway is prosecuted under Railway Act, 1890, s. 125 (*1*), the Magistrate is bound to ascertain whether the person charged was himself guilty.—QUEEN-EMPRESS *v.* ANDI, I. L. R., 18 Mad. 228. [Collins, C.J., and Parker, J. Nov. 22, Dec. 5, 1894.]

S. 113, sub-s. (*4*), of the Indian Railways Act (IX. of 1890), which directs that, on failure to pay on demand excess charge and fare when due, the amount shall, on application, be recovered by a Magistrate as if it were a fine, does not authorize the Magistrate to impose imprisonment in default. The excess charge and fare, referred to in this section, is not a fine, though it may be recovered as such.—QUEEN-EMPRESS *v.* SUBRAMANIA AYYAR, I. L. R., 20 Mad. 385. [Collins, C.J., and Shephard, J. Jan. 14, 1897.]

Before a person can be convicted of wilfully obstructing or impeding a railway servant in the discharge of his duties as provided in s. 121 of the Railways Act (IX. of 1890), or of voluntarily obstructing a public servant in the discharge of his public functions as provided in s. 186 of the Penal Code (Act XLV. of 1860), it must be shown that the obstruction or resistance was offered to a railway or public servant in the discharge of his duties or public functions as authorized by law. The mere fact of a public servant or railway servant believing that he was acting in the discharge of his duties will not be sufficient to make resistance or obstruction to him amount to an offence.—*In re* BARODA KANT PRAMANICK AND SHIBADA GATI PRAMANICK, 1 C. W. N. 74. [O'Kinealy and Banerjee, JJ. July 16, 1896.]

The Rajnaggar Spinning, Weaving, and Manufacturing Company had a mill on one side of the B. B. & C. I. Railway line, and a ginning factory on the other. To bring water from the mill to the factory, a pipe had been laid beneath the railway line, and brick-reservoirs built at each side to preserve the proper level of the water. Servants of the company, having entered on the railway premises to repair the pipe and reservoirs without having first obtained the permission of the Railway Company, were convicted by a Magistrate under s. 122 of the Indian Railways Act (IX. of 1890) of an unlawful entry upon a railway. It was proved that the repairs were necessary. *Held*, reversing the convictions and sentences, that, as the pipes and reservoirs belonged to the Spinning and Weaving Company, and were kept in repairs by them, they, as owners of the dominant tenement, had a right to enter on the premises of the Railway Company, the owners of the servient tenement, to effect any necessary repairs, and that the entry in question, being in the exercise of a right, could not be called unlawful.—IMPERATRIX *v.* VANMALI, I. L. R., 22 Bom. 525. [Parsons and Ranade, JJ. Oct. 31, 1896.]

A passenger who travels in a train without having a proper pass or ticket with him has not committed an "offence." He cannot, therefore, be legally sentenced to imprisonment in default of payment of the excess charge and fare, which may be recovered under the provisions of s. 113, cl. (*4*), of Act IX. of 1890.—QUEEN-EMPRESS *v.* RAM PAL, I. L. R., 20 All. 95. [Knox, J. Aug. 2, 1897.]

# ACT NO. VIII. OF 1897.

## THE REFORMATORY SCHOOLS ACT, 1897.

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# ACT NO. VIII. OF 1897.*

## THE REFORMATORY SCHOOLS ACT, 1897.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*Received the assent of the Governor-General on the 11th March 1897.*

*An Act to amend the Law relating to Reformatory Schools and to make further provision for dealing with Youthful Offenders.*

WHEREAS it is expedient to amend the law relating to Reformatory Schools and to make further provision for dealing with youthful offenders; It is hereby enacted as follows :—

### *I.—Preliminary.*

Title, commencement, and extent.

**1.** (*1*) This Act may be called the Reformatory Schools Act, 1897 ; and

(*2*) It shall come into force at once.

(*3*) This section and section 2 shall extend to the whole of British India. The other sections shall extend in the first instance to the whole of British India except the territories for the time being administered by the Lieutenant-Governor of the Punjab and the Chief Commissioner of Coorg, but either of the said Local Governments may, at any time, by notification in the local official Gazette, extend these sections to their territories from such day as may be fixed in any such notification.

Repeal of Act V. of 1876.

**2.** (*1*) The Reformatory Schools Act, 1876, is hereby repealed.

(*2*) But all proceedings taken, orders passed, officers appointed or authorized, and rules made under the said Act, shall, as far as may be, be deemed to have been respectively passed, appointed, or authorized, and made under this Act.

(*3*) Any enactment or document referring to the said Act shall, as far as may be, be construed to refer to this Act, or to the corresponding portion thereof.

Section 399 of Act X. of 1882 repealed on date fixed by a notification under section 1, sub-section (*3*).

**3.** From the date fixed by any notification issued under section 1, sub-section (*3*), section 399 of the Code of Criminal Procedure, 1882,† shall be repealed in the province to which the notification relates.

Definitions.

**4.** In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "youthful offender" means any boy who has been convicted of any offence punishable with transportation or imprisonment, and who, at the time of such conviction, was under the age of fifteen years ;

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* For Statement of Objects and Reasons see Gazette of India, 1896, Pt. V., p. 187 ; for Report of the Select Committee, see *ibid*, 1897, Pt. V., p. 55 ; and for Proceedings in Council, see *ibid*, 1896, Pt. VI., pp. 222 and 251 ; and *ibid*, 1896, Pt. VI., pp. 44 and 68.

The Act has been declared in force in Upper Burma (except the Shan States). See the Burma Laws Act (XIII. of 1898).

It has also been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III. of 1872) as amended by the Santhál Parganas Laws Regulation (III. of 1886). See Calcutta Gazette, 1897, Pt. I., p. 1116.

† See *now the Code of Criminal Procedure* (Act V. of 1898).

(*b*) "Inspector-General" includes any officer appointed by the Local Government to perform all or any of the duties imposed by this Act on the Inspector-General; and

(*c*) "District Magistrate" shall include a Chief Presidency Magistrate.

## *II.—Reformatory Schools.*

Power to establish and discontinue Reformatory Schools.

**5.** With the previous sanction of the Governor-General in Council, the Local Government may—

(*a*) establish and maintain Reformatory Schools at such places as it may think fit;

(*b*) use as Reformatory Schools schools kept by persons willing to act in conformity with such rules, consistent with this Act, as the Local Government may prescribe in this behalf;

(*c*) direct that any school so established or used shall cease to exist as a Reformatory School, or to be used as such.

Requisites of Schools.

**6.** Every school so established or used must provide—

(*a*) sufficient means of separating the inmates at night;

(*b*) proper sanitary arrangements, water-supply, food, clothing, and bedding for the youthful offenders detained therein;

(*c*) the means of giving such youthful offenders industrial training;

(*d*) an infirmary or proper place for the reception of such youthful offenders when sick.

Inspection of Reformatory Schools.

**7.** (*1*) Every school intended to be established or used as a Reformatory School shall, before being used as such, be inspected by the Inspector-General, and if he finds that the requirements of section 6 have been complied with, and that, in his opinion, such school is fitted for the reception of such youthful offenders as may be sent there under this Act, he shall certify to that effect, and such certificate shall be published in the local official Gazette, together with an order of the Local Government establishing the school as a Reformatory School, or directing that it shall be used as such, and the school shall thereupon be deemed to be a Reformatory School.

(*2*) Every such school shall, from time to time, and at least once in every year, be visited by the said Inspector-General, who shall send to the Local Government a report on the condition of the school in such form as the Local Government may prescribe.

Power of Courts to direct youthful offenders to be sent to Reformatory Schools.

**8.** (*1*) Whenever any youthful offender is sentenced to transportation or imprisonment, and is, in the judgment of the Court by which he is sentenced, a proper person to be an inmate of a Reformatory School, the Court may, subject to any rules made by the Local Government, direct that, instead of undergoing his sentence, he shall be sent to such a school, and be there detained for a period which shall be not less than three, or more than seven years.

(*2*) The powers so conferred on the Court by this section shall be exercised only by (*a*) the High Court, (*b*) a Court of Session, (*c*) a District Magistrate, and (*d*) any Magistrate specially empowered by the Local Government in this behalf, and may be exercised by such Courts, whether the case comes before them originally or on appeal.

1897.
Act 8.

(3) The Local Government may make rules for—

(a) defining what youthful offenders should be sent to Reformatory Schools, having regard to the nature of their offences or other considerations, and

(b) regulating the periods for which youthful offenders may be sent to such schools according to their ages or other considerations.*

Procedure where Magistrate is not empowered to pass an order under section 8.

**9.** (1) When any Magistrate not empowered to pass an order under the last foregoing section is of opinion that a youthful offender convicted by him is a proper person to be an inmate of a Reformatory School, he may, without passing sentence, record such opinion, and submit his proceedings, and forward the youthful offender to the District Magistrate to whom he is subordinate.

(2) The Magistrate to whom the proceedings are so submitted may make such further inquiry (if any) as he may think fit, and pass such sentence and order for the detention in a Reformatory School of the youthful offender, or otherwise, as he might have passed if such youthful offender had been originally tried by him.

Power of Magistrates to direct boys under fifteen sentenced to imprisonment to be sent to Reformatory Schools.

**10.** The officer in charge of a prison in which a youthful offender is confined in execution of a sentence of imprisonment may bring him, if he has not then attained the age of fifteen years, before the District Magistrate within whose jurisdiction such prison is situate ; and such Magistrate may, if such youthful offender appears to be a proper person to be an inmate of a Reformatory School, direct that, instead of undergoing the residue of his sentence, he shall be sent to a Reformatory School, and there detained for a period which shall be subject to the same limitations as are prescribed by or under section 8, with reference to the period of detention thereby authorized.

Preliminary inquiry and finding as to age of youthful offender.

**11.** (1) Before directing any youthful offender to be sent to a Reformatory School under section 8, section 9, or section 10, the Court or Magistrate shall inquire into the question of his age, and, after taking such evidence (if any) as may be deemed necessary, shall record a finding thereon, stating his age as nearly as may be.

(2) A similar inquiry shall be made and finding recorded by every Magistrate not empowered to pass an order under section 8 before submitting his proceedings, and forwarding the youthful offender to the District Magistrate as required by section 9, sub-section (1).

Government to determine Reformatory School to which such offenders shall be sent.

**12.** Every youthful offender directed by a Court or Magistrate to be sent to a Reformatory School shall be sent to such Reformatory School as the Local Government may, by general or special order, appoint for the reception of youthful offenders so dealt with by such Court or Magistrate:

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* For rules regulating the period for which youthful offenders may be sent to Reformatories in :—

(1) Bengal, see Calcutta Gazette, 1899, Pt. I., p. 226.
(2) Bombay, see Bombay List of Local Rules and Orders, Ed. 1896, Vol. I., p. 160.
(3) Burma, see Burma Gazette, 1897, Pt. I., p. 301.
(4) Central Provinces, see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 23.
(5) Madras, see Madras List of Local Rules and Orders, Ed. 1898, Vol. I., p. 33.

Provided that, if accommodation in a Reformatory School is not immediately available for such youthful offender, he may be detained in the juvenile ward or such other suitable part of a prison as the Local Government may direct—

(*a*) until he can be sent to a Reformatory School, or

(*b*) until the term of his original sentence expires,

whichever event may first happen. Should the term of his original sentence first expire, he shall thereupon be released, but, should he be sent to a Reformatory School, then the period of detention previously undergone shall be treated as detention in a Reformatory School.

Persons found to be over eighteen years not to be detained in Reformatory Schools.

**13.** (*1*) If, at any time after a youthful offender has been sent to a Reformatory School, it appears to the Committee of Visitors or Board of Management, as the case may be, that the age of such youthful offender has been understated in the order for detention, and that he will attain the age of eighteen years before the expiration of the period for which he has been ordered to be detained, they shall report the case for the orders of the Local Government.

(*2*) No person shall be detained in a Reformatory School after he has been found by the Local Government to have attained the age of eighteen years.

Discharge or removal by order of Government.

**14.** The Local Government may at any time order any youthful offender—

(*a*) to be discharged from a Reformatory School;

(*b*) to be removed from one Reformatory School to another such school situate within the territories subject to such Government: Provided that the whole period of his detention in a Reformatory School shall not be increased by such removal.

Power to Governor-General in Council to direct use of Reformatories in one province for reception of youthful offenders from another.

**15.** (*1*) The Governor-General in Council may, by general or special order, direct that any Reformatory School situated in one province shall be available for the reception of youthful offenders directed to be sent to any Reformatory School by any Court or Magistrate in any other province.

(*2*) Any such order may also provide for the removal of the youthful offender, and the cost of his maintenance, and may give any such further directions as may be necessary.

Certain orders not subject to appeal or revision.

**16.** Nothing contained in the Code of Criminal Procedure, 1882,* shall be construed to authorize any Court or Magistrate to alter or reverse in appeal or revision any order passed with respect to the age of a youthful offender or the substitution of an order for detention in a Reformatory School for transportation or imprisonment.

### *III.—Management of Reformatory Schools.*

Appointment of Superintendent and Committee of Visitors or Board of Management.

**17.** (*1*) For the control and management of every Reformatory School, the Local Government shall appoint either (*a*) a Superintendent and a Committee of Visitors, or (*b*) a Board of Management.

(*2*) Every Committee and every Board so appointed must consist of not less than five persons, of whom two at least shall be Natives of India.

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* See now the Code of Criminal Procedure (Act V. of 1898).

1897. Act 8.

(3) The Local Government may suspend or remove any Superintendent or any Member of a Committee or Board so appointed.

Superintendent may license youthful offenders to employers of labour.

**18.** (1) Every Superintendent so appointed may, with the sanction of the Committee, by license under his hand, permit any youthful offender sent to a Reformatory School, who has attained the age of fourteen years, to live under the charge of any trustworthy and respectable person named in the license, or any officer of Government or of a Municipality, being an employer of labour, and willing to receive and take charge of him, on the condition that the employer shall keep such youthful offender employed at some trade, occupation, or calling.

(2) The license shall be in force for three months and no longer, but may, at any time and from time to time until the expiration of the period for which the youthful offender has been directed to be detained, be renewed for three months at a time.

Cancellation of license.

**19.** The license shall be cancelled at the desire of the employer named in the license.

Determination of license.

**20.** If, during the term of the license, the employer named therein dies or ceases from business or to employ labour, or the period for which the youthful offender has been directed to be detained in the Reformatory School expires, the license shall thereupon cease and determine.

Cancellation of license in case of ill-treatment.

**21.** If it appears to the Superintendent that the employer has ill-treated the youthful offender, or has not adequately provided for his lodging and maintenance, the Superintendent may cancel the license.

Superintendent to be deemed guardian of youthful offenders.

**22.** (1) The Superintendent of a Reformatory School shall be deemed to be the guardian of every youthful offender detained in such school, within the meaning of Act No. XIX. of 1850 (*concerning the binding of apprentices*).

Power to apprentice youthful offender.

(2) If it appears to the Superintendent that any youthful offender licensed under section 18 has behaved well during one or more periods of his license, the Superintendent may, with the sanction of the Committee, apprentice him under the provisions of the said Act, and, on such apprenticement, the right to detain such youthful offender in a Reformatory School shall cease, and the unexpired term (if any) of his sentence shall be cancelled.

Duties of Committee of Visitors.

**23.** (1) Every Committee of Visitors appointed under section 17 for a Reformatory School shall, at least once in every month—

(*a*) visit the school to hear complaints, and see that the requirements of section 6 have been complied with, and that the management of the school is proper in all respects;

(*b*) examine the punishment-book;

(*c*) bring any special cases to the notice of the Inspector-General; and

(*d*) see that no person is illegally detained in the school.

(2) If any member of a Committee of Visitors so appointed fails or neglects, during a period of six consecutive months, to visit the school, and assist in the discharge of the duties aforesaid, he shall cease to be a member of such Committee.

**24.** If, in exercise of the power conferred by section 17, the Local Government appoints a Board of Management for any Reformatory School, such Board shall have the powers and perform the functions of the Superintendent under sections 18 to 22, both inclusive; and the license mentioned in section 18 may be under the hand of their Chairman; and they shall be deemed to be the guardians of the youthful offenders detained in such school.

Powers of Board of Management.

**25.** The Local Government may declare any body of Trustees or Managers of a school, who are willing to act in conformity with the rules referred to in section 5, clause (*b*), to be a Board of Management under this Act, and thereupon such body or Managers shall have all the powers and perform all the functions of such Board of Management.

Power to appoint Trustees or other Managers of a school to be a Board of Management.

**26.** (*1*) With the previous sanction of the Local Government, every Board of Management of a Reformatory School may from time to time make rules consistent with this Act—

Power of Board to make rules.

(*i*) to prescribe the articles which are to be deemed to be "prohibited articles"; and

(*ii*) to regulate—

(*a*) the conduct of business of the Board:

(*b*) the management of the school:*

(*c*) the education and industrial training of youthful offenders;

(*d*) visits to, and communication with, youthful offenders;

(*e*) the terms and conditions under which any articles declared by the Board to be "prohibited articles" may be introduced into or removed out of the school:

(*f*) the manner in which such articles are to be removed when introduced without due authority;

(*g*) the conditions and limitations under which such articles may be supplied outside the school to any youthful offender under order of detention therein;

(*h*) the conditions on which the possession by any such youthful offender of such articles may be sanctioned;

(*i*) the penalties to be imposed for the supply or possession of such articles when supplied or possessed without due authority;

(*j*) the punishment of offences committed by youthful offenders: and

(*k*) the granting of licenses for the employment of youthful offenders.

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* For rules framed by the Government of—

(*1*) Bengal for the management of the Reformatory at Alipur, see Rules, dated 29th June, 1877;

(*2*) Bombay ditto ditto Yerrowda, see Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, p. 151;

(*3*) Burma ditto ditto Insein, see Burma Laws List, Ed. 1897, p. 70;

(*4*) Madras ditto ditto Chingleput, see Madras List of Local Rules and Orders, Ed. 1889, Vol. I., p. 32.

[Cr. Ct. M.—57.]

1897. Act 8.

(2) In the absence of a Board of Management the Local Government may make rules consistent with this Act to regulate for any Reformatory School the matters mentioned in any clause of sub-section (1), other than clause (ii) (a), and also the mode in which the Committee of Visitors shall conduct their business.

*IV.—Offences in relation to Reformatory Schools.*

Penalty for introduction or removal or supply of prohibited articles and communication with youthful offenders.

**27.** Whoever, contrary to any rule made under section 26, introduces or removes, or attempts by any means whatever to introduce or remove, into or from any Reformatory School, or supplies or attempts to supply outside the limits of any Reformatory School to any youthful offender under order of detention therein, any prohibited article,

and every officer or person in charge of a Reformatory School who, contrary to any such rule, knowingly suffers any such article to be introduced into, or removed from, any Reformatory School, to be possessed by any youthful offender detained therein, or to be supplied to any such youthful offender outside its limits,

and whoever, contrary to any such rule, communicates or attempts to communicate with any such youthful offender,

and whoever abets any offence made punishable under this section,

shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, or to both.

Penalty for abetting escape of youthful offender.

**28.** Whoever abets an escape, or an attempt to escape, on the part of a youthful offender from a Reformatory School, or from the employer of such youthful offender, shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding two hundred rupees, or with both.

Arrest of escaped youthful offender.

**29.** A police-officer may, without orders from a Magistrate, and without a warrant, arrest any youthful offender sent to a Reformatory School under this Act, who has escaped from such school or from his employer, and take him back to such school or to his employer.

*V.—Miscellaneous.*

**30.** [*Application of Act XV. of 1869 to youthful offenders detained in Reformatory Schools.*] *Repealed by the Prisoners Act (III. of 1900)*

Power to deal in other ways with youthful offenders, including girls.

**31.** (1) Notwithstanding anything contained in this Act or in any other enactment for the time being in force, any Court may, if it shall think fit, instead of sentencing any youthful offender to transportation or imprisonment, or directing him to be detained in a Reformatory School, order him to be—

(a) discharged after due admonition, or

(b) delivered to his parent, or to his guardian or nearest adult relative, on such parent, guardian, or relative executing a bond, with or without sureties, as the Court may require, to be responsible for the good behaviour of the youthful offender for any period not exceeding twelve months.

(2) For the purposes of this section the term "youthful offender" shall include a girl.

(3) The powers conferred on the Court by this section shall be exercised only by Courts empowered by or under section 8.

(4) When any youthful offender is convicted by a Court not empowered to act under this section, and the Court is of opinion that the powers conferred by this section should be exercised in respect of such youthful offender, it may record such opinion, and submit the proceedings and forward the youthful offender to the District Magistrate to whom such Court is subordinate.

(5) The District Magistrate to whom the proceedings are so submitted may thereupon make such order or pass such sentence as he might have made or passed if the case had originally been tried by him.

Procedure when youthful offender under detention in a Reformatory School is again convicted and sentenced.

**32.** When a youthful offender during his period of detention in a Reformatory School is again convicted by a Criminal Court, the sentence of such Court shall commence at once, notwithstanding anything to the contrary in section 397 of the Code of Criminal Procedure, 1882,* but the Court shall forthwith report the matter to the Local Government, which shall have power to deal with the matter in any way in which it thinks fit.

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RULINGS UNDER THE REFORMATORY SCHOOLS ACT.

WHERE a boy over fourteen, but otherwise of uncertain age, was ordered, upon conviction by a Magistrate, to be detained in a Reformatory School for two years, *held* that such sentence, having regard to the rule made by the Governor-General in Council on the 14th of March 1889 under s. 22 of Act V. of 1876, was illegal. The proper course for the Magistrate to have adopted with reference to the above-mentioned rules was to have ascertained, as near as might be, the exact age of the offender, and sentenced him to a specified period of detention, which should be that elapsing between his conviction and the attainment by him of the age of eighteen years.—QUEEN-EMPRESS *v.* NARAIN, I. L. R., 15 All. 208. [Edge, C.J., and Aikman, J. April 27, 1893.]

THE Reformatory Schools Act, 1876, provides only for male juvenile offenders being sent to Reformatory Schools by Magistrates of the first class, and s. 399 of the Code of Criminal Procedure, 1882, so far as it authorizes a Magistrate not of the first class to direct that a male juvenile offender be sent to a Reformatory, is repealed. *Held*, therefore, when a second-class Magistrate directed a boy to be sent to a Reformatory under s. 399 of the Code of Criminal Procedure, that the order was illegal. — QUEEN-EMPRESS *v.* MADASAMI, I. L. R., 12 Mad. 94 [Kernan, Muttusami Ayyar, Parker, and Wilkinson, JJ. Sep. 7, 26, 1888.]

A MAGISTRATE, acting under s. 8 of the *Reformatory Schools Act* (V. of 1876), is bound to ascertain the age of the prisoner, and, in accordance with that finding, to direct the confinement in a Reformatory according to the rules made under s. 22 of the Act. It is not sufficient for the Magistrate merely to find that the prisoner is under a particular age Under s. 8 of the Act, evidence may be taken by the Magistrate as to the age of the prisoner; and as the proceeding of the Magistrate involves the alteration of a sentence after the exercise of judicial discretion, such proceeding is clearly a judicial proceeding within the meaning of ss. 4 and 435 of the Code of Criminal Procedure (Act X. of 1882). The High Court is, therefore, competent to exercise its revisional jurisdiction in such cases.—QUEEN-EMPRESS *v.* MANAJI, I. L. R., 14 Bom. 381. [Scott and Candy, JJ. Nov. 26, 1889.]

THE accused was convicted of the offence under s. 457 of the Penal Code by the Deputy Magistrate of Barisal, who found that the accused was a boy of fourteen or fifteen years, decidedly under sixteen, and passed

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* See now the Code of Criminal Procedure (Act V. of 1898).

Act 8.

the following order: "I find Ahmad Ali, boy, guilty of house-breaking by night for the purpose of committing theft, and instead of being imprisoned in the jail under s. 457 of the Penal Code, I direct, under s. 399 of the Criminal Procedure Code and s. 7 of Act V. of 1876, that Ahmad Ali be confined in the Calcutta Reformatory for two years for training in some branch of useful industry." *Held* that the order could not be sustained under s. 7 of Act V. of 1876, as that Act had been repealed before the date of the order and the commission of the offence, nor under s. 8 of Act VIII. of 1897, as the order does not comply with the provisions of the latter Act. *Held*, further, that s. 318 of the Criminal Procedure Code (Act X. of 1872), having been repealed by s. 2 of Act V. of 1876, the corresponding s. 399 of the present Criminal Procedure Code (Act X. of 1882) must also be held by virtue of s. 3 of the Code to have been repealed in the provinces, including Bengal, to which Act V. of 1876 was extended. The repeal of a statute repealing another statute does not revive the repealed statute. The law in India as embodied in s. 7 of the General Clauses Act (X. of 1897) is the same as the law in England. *Queen-Empress* v. *Madasami* (I. L. R., 12 Mad. 94) and *Queen-Empress* v. *Manaji* (I. L. R., 14 Bom. 381) referred to and approved of.—DEPUTY LEGAL REMEMBRANCER *v.* AHMAD ALI, I. L. R., 25 Cal. 333; 2 C. W. N. 11. [Banarjee and Wilkins, JJ. Oct. 28, 1897.]

HELD that the High Court has no power to interfere in appeal or revision with an order for detention in a Reformatory School passed in substitution of an order of transportation or imprisonment.—QUEEN-EMPRESS *v.* HIMAI, I. L. R., 20 All. 158, and QUEEN-EMPRESS *v.* GOBINDA, I. L. R., 20 All. 159. [Edge, C.J., and Burkitt, J. Nov. 20, 27, 1897.]

THE prohibition contained in s. 16 of Act VIII. of 1897 does not apply to an order for detention in a Reformatory School passed when the person to whom it relates has not been convicted of any offence, and has not been sentenced to any term of imprisonment or transportation for which detention in a Reformatory could be substituted.—QUEEN-EMPRESS *v.* BILLAR, I. L. R., 20 All. 160. [Edge and Burkitt, JJ. Nov. 27, 1897.]

HELD by Shephard, Offg. C.J., affirming the judgment of Moore, J. (Davies, J., *diss.*), that the rules made by Government under Act V. of 1876 must be deemed to have been made under Act VIII. of 1897; and that Magistrates acting under Act VIII. of 1897 must order the detention of a juvenile offender until he attains the age of eighteen.—QUEEN-EMPRESS *v.* RAMALINGAM, I. L. R., 21 Mad. 430. [Shephard, C.J. July 15, 25, 29, 1898.]

*Held* that the High Court has power to interfere in appeal or revision with an order for detention in a Reformatory School passed in substitution for transportation or imprisonment when such order is made without jurisdiction, and is not an order warranted by Act VIII. of 1897. S. 16 of Act VIII. of 1897 only precludes the interference of a superior Court with the original Court's order so far as it (1) determines the age of a youthful offender, or (2) directs the substitution of detention in a Reformatory School for transportation or imprisonment, where such substitution is not made without jurisdiction, or is not otherwise illegal, having regard to the provisions of the Act. *Queen-Empress* v. *Himai* (I. L. R., 20 All. 158) and *Queen-Empress* v. *Gobinda* (I. L. R., 20 All. 159) overruled. *Queen-Empress* v. *Billar* (I. L. R., 20 All. 160), *Queen-Empress* v. *Kaidya Husain* (1 Bombay Law Reports 162), *Deputy Legal Remembrancer* v. *Ahmed Ali* (I. L. R., 25 Cal. 333), *Queen-Empress* v. *Ramalingam* (I. L. R., 21 Mad. 430), *Roop Lall Dass* v. *Manook* (2 C. W. N. 572), *Queen-Empress* v. *Partap Chunder Ghose* (I. L. R., 25 Cal. 852), *Ex-parte Bradlaugh* (L. R., 3 Q. B. D. 509), and *The Colonial Bank of Australasia* v. *William* (L. R., 5 P. C. 417 at p. 442) referred to. In interpreting statutes, the more literal construction ought not to prevail if it is opposed to the intention of the Legislature as apparent by the statute, and if the words are sufficiently flexible to admit of some other construction by which that intention will be better effectuated. *Caledonian Railway Company* v. *North British Railway Company* (L. R., 6 App. Cas. 114 at p. 122) referred to.—QUEEN-EMPRESS *v.* HORI, I. L. R., 21 All. 391. [Strachey, C.J., and Knox and Banerji JJ. May 27, 1899.]

S. 16 of the Reformatory Schools Act (VIII. of 1897) does not entitle any Appellate Court to order the alteration or the substitution of an order for detention in a Reformatory School to imprisonment. Before an order for detention in a Reformatory School can be passed in lieu of a sentence for imprisonment, there should be a definite finding as to the age of the boy, and as to his being a fit subject for a Reformatory School.—EMPRESS *v.* HARIDAS MUKERJEE, 3 C. W. N. 576. [Prinsep and Hill, JJ. June 12, 1899.]

If an order for detention in a Reformatory School in substitution for transportation or imprisonment be not properly

passed, a Court is not debarred by s. 16 of the Reformatory Schools Act (VIII. of 1897) from altering or reversing such order. A boy of about 9 years of age was found in the grounds of the residence of the Commissioner of Patna at 3 A.M. in the morning with a brass *lota* in his hand. He was tried summarily, and, without any preliminary inquiry as to the age of the boy being made, was sentenced to three months' rigorous imprisonment, or in lieu thereof to be detained in a Reformatory School for seven years. *Held*, the accused did not come within the definition of "youthful offenders" as given in the Rules (1) framed by the Local Government under s. 8 of the Reformatory Schools Act; and the offence of the accused being his first offence the case should have been dealt with under s. 31 of the Act. It is not that a Magistrate is under no circumstances competent to find from the appearance of a person convicted by him that he is a youthful offender, but it is generally desirable that there should be some reliable evidence on the point, and especially when it is necessary to determine the period of detention. The age of the accused being under twelve years the Magistrate should, considering the provisions of s. 83 of the Penal Code, have found that the accused had attained sufficient maturity of understanding to judge of the nature and consequences of his act.—QUEEN-EMPRESS *v.* MAKIMUDDIN, I. L. R., 27 Cal. 133. [Prinsep and Hill, JJ. July 26, 1899.]

S. 16 of the Reformatory Schools Act (VIII. of 1897) does not in any way take away the jurisdiction of the High Court, as a Court of revision, to alter or set aside the sentence in substitution of which an order for detention in a Reformatory School is made. A young lad was found abstracting a piece of coal from a wagon, and was, on a charge for theft, sentenced to a month's rigorous imprisonment, and ordered, in lieu thereof, to be detained in a Reformatory School for 4 years. The High Court, on the ground of its being the first offence and a trivial one, set aside the sentence, and passed one of whipping by way of school discipline.—SHEIKH REASUT *v.* J. COURTENEY, 5 C. W. N. 211. [Ameer Ali and Stevens, JJ. Nov. 28, 1900.]

S. 16 of the Reformatory Schools Act (VIII. of 1897) does not affect the jurisdiction of the High Court, as a Court of revision, to consider the legality or propriety of the conviction or sentence or of any order passed by a Subordinate Court other than that mentioned in that section. *Sheikh Reasut v. J. Courteney* (5 C. W. N. 211) referred to. The law requires that a Magistrate trying a case, or one to whom the proceedings of the case are submitted under s. 9 of the Reformatory Schools Act, should, in the first instance, sentence the accused to a term of imprisonment or transportation, which he may then commute into one of detention in a Reformatory School for such period as the law prescribes. An order for the detention of a youthful offender in a Reformatory School, when no sentence of imprisonment or of transportation has been passed, is bad in law.—IN THE MATTER OF RADHA KRISTO BARAT *v.* GOKULA NUT, 5 C. W. N. 210. [Ameer Ali and Stevens, JJ. Jan. 3, 1901.]

# ACT NO. III. OF 1877.

[*EXTRACTS.*]

## THE INDIAN REGISTRATION ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 14TH FEBRUARY 1877.

*An Act for the Registration of Documents.*

Preamble.

WHEREAS it is expedient to amend the law relating to the registration of documents; It is hereby enacted as follows:—

### PART XIV.—OF PENALTIES.

Penalty for incorrectly endorsing, copying, translating, or registering documents with intent to injure.

**81.*** Every registering officer appointed under this Act, and every person employed in his office for the purposes of this Act, who, being charged with the endorsing, copying, translating, or registering of any document presented or deposited under its provisions, endorses, copies, translates, or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury, as defined in the Indian Penal Code, to any person, shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

Penalty for certain other offences.

**82.*** Whoever commits any of the following offences shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both:

Making false statements before registering officer.

(*a*) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or inquiry under this Act:

Delivering false copy or translation.

(*b*) intentionally delivers to a registering officer, in any proceeding under section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan;

False personation.

(*c*) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act;

Abetment of offences under this Act.

(*d*) abets within the meaning of the Indian Penal Code anything made punishable by this Act.

Registering officer may commence prosecutions.

**83.** A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by, or with the permission of, the Inspector-General, the Branch Inspector-General of Sindh, the registrar, or the sub-registrar in whose territories, district, or sub-district, as the case may be, the offence has been committed.

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* As to Upper Burma, *cf.* the Upper Burma Registration Regulation (II. of 1897), s. 12.

1877. Act 3.

Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a "Magistrate of the second class:" *

Provided that, in imposing penalties under this Act, no such Court or officer shall exceed the limits of jurisdiction prescribed by the law for the time being in force as to such Court or officer.

All fines imposed under this Act may be recovered "in the manner provided by the law for the time being in force for the recovery of fines imposed by Criminal Courts."†

Registering officers to be deemed public servants.

**84.** Every registering officer appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code.

Every person shall be legally bound to furnish information to such registering officer when required by him to do so. And in section 228 of the same Code, the words "judicial proceeding" shall include any proceeding under this Act. ‡

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RULINGS UNDER THE REGISTRATION ACT.

THE notes of an inquiry held before a registering officer are not admissible as evidence of what the prisoner said on that occasion.—QUEEN v. PURMANUND BARICK, 11 W. R. 13 [Jackson and Glover, JJ. Mar. 2, 1869.]

S. 29 of the Code of Criminal Procedure, 1882, does not affect the jurisdiction given to a Second-class Magistrate by s. 83 of the Registration Act, 1877, as amended by Act XII. of 1879.—QUEEN-EMPRESS v. KRISHNA, I. L. R., 7 Mad. 347. [Brandt, J. Feb. 29, 1884.]

WHERE the accused was tried for intentionally making a false statement in the course of certain proceedings taken before a Registrar, *held* that, even assuming that such proceedings were taken under s. 72 of the Registration Act, and not, as they should have been, under s. 73, the appearance of the accused before the Registrar, and his taking no objection to the form of the proceedings, will cure the irregularity for the purposes of a criminal trial under the provisions of the Registration Act; nor, under similar circumstances, will the want of verification of a petition of appeal on the part of the applicant, as provided by s. 73 of the Act, oust the jurisdiction of the Criminal Court.—*Reg.* v. *James Berry* (28 L. J. M. C. 86; 8 Cox C. C. 121); *Queen* v. *Thomas Fletcher* (L. R., 1 C. C. R. 320); *Turner* v. *Postmaster-General* (5 B. and S. 756); *Queen* v. *Hughes* (L. R., 4 Q. B. D. 614; 14 Cox C. C. 285); *Queen* v. *Smith* (L. R., 1 C. C. R. 110; 11 Cox C. C. 10) followed. *Held* also that, except as directed by s. 82 of Act III. of 1877, the Magistrate has no authority, on his own mere motion, to frame a charge against the accused in consequence of evidence given in the course of the trial by the registering officer in respect of certain statements made before him during registration-proceedings.—QUEEN-EMPRESS v. BATESAR MANDAL, I. L. R., 10 Cal. 604. [Tottenham and Norris, JJ. Mar. 24, 1884.]

UNDER s. 435 of the Criminal Procedure Code, the High Court has power to go into questions of fact, but it will only exercise this power in cases in which it finds that it will be in the interests of justice to do so. N was charged with having made a false statement before a sub-registrar in identifying K, a person who had executed a mortgage-deed in favour of R, and who was a neighbour of his (N's), as being the person to whom R had agreed to advance the money, the consideration of the mortgage. The false statement consisted in his stating to the sub-registrar that he "knew K as his neighbour." During the hearing of the case it was sought to prove a statement made by R to a third party (R having died pre-

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* The words "Magistrate of the second class" have been substituted for the words "Subordinate Magistrate of the first class" by the Registration and Limitation Acts, Amendment Act (XII. of 1879), s. 106.

† The words quoted have been substituted.—See Repealing and Amending Act (XII. of 1891).

‡ The third paragraph of s. 84 has been omitted, having been repealed by Act XII. of 1891.

vious to the institution of the case), to the effect that N had told him certain facts. A memorandum alleged to be in the handwriting of N was also tendered and received in evidence without any further proof as to its being in N's handwriting than that it bore a similarity to another piece of paper proved to bear his handwriting. *Held* that the statement made by R to the third party was inadmissible and irrelevant, and that the memorandum was wrongly received in evidence.—NOBIN KRISHNA MOOKERJEE *v.* RASSICK LAL LAHA, I. L. R., 10 Cal. 1047. [Mitter and Pigot, JJ. Aug. 18, 1884.]

It is not necessary that sanction should be given before instituting a charge under s. 82 of the Registration Act.—GOPI NATH *v.* KULDIP SINGH, I. L. R., 11 Cal. 566. [Garth, C.J., and Prinsep, Wilson, Field, and O'Kinealy, JJ. May 15, 1885.]

A Registrar acting under s. 73 of the Indian Registration Act, 1877, is not a Court within the meaning of s. 193 of the Code of Criminal Procedure. *Atchayya v. Gangayya* (I. L. R., 15 Mad. 138) dissented from.—QUEEN-EMPRESS *v.* RAM LAL, I. L. R., 15 All. 141. [Knox, J. Feb. 7, 1893.]

It is no offence to make a false statement before a person purporting to act in execution of the Registration Act, but not legally authorized so to do.—RADHIKA MOHAN KURI *v.* LAL MOHAN SHA, I. L. R., 20 Cal. 719. [Trevelyan and Rampini, JJ. March 23, 1893.]

An inquiry under s. 74 of the Registration Act should be made by the Registrar himself. He cannot delegate his power to any one else. A Sub-Registrar holding such an inquiry under an order of the Registrar cannot be said to be acting in execution of the Registration Act in any proceeding or inquiry under that Act. An order for the prosecution, under s. 82 of the Registration Act, of a witness who gives evidence before the Sub-Registrar in such an inquiry, is wrong in law.—MATA DAYAL *v.* QUEEN-EMPRESS I. L. R., 24 Cal 755. [Ghose and Wilkins, JJ. May 5, 1897.]

# ACT NO. XII. OF 1882.*

## THE INDIAN SALT ACT, 1882.

RECEIVED THE G.-G.'S ASSENT ON THE 10TH MARCH 1882.

*An Act for Regulating the Duty on Salt, and for other Purposes.*

Preamble.

WHEREAS it is expedient to amend the law relating to the levy of duty on salt, and to the import and transit of salt, and the manufacture of salt and saltpetre, into, over, and in British India; It is hereby enacted as follows:—

## CHAPTER I.

### PRELIMINARY.

Short title. Commencement.

**1.** This Act may be called "The Indian Salt Act, 1882;" and it shall come into force at once.

Local extent.

This section, sections 2, 7, and 8, and so much of this Act as refers to offences against any of its provisions or against any rules made under it, extend to the whole of British India.

The rest of this Act extends to the territories for the time being respectively administered by the Lieutenant-Governors of the North-Western Provinces and the Punjab, and the Chief Commissioners of Oudh, the Central Provinces, and Ajmir and Mairwara, "to the Province of Sindh,"† to the districts of the Patna Division, and to British territory under the jurisdiction of the Agent to the Governor-General in Central India;

Power to extend Act.

and any portion of this Act, other than the portions specified in the second paragraph of this section, may be extended,‡ by order of the Governor-General in Council published in the *Gazette of India*, to any part of British India other than the territories, "province,"† and districts mentioned in the third paragraph of this section.

Repeal of enactments.

**2.** The enactments specified in the schedule hereto annexed are repealed to the extent mentioned in the third column thereof; but all rules made, licenses and passes granted, prices and duties fixed, notifications published, and powers conferred under any such enactment, and now in force, shall, so far as they are consistent with this Act, be deemed to have been respectively made, granted, fixed, published, and conferred hereunder.

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* For proceedings in Council, see the Gazette of India, 1882, Supplement, p. 261, and Extra Supplement, p. 34.

Act XII. of 1882 has been declared in force in the Santhal Parganas, see Calcutta Gazette, 1889, Pt. I., p. 737; and in British Baluchistan, see the British Baluchistan Laws Regulation (I. of 1890), s. 3.

Ss. 1, 2, 6, 7, and 8, and Ch. IV. have been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act (XIII. of 1898). So much of the Act as was in force in Lower Burma had previously been extended by notification under the Scheduled Districts Act (XIV. of 1874), see Gazette of India, 1889, Pt. I., p. 334.

† From such day as the Governor of Bombay in Council, by notification in the official Gazette, fixes in this behalf, the words quoted shall be repealed.—Act XX. of 1884, s. 1.

‡ Under this power—

(1) the Act with certain exceptions has been extended to the Districts of the Orissa Division, see Notification No. 769, dated 11th February 1888, Gazette of India, 1888, Pt. I., p. 67.

(2) s. 6 has been extended to Lower Burma, see Burma Rules Manual, Ed. 1897, p. 182.

Interpretation-clause.

**8.** In this Act, unless there be something repugnant in the subject or context,—

"The said territories;" the expression "the said territories" means the territories to which the section of this Act, in which that expression occurs, for the time being extends;

"Assistant Commissioner;" "Assistant Commissioner" means an Assistant Commissioner of Northern India Salt-revenue, and also includes any person invested by the Local Government with the powers of an Assistant Commissioner under this Act;

"Salt-revenue officer;" "Salt-revenue officer" means any officer of the Northern India Salt Department, and also includes any person invested* by the Local Government with any of the powers of a salt-revenue officer under this Act;

"Saltpetre;" "saltpetre" includes rasi, sajji, and all other substances manufactured from saline earth, and khari-nun and every form of sulphate or carbonate of soda;

"Manufacture of salt;" "manufacture of salt" includes the separation or purification of salt obtained in the manufacture of saltpetre, the separation of salt from earth or other substance so as to produce elementary salt, and the excavation or removal of natural saline deposits or efflorescence; and

"Kohat salt." "Kohat salt" means salt produced in the district of Kohat in the Punjab.†

Powers of Commissioner of Division by whom to be exercised.

**4.** The powers and duties conferred and imposed by this Act on a Commissioner of a Division may, in places where there is no such Commissioner, be exercised and performed by such officer as the Governor-General in Council may, from time to time, appoint in this behalf.

Commissioner of Northern India Salt-revenue.

**5.** At the head of the administration of the salt-revenue under this Act there shall be an officer, called the Commissioner of Northern India Salt-revenue, who shall be appointed, and may be suspended or removed, by the Governor-General in Council.

## CHAPTER II.

### MANUFACTURE AND REFINING OF SALT AND SALTPETRE.

Power of Governor-General in Council—

**6.** The Governor-General in Council may, from time to time, by rule—

to regulate manufacture and refining of salt and saltpetre; (*a*) prohibit absolutely, or subject to such conditions as he thinks fit, the manufacture of salt, or the manufacture or refining of saltpetre, throughout the whole or any portion of the said territories;

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* Police-officers in the North-Western Provinces and Oudh have been invested with the powers of a salt-revenue officer, see North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 110.

† This definition of "Kohat salt" in s. 3 was added by the Indian Salt Act (1882) Amendment Act (XIX. of 1890), s. 1.

to fix fees for licenses;

(*b*) fix fees for the following licenses, not exceeding in the case of each such license the amount hereinafter mentioned :—

| | Rs. |
|---|---|
| License to manufacture and refine saltpetre, and to separate and purify salt in the process of such manufacture and refining ... ... | 50 |
| License to manufacture saltpetre ... ... ... | 2 |
| License to manufacture sulphate of soda (*khari nun*) by solar heat in evaporating pans ... ... ... ... ... | 10 |
| License to manufacture sulphate of soda (*khari-nun*) by artificial heat | 2 |
| License to manufacture other saline substances ... ... | 2 |

to regulate the collection of duties;

(*c*) determine the manner, time, and place in and at which, and the persons by whom, any duty imposed hereunder shall be collected in the said territories;*

to regulate possession of salt in vicinity of places where saltpetre is manufactured;

(*d*) define an area no point in which shall be more than one hundred yards from the nearest point of any place in which salt is stored or sold by or on behalf of Government or of any manufactory and its appurtenances in or on which saltpetre is manufactured or refined, and regulate the possession, storage, and sale of salt within such area;

to regulate possession of salt in vicinity of places where salt is manufactured.

(*e*) define an area round any other place in which salt is manufactured, and regulate the possession, storeage, and sale of salt within such area.

## CHAPTER III.

### Duty and Price of Salt.

Power of Governor-General in Council—

**7.** The Governor-General in Council may, from time to time, by rule consistent with this Act,—

to impose a duty on salt manufactured or imported by land;

(*a*) impose a duty,† not exceeding three rupees per maund of 82⅔ pounds avoirdupois, on salt manufactured in, or imported by land into, any part of British India;

to reduce or remit duties;

(*b*) reduce or remit‡ any duty so imposed, and reimpose any duty so reduced or remitted;

to fix minimum price of salt excavated, &c., by Government.

(*c*) fix the minimum price at which salt excavated, manufactured, or sold by or on behalf of the Government of India, shall be sold.

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* In Burma it has been directed that the duty leviable under s. 7 shall be recovered as arrears of land-revenue, see Burma Rules Manual, Ed. 1892, p. 182.

† For notification imposing a duty on salt manufactured in—
(*1*) the Kohat District, see Gazette of India, 1896 Pt. I, p. 454;
(*2*) or imported into British India except certain Punjab Districts, see Gazette of India, 1888, Pt. I., p. 31;
(*3*) the Kalabagh Mines west of the Indus, see Gazette of India, 1888, Pt. I., p. 48;
(*4*) Upper Burma, exclusive of the Shan States, see Burma Rules Manual, Ed. 1897, p. 182;
(*5*) Aden, see Bombay List of Local Rules and Orders, Ed. 1896, Vol. I., p 396.

‡ For notification remitting the duty imposed on refuse salt of the Punjab mines used for manufacture of glazed stoneware and pottery, see Gazette of India, 1893, Pt. I., p. 214.

1882. Act 12.

In calculating the amount of duty payable under this section, fractions of quarter maunds may be reckoned as quarter maunds.

Power of Local Government to fix minimum price of salt excavated, &c.

**8.** Subject to any general rules or special orders which the Governor-General in Council may, from time to time, make in this behalf, the Local Government may, from time to time, by notification in the local official Gazette, fix the minimum price at which salt excavated, manufactured, or sold by, or on behalf of, such Local Government, shall be sold.*

## CHAPTER IIIA.†

### INDUS PREVENTIVE LINE.

Power to define zones, and establish chains of posts.

**8A.** (*1*) The Governor-General in Council may, from time to time, by rule—

(*a*) define a zone of country not exceeding fifteen miles in breadth—

(i) along any portion of the river Indus and at such distance therefrom as he deems expedient, or

(ii) in any tract extending from that river to the western frontier of the Punjab,

(*b*) extend any such zone so as to include any ferry, or any portion of a railway, canal, or navigable river entering the zone, or any place where goods are loaded or unloaded into wagons or boats for the purpose of entering or leaving the zone, and

(*c*) within such a zone establish a chain of posts extending along the zone.

(*2*) The establishment of a chain of posts under clause (*c*) of sub-section (*1*) shall be deemed to be a public purpose within the meaning of the Land Acquisition Act, 1870.‡

Effect of defining a zone and establishing a chain of posts.

**8B.** When a zone has been defined and a chain of posts established under section 8A, the Governor-General in Council may, from time to time, by rule—

(*a*) prohibit any person, except upon such conditions as may be prescribed in the rule, from having in his possession any Kohat salt within the limits of the zone, and,

(*b*) so far as may be necessary for the prevention of the smuggling of Kohat salt across the chain of posts, control and regulate the passage of traffic across such chain, and provide for the searching of all persons and things crossing or being taken across such chain.

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* For notifications fixing the price of salt at—
(*1*) Aden, see Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, p. 396;
(*2*) Tuticorin, for export of Penang and Kattanguli in the Tinnevelly Districts, see Madras List of Local Rules and Orders, Vol. I., Ed 1898, p. 194.

† Ch. IIIA. has been inserted by the Indian Salt Act Amendment Act (XIX. of 1890), s. 2.

‡ See now the Land Acquisition Act (I. of 1894).

Penalties.

**9.** Whoever commits any of the following offences (namely):—

(*a*) does anything in contravention of this Act or of any rule made hereunder;

(*b*) evades payment of any duty or charge payable under this Act or any such rule; or

(*c*) attempts to commit, or abets within the meaning of the Indian Penal Code the commission of, any of the offences mentioned in clauses (*a*) and (*b*) of this section,

shall, for every such offence, be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both;

and the convicting Magistrate, on the application of the Assistant Commissioner or salt-revenue officer, may declare to be confiscated all works, materials, and implements constructed or prepared for the purpose of manufacturing or refining salt or saltpetre contrary to the provisions of this Act or any such rule.

Punishment on second and subsequent convictions.

**10.** Any person convicted of an offence under section 9, after having been previously convicted of an offence under that section or section 11 of the Inland Customs Act, 1875,* or under any enactment repealed by that Act, shall be punished with imprisonment for a term which may extend to six months, in addition to the punishment which may be inflicted for a first offence under section 9;

and every such person shall, upon every subsequent conviction of an offence under section 9, be liable to imprisonment for a term which may extend to six months, in addition to any term of imprisonment to which he was liable at his last previous conviction.

Charge by whom to be preferred.

**11.** A charge of an offence under section 9† shall not be entertained except on the complaint of an Assistant Commissioner or other salt-revenue officer not inferior in rank to a sub-inspector;

Limitation.

and no such complaint shall be admitted unless it is preferred within six months after the commission of the offence to which it refers.

Jurisdiction.

All such offences shall be tried by a Magistrate exercising powers not less than those of a Magistrate of the second class.

Confiscation of articles in respect of which offence committed.

**12.** All salt or saltpetre in respect of which any offence mentioned in section 9 has been committed, together with the vessels, packages, or coverings in which such salt or saltpetre is contained, and the animals and conveyances used in carrying it, shall be liable to confiscation.

When the article seized exceeds five sers in weight, the Commissioner of the Division in which the seizure takes place may, if satisfied on the report of any salt-

* Act VIII. of 1875 has been repealed by this Act, see schedule, *infra*.

† Here certain words which were repealed by the Repealing and Amending Act (XII. of 1891) have been omitted.

1882. Act 12.

revenue officer, or on such inquiry as he thinks fit to make, that such offence has been committed, declare such article to be confiscated, or impose such lesser penalty in lieu of confiscation as to him may seem fit.

If the article seized does not exceed five sers in weight, the Assistant Commissioner shall possess the same powers in regard to its disposal as by this section are conferred on the Commissioner of the Division in regard to quantities exceeding five sers, and may also confiscate any vessel, package, or covering in which such article is contained.

Whenever such Commissioner declares under this section any article to be confiscated, he may also declare to be confiscated any vessel, package, or covering in which such article is contained, and any animal or conveyance used in carrying it.

Power to levy additional duty as penalty.

**13.** The Governor-General in Council may, from time to time, by rule direct that any salt-revenue officer, not inferior in rank to an assistant inspector, if satisfied in such manner as such rule may prescribe that any offence mentioned in section 9 has been committed in respect of any dutiable salt, shall, instead of making a complaint to a Magistrate, or instituting proceedings with a view to confiscation, impose as a penalty an additional duty on such salt not exceeding the duty leviable thereon under Chapter III. of this Act.

The imposition of every such penalty shall be at once reported, if the salt in respect of which an offence has been committed exceeds five sers in weight, to the Commissioner of the Division in which such penalty is imposed, and if such salt does not exceed five sers in weight, to the Assistant Commissioner,

and shall require the sanction of the Commissioner or Assistant Commissioner, as the case may be, to whom it is so reported.

Punishment for connivance at offences mentioned in section 9.

**14.** Any zamindar or other proprietor of land, and any agent of a zamindar or proprietor of land, who wilfully connives at any offence mentioned in section 9, shall, for every such offence, be punishable by any Magistrate exercising powers not less than those of a Magistrate of the second class with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both.

## CHAPTER V.

### POWERS OF STOPPAGE, SEARCH, SEIZURE, AND ARREST.

Power to search places where article is manufactured under license.

**15.** Any salt-revenue officer empowered in this behalf by the Local Government may at any time enter and search any place in which any article is manufactured or refined under a license granted under this Act or any rule made hereunder.

Power to detain suspected person, and to seize goods liable to confiscation.

**16.** Any salt-revenue officer may stop and detain any person whom he has reason to believe to be liable to punishment under this Act;

and may seize any salt or saltpetre in respect of which there is reason to believe that any offence mentioned in section 9 has been committed, or that any duty is payable, together with the vessels, packages, or coverings in which such salt or saltpetre is contained, and the animals or conveyances used in carrying it.

**17.** Any salt-revenue officer may arrest any person whom he has reason to believe to have committed any such offence as last aforesaid.

Power to arrest.

**18.** Whenever any salt-revenue officer, not inferior in rank to a sub-inspector, has reason to believe that salt or saltpetre is being unlawfully manufactured, refined, or stored in an unlicensed place,

Procedure of officer having reason to believe unlawful manufacture.

such officer shall first record in writing (so far as may be practicable) (*a*) the name, residence, and calling of the informant (if any); (*b*) the locality and description of the house, boat, or place where the officer believes that the salt or saltpetre is being so manufactured, refined, or stored; (*c*) the name of the person by or for whom the salt or saltpetre is so manufactured, refined, or stored; and (*d*) the supposed quantity and description of the salt or saltpetre, with the grounds for believing the same to be unlawfully manufactured, refined, or stored;

and may then summon in writing the officer in charge of the police-station within whose jurisdiction the house, boat, or place to be searched is situate to attend him;

and may then, after sunrise and before sunset (but always in the presence of an officer of police not inferior in rank to a head-constable) enter and search any house, boat, or place in which there is reason to believe that salt or saltpetre is being so manufactured, refined, or stored;

Power to enter and search.

and, in case of resistance, may break open any door, and force and remove any other obstacle to such entry;

and may seize and carry away all salt and saltpetre so manufactured, refined, or stored, and all materials used in the manufacture or refinement of such salt or saltpetre;

and may also detain and search, and, if he thinks proper, arrest the occupier of the said house, boat, or place, together with all persons concerned in the manufacture, refinement, or storing of such salt or saltpetre or in the concealing thereof.

If the place so entered is an apartment in the actual occupancy of a woman who, according to the custom of the country, does not appear in public, the officer entering the same shall be guided by the rules prescribed for such cases in the Code of Criminal Procedure.*

Before conducting a search under this section, the officer conducting it shall call upon two or more respectable inhabitants (if any) of the locality in which the house, boat, or place is situate to attend and witness the search, and the search shall be made in the presence of such inhabitants (if any), and also (if practicable) of the occupant of the house, boat, or place searched. †

Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency. ‡

**19.** Any officer in charge of a police-station who, on application in writing made by a salt-revenue officer to attend for any of the purposes specified in section 18, refuses or fails within a reasonable time so to attend, or to depute a subordinate officer, not inferior in

Failure of police-officer to attend.

* See now the proviso to s. 48 of the Code of Criminal Procedure (Act V. of 1898).

† *Cf.* s. 103 of Act V. of 1898.

‡ *Cf.* s. 52 of Act V. of 1898.

1882. Act 12. rank to a head-constable, so to attend, shall, for every such offence, be punished with fine which may extend to five hundred rupees.

Report of arrest, seizure, and search.

**20.** Whenever a salt-revenue officer under the rank of Assistant Commissioner arrests under this Act any person,

or seizes any article as liable to confiscation under this Act,

or enters any house, boat, or place for the purpose of searching for any such article,

he shall (unless generally empowered by the Assistant Commissioner to send the person arrested to the Magistrate), within forty-eight hours next after such arrest, seizure, or entry, make a full report of all the particulars of such arrest, seizure, or entry to his official superior for the information of the Assistant Commissioner.

Every officer making any arrest under this Act, or his official superior, shall, if generally empowered in this behalf by the Assistant Commissioner, either send with all convenient despatch the person arrested to the Magistrate having jurisdiction to deal with the case, or order the discharge of such person.

Every officer of police attending any search made under section 18 shall report the same to his official superior.

Procedure in respect of articles seized.

**21.** Whenever the Assistant Commissioner is informed of the seizure of any article exceeding five sers in weight as liable to confiscation under this Act, he shall, with all convenient despatch, report the circumstances of the case to the Commissioner of the Division in which such seizure is made, who may thereupon proceed under section 12.

If the article seized does not exceed five sers in weight, such Assistant Commissioner may dispose of the case himself under the said section.

Procedure on detention of article subject to additional duty.

**22.** Any article in respect of which a penalty is imposed under section 13 may be detained pending the receipt of the orders of the Commissioner of the Division or the Assistant Commissioner, as the case may be, on the report required by the same section:

Provided that, if the owner of any article so detained deposits the amount of such penalty with, and pays all ordinary duty and charges payable on such article to, the salt-revenue officer detaining the same, such article shall be at once released.

When an article is so detained, it shall, on the receipt of the said order, be dealt with in accordance with the rules made in this behalf hereunder.

When an article has been released under the second paragraph of this section, and the Commissioner of the Division or Assistant Commissioner, as the case may be, reduces, or declines to sanction, the penalty imposed in respect of such article, the amount refundable to the owner shall be paid to him on his applying therefor to the Assistant Commissioner within six months, to be computed (where the order has been made by the Commissioner of the Division) from the day on which the Assistant Commissioner has received such order, and (where the order has been made by the Assistant Commissioner) from the date of such order.

When any penalty, the amount of which has been deposited under the second clause of this section, is sanctioned,

or when any sum refundable under this section has not been claimed within the said period of six months,

the amount so in deposit, or the sum so refundable, shall be forfeited to Her Majesty, unless the Commissioner of Northern India Salt-revenue otherwise directs. 1882. Act 12.

Procedure in respect of person arrested.

**23.** Whenever the Assistant Commissioner is informed of the arrest of any person, he shall (unless such person has been dealt with under the penultimate paragraph of section 20) either send, with all convenient despatch, the person arrested to the Magistrate having jurisdiction to deal with the case, or order the immediate discharge of such person.

Officers required to assist salt-revenue officers.

**24.** All officers of police, and all officers of Government engaged in the collection of land-revenue, are hereby empowered and required to assist the salt-revenue officers in the execution of this Act.

Vexatious search, seizure, &c., by salt-revenue officer.

**25.** Any salt-revenue officer who—

(*a*) without reasonable ground of suspicion searches or causes to be searched any house, boat, or place ;

(*b*) vexatiously and unnecessarily detains, searches, or arrests any person ;

(*c*) vexatiously and unnecessarily seizes the moveable property of any person, on pretence of seizing or searching for any article liable to confiscation under this Act ;

(*d*) commits, as such officer, any other act to the injury of any person, when such officer has not reason to believe that such act is required for the execution of his duty,

shall, for every such offence, be punishable, by a Magistrate exercising powers not less than those of a Magistrate of the second class, with fine which may extend to five hundred rupees.

Any person wilfully and maliciously giving false information, and so causing a search to be made under this Act, shall be punishable, by a Magistrate exercising the same powers, with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to two years, or with both.

A salt-revenue officer shall not be deemed to search or detain any person, or to seize the moveable property of any person, vexatiously and unnecessarily within the meaning of clause (*b*) or clause (*c*) of the first paragraph of this section if the search is authorized by any rule under clause (*b*) of section 8B, and the detention or seizure is such as is necessary for the purposes of such search.*

Power to regulate seizures and disposal of things seized.

**26.** The Governor-General in Council may, from time to time make rules consistent with this Act to regulate the seizure, disposal, and destruction of things liable to be seized under this Act.

Such rules may, among other matters, provide—

(*a*) that the owner or person having the charge of any animal seized and detained shall provide from day to day for its keep while detained, and that, if he omits to do so, such animal may be sold by public auction, and the expenses (if any) incurred on account of it defrayed from the proceeds of the sale;

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* This paragraph has been added by the Indian Salt Act Amendment Act (XIX. of 1890), s. 3.

(*b*) that, when anything is seized, and an order for its release is subsequently passed, and the owner does not, within a period to be fixed by such rules, appear to claim such thing, and tender the duty, penalties, and charges (if any) due in respect thereof, it may be sold by public auction, and such duty, penalties, and charges defrayed from the proceeds of the sale;

(*c*) that the surplus-proceeds of a sale under clause (*a*) or clause (*b*) of this section shall, unless the owner of the thing seized establishes his claim to such proceeds within a period, not less than three months, to be fixed by such rules, be forfeited to Her Majesty.

## CHAPTER VI.

### MISCELLANEOUS.

Power to prohibit import and transit of salt.

**27.** The Governor-General in Council may from time to time, by rule, prohibit absolutely, or subject to conditions, the importation of salt into, or the transit of salt over, the said territories or any part thereof.

Except in the case of a prohibition under this section, nothing in this Act shall affect the transit of salt into or from any of the said territories, from or into any other part of British India.

Nothing in this section shall be deemed to affect Chapter IIIA. of this Act or any rule under that chapter.*

Further matters for which Governor-General in Council may make rules.

**28.** In addition to the rules which the Governor-General in Council is hereinbefore empowered to make, he may, from time to time, make rules, consistent with this Act, to regulate the following matters, namely:—

(*a*) the persons by whom, and the time, place, and manner at or in which, anything to be done under this Act shall be done;

(*b*) the cases in which, and the officers to whom, and the conditions subject to which, orders given by salt-revenue officers under this Act shall be appealable;

(*c*) the fee to be charged on account of any license, pass, certificate, dakhila, rawana, or other such document issued under this Act;

† and generally to carry out the provisions herein contained.

Publication of rules.

**29.** All rules made under this Act shall be published in the *Gazette of India*, and shall thereupon have the force of law.

Power to confer powers of Assistant Commissioner and salt-revenue officers.

**30.** Subject to the provisions herein contained, and to any rules for the time being in force made by the Governor-General in Council, the Local Government or the Commissioner of Northern India Salt-revenue may invest any

* This paragraph has been added by the Indian Salt Act Amendment Act (XIX. of 1890), s. 4.

† For rules as to through booking of salt made under this section, see Gazette of India, 1889, Pt. I., p. 422; 1890, Pt. I., p. 211; 1892, Pt. I., p. 426. For rules as to the manufacture of salt under license, see Gazette of India, 1884, Pt. I., p. 246.

As to rules for the Orissa Division of the Presidency of Madras, see Madras List of Local Rules and Orders, Ed. 1898, Vol. I., p. 194.

person with the powers of an Assistant Commissioner under this Act, or with all or any of the powers hereinbefore conferred on salt-revenue officers. 1882. Act 12.

**31.** [*Amendment of Madras Act VI. of 1871.*] *Repealed by the Indian Salt Act Amendment Act (XIX. of 1890), s. 5.*

## SCHEDULE.

*(See section 2.)*

ENACTMENTS REPEALED.

ACTS OF THE GOVERNOR-GENERAL IN COUNCIL.

| Number and year. | Short title. | Extent of repeal. |
|---|---|---|
| VIII. of 1875 ... | The Inland Customs Act, 1875. | The whole. |
| II. of 1876 ... | The Burma Land and Revenue Act, 1876. | Section 39, clause (*b*), and in clause (*c*) of the same section the words and letter "under clause (*b*)." |
| XVIII. of 1877 ... | The Salt Act, 1877 ... | The whole. |

REGULATION.

| Number and year. | Short title. | Extent of repeal. |
|---|---|---|
| III. of 1877 ... | The Ajmir Laws Regulation, 1877. | Sections 36 and 37. |

ACT OF THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

| Number and year. | Short title. | Extent of repeal. |
|---|---|---|
| VII. of 1864 ... | The Salt Act, 1864 ... | Section 9. |

# ACT NO. XXII. OF 1867.*

## THE SARAIS ACT, 1867.

RECEIVED THE G.-G.'S ASSENT ON THE 15TH MARCH 1867.

*An Act for the Regulation of Public Sarais and Puraos.*

Preamble.

WHEREAS it is expedient to provide for the regulation of public Sarais and Puraos: It is hereby enacted as follows:—

**1.** [*Repeal of Bengal Regulation XIV. of 1807, section 11, clause 5.*] *Repealed by the Repealing and Amending Act (XII. of 1891).*

Interpretation-clause.

**2.** In this Act, unless there be something repugnant in the subject or context—

"Sarai" means any building used for the shelter and accommodation of travellers, and includes, in any case in which only part of a building is used as a sarai, the part so used of such building:

It also includes a purao so far as the provisions of this Act are applicable thereto:

"Keeper of a sarai" includes the owner, and any person having or acting in the care or management thereof:

"Magistrate of the District"† means the chief officer charged with the executive administration of a district in criminal matters, whatever may be his designation:

Words in the singular include the plural, and *vice versâ*. And in any place in which this Act shall operate, "Local Government" shall mean the person administering executive government in such place, and shall include a Chief Commissioner and the Commissioner in Sindh.

Notice of Act to be given to keepers of sarais.

**3.** Within six months after this Act shall come into operation, the Magistrate of the District in which any sarai to which this Act shall apply may be situate shall, and from time to time thereafter such Magistrate may, give to the keeper of every such sarai notice in writing of this Act, by leaving such notice for the keeper at the sarai; and shall by such notice require the keeper to register the sarai as by this Act provided.

Form of notice.

Such notice may be in the form in the schedule to this act annexed or to the like effect.

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* For the Statement of Objects and Reasons for the Bill which was passed into law as Act XXII. of 1867, see Gazette of India, 1867, p. 194; for Proceedings in Council relating to the Bill, see *ibid*, Supplement, pp. 62, 72, 158, 225, and 232.

The Act has been declared by notification under s. 3 (*a*) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts:—

| | | |
|---|---|---|
| The Districts of Hazáribágh, Lohárdaga, and Mánbhúm, and Pargana Dálbhúm, and the Kolhán in the District of Singbhúm ... ... | See Gazette of India, | Oct. 22, 1881, Pt. I., p. 504. |
| The North-Western Provinces Tarái ... ... ... ... | Ditto | Sep. 23, 1876, Pt. I., p. 505. |

See also note to s. 17.

† This reference should now be read as "District Magistrate," see para. 2 of s. 3 of the Code of Criminal Procedure (Act V. of 1898).

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Act 22.

Registers of sarais to be kept.

**4.** The Magistrate of the District shall keep a register in which shall be entered by such Magistrate, or such other person as he shall appoint in this behalf, the names and residences of the keepers of all sarais within his jurisdiction, and the situation of every such sarai.

No charge shall be made for making any such entry.

Lodgers, &c., not to be received in sarais until registered.

**5.** After one month after the giving of such notice to register as by this Act provided, the keeper of any sarai or any other person shall not receive any lodger, or allow any person, cattle, sheep, elephant, camel, or other animal, or any vehicle, to halt, or be placed in such sarai until the same, and the name and residence of the keeper thereof, shall have been registered as by this Act provided.

Magistrate may refuse to register keeper not producing certificate of character.

**6.** The Magistrate of the District may, if he shall think fit, refuse to register, as the keeper of a sarai, a person who does not produce a certificate of character in such form, and signed by such persons, as the Local Government shall from time to time direct.

Duties of keepers of sarais.

**7.** The keeper of a sarai shall be bound—

(1) when any person in such sarai is ill of any infectious or contagious disease, or dies of such disease, to give immediate notice thereof to the nearest police-station:

(2) at all times, when required by any Magistrate or any other person duly authorized by the Magistrate of the District in this behalf, to give him free access to the sarai, and allow him to inspect the same or any part thereof:

(3) to thoroughly cleanse the rooms and verandahs and drains of the sarai, and the wells, tanks, or other sources from which water is obtained for the persons or animals using it, to the satisfaction of, and so often as shall be required by, the Magistrate of the District, or such person as he shall appoint in this behalf:

(4) to remove all noxious vegetation on or near the sarai, and all trees and branches of trees capable of affording to thieves means of entering or leaving the sarai:

(5) to keep the gates, walls, fences, roofs, and drains of the sarai in repair:

(6) to provide such number of watchmen as may, in the opinion of the Magistrate of the District, subject to such rules as the Local Government may prescribe in this behalf, be necessary for the safety and protection of persons and animals or vehicles lodging in, halting at, or placed in, the sarai: and

(7) to exhibit a list of charges for the use of the sarai at such place and in such form and languages as the Magistrate of the District shall from time to time direct.

Power to order reports from keepers of sarais.

**8.** The keeper of a sarai shall, from time to time, if required so to do by an order of the Magistrate of the District served upon him, report, either orally or in writing, as may be directed by the Magistrate, to such Magistrate, or to such person as the Magistrate shall appoint, every person who resorted to such sarai during the preceding day or night.

When schedules to be furnished.

If written reports are required for any space of time exceeding a single day or night, schedules shall be furnished by the Magistrate of the District to the keeper.

The keeper shall from time to time fill up the said schedules with the information so required, and transmit them to the said Magistrate, in such manner, and at such intervals, as may from time to time be ordered by him.

Keeper to fill up and send schedules.

**9.** If any sarai, by reason of abandonment or of disputed ownership, shall remain untenanted, and thereby become a resort of idle and disorderly persons, or become in a filthy or unwholesome state, or be complained of by any two or more of the neighbours as a nuisance, the Magistrate of the District, after due enquiry, may cause notice in writing to be given to the owner, or to the person claiming to be the owner, if he be known and resident within the district, and may also cause such notice to be put on some conspicuous part of the sarai, requiring the persons concerned therein, whoever they may be, to secure, enclose, clean, or clear the same;

Power to shut up, secure, clear, and clean deserted sarais.

and, if such requisition shall not be complied with within eight days, the Magistrate of the District may cause the necessary work to be executed, and all expenses thereby incurred shall be paid by the owner of the sarai, and shall be recoverable like penalties under this Act, or, in case of abandonment or disputed ownership of the sarai, by the sale of any material found therein.

**10.** If a sarai, or any part thereof, be deemed by the Magistrate of the District to be in a ruinous state, or likely to fall, or in any way dangerous to the persons or animals lodging in, or halting at, the sarai, he shall give notice in writing to the keeper of the sarai, requiring him forthwith to take down, repair, or secure (as the case may be) the sarai, or such part thereof as the case may require.

Taking down or repairing ruinous sarais.

If the keeper do not begin to take down, repair, or secure the sarai, or such part as aforesaid, within three days after such notice, and complete such work with due diligence, the Magistrate shall cause all or so much of the sarai as he shall think necessary to be taken down, repaired, or otherwise secured.

All the expenses so incurred by the Magistrate shall be paid by the keeper of the sarai, and shall be recoverable from him as hereinafter mentioned.

**11.** If any such sarai, or any part thereof, be taken down by virtue of the powers aforesaid, the Magistrate of the District may sell the materials thereof, or so much of the same as shall be taken down under the provisions of the last preceding section, and apply the proceeds of such sale in payment of the expenses incurred, and shall restore the overplus (if any) arising from such sale to the owner of such sarai on demand, and may recover the deficiency (if any) as if the amount thereof were a penalty under this Act.

Sale of materials of ruinous sarais.

**12.** Whoever being the keeper of any sarai, suffers the same to be in a filthy and unwholesome state, or overgrown with vegetation, or after the expiration of two days from the time of his receiving notice in writing from the Magistrate of the District to cleanse or clear the same, or after he shall have been convicted of suffering the same to be in such state or so overgrown as aforesaid, shall allow the same to continue in such state, or so overgrown, shall be liable to the penalties provided in section 14 of this Act:

Penalty for permitting sarais to be filthy or overgrown.

Provided that the Magistrate of the District may, in lieu of enforcing such daily penalty, enter on, and cleanse or clear, the said sarai, and the expense incurred by the Magistrate

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in respect thereof shall be paid to him by the keeper, and shall be recoverable as by this Act provided in the case of penalties.

Power for Local Government to make regulations.

**13.** The Local Government may from time to time make regulations for the better attainment of the objects of this Act, provided that such rules be not inconsistent with this Act, or with any other law for the time being in force, and may from time to time repeal, alter, and add to, the same.

Regulations to be published.

All regulations made under this Act, and all repeals thereof, and alterations and additions thereto, shall be published in the local official Gazette.

Penalty for infringing Act or regulations.

**14.** If the keeper of a sarai offend against any of the provisions of this Act, or any of the regulations made in pursuance of this Act, he shall, for every such offence, be liable, on conviction before any Magistrate, to a penalty not exceeding twenty rupees, and to a further penalty, not exceeding one rupee a day, for every day during which the offence continues:

Saving of penalties incurred otherwise.

Provided always that this Act shall not exempt any person from any penalty or other liability to which he may be subject irrespective of this Act.

Recovery of penalties.

All penalties imposed under this Act may be recovered in the same manner as fines may be recovered under sections 386, 387, and 389* of the Code of Criminal Procedure.

Effect of conviction for third offence.

**15.** Where a keeper of a sarai is convicted of a third offence under this Act, he shall not afterwards act as keeper of a sarai without the license in writing of the Magistrate of the District, who may either withhold such license, or grant the same on such terms and conditions as he may think fit.

Section 8 only to apply to certain sarais.

**16.** No part of this Act, except section 8, shall apply to any sarai which may be under the direct management of the Local Government, or of any municipal committee.

Extent of Act.

**17.** This Act shall, in the first instance, extend only to the territories under the government of the Lieutenant-Governor of the North-West Provinces of the Presidency of Fort William in Bengal.

Power to Local Government to extend Act.

But it shall be lawful for the Local Government, by notification in the local Gazette, to extend this Act,† *mutatis mutandis*, to any other part of the territories which are or may be vested in Her Majesty or Her Successors by the Statute 21 and 22 Vict., cap. 106 *(An Act for the Better Government of India)*, except the towns of Calcutta, Madras, and Bombay.‡

Short title.

**18.** This Act may be called "The Sarais Act, 1867."

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* The reference to s. 61 of Act VIII. of 1866 has been altered in accordance with Act VIII. of 1869. [See Act X of 1882, s. 3. This Act has been superseded by Act V. of 1898.

† It has been extended to Oudh.—See Notification No. 591, dated 25th July 1883, North-Western Provinces and Oudh Gazette, 28th July 1883, Pt. I., p. 433.

It has also been extended to the Punjab.—See Notification No. 4499, dated 13th December 1879. See Punjab Gazette 18th December 1879, Pt. I., p. 727.

‡ Here the words, "and the Settlement of Prince of Wales's Island, Singapore, and Malacca," have been repealed by the Repealing and Amending Act (XII. of 1891).

## SCHEDULE.

### FORM OF NOTICE.

Take notice that on the day of 1867, an Act, called "The Sarais Act, 1867," was passed, and that before the day of 18 , you, being the keeper of a sarai [*or* purao] within [*here state the district over which the jurisdiction of the Magistrate giving the notice extends*], must have your sarai [*or* purao] registered, and that the register is to be kept at [*here state where the register is to be kept*], and that, if you do not have your sarai [*or* purao] so registered you will be liable to a penalty not exceeding twenty rupees, and to a further penalty, not exceeding one rupee a day, for every day during which the offence continues, and that, on your applying to [*here give the name and address of the person to keep the register*], he will register your sarai [*or* purao] free of all charge to you.

Dated the day of 18 .

# ACT NO. XVI. OF 1861. *

## THE STAGE-CARRIAGES ACT, 1861. †

RECEIVED THE G.-G.'S ASSENT ON THE 7TH JULY 1861.

*An Act for Licensing and Regulating Stage-Carriages.*

WHEREAS it is expedient to license and to regulate stage-carriages in British India; It is enacted as follows:—

Preamble.

**1.** Every carriage drawn by one or more horses, ‡ which shall ordinarily be used for the purpose of conveying passengers for hire to or from any place in British India, shall, without regard to the form or construction of such carriage, be deemed to be a stage-carriage within the meaning of this Act. . . . .§

Definition of stage-carriage.

**2.** [*Carriages to be licensed.*] *Repealed by the Stage-Carriages Act (1861), Amendment Act (I. of 1898), s. 2.*

**3.** The Magistrate or Chief Commissioner of Police to whom the application for a license of a stage-carriage is made may refuse to license the same, if he shall be of opinion that such stage-carriage is unserviceable, or is unsafe or unfit for public accommodation or use.

Power to refuse license.

If a Magistrate or Chief Commissioner of Police as aforesaid shall grant a license, the license shall set forth the number thereof, the name and residence of the proprietor of the stage-carriage, the place at which his head-office is held, the largest number of passengers and the greatest weight of luggage to be carried in or on such carriage, the number of horses by which such carriage is to be drawn, and the name of the place at which such carriage is licensed.

Particulars of license.

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* *Cf.* "The Stage-Carriages Act, 1832" (2 & 3 Wm. IV., c. 120); The London Hackney Carriages Act, 1833" (3 & 4 Wm. IV., c. 48); "The Railway Passenger Duty Act, 1842" (5 & 6 Vict., c. 79), "The Railway Passenger Duty Act, 1847" (10 & 11 Vict., c. 42); "The Excise Act, 1848" (11 & 12 Vict., c. 118), s. 2.

Act XVI. of 1861 [as amended by the Stage-Carriages Act (1861) Amendment Act (I. of 1898)] has been declared to apply to the whole of British India, but not so as to supersede or contravene provisions of local laws dealing with the same subject.—See *infra*, s. 22. For local laws see Bom. Act VI. of 1863, the Madras Hackney Carriage Act (Mad. Act III. of 1879), and the Calcutta Hackney Carriage Act (Ben. Act II. of 1891).

Act XVI. of 1861 has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely:—

(*1*) The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum.—See Gazette of India, 1881, Pt. I., p. 504.

(*2*) The North-Western Provinces Tárai.—See Gazette of India, 1876, Pt. I., p. 505.

† This short title has been given by the Indian Short Titles Act (XIV. of 1897).

‡ All expressions and provisions in this Act applied to horses also apply to all other animals employed in drawing stage-carriages.—See s. 21, *infra*.

§ The proviso to s. 1 has been repealed by s. 2 of the Stage-Carriages Act (1861) Amendment Act (I. of 1898), s. 2. That proviso ran as follows: "Provided that this Act shall not apply to carriages not ordinarily used for journeys of a greater distance than twenty miles."

1861.

Act 16.

**4.** For every such license there shall be paid by the proprietor of the stage-carriage the sum of five rupees, or such less sum as the Local Government may fix; and such license shall be in force for one year from the date thereof. *

Charge for, and duration of, license.

When a licensed stage-carriage is transferred to a new proprietor within the year, the name of such new proprietor shall, on application to that effect, be substituted in the license for the name of the former proprietor without any further payment for that year; and every person who appears by the license to be the proprietor shall be deemed to be such proprietor for all the purposes of this Act.

**5.** On any stage-carriage being licensed, the proprietor thereof shall cause the number of the license and all the other particulars of the license to be distinctly painted in the English language and character upon a conspicuous part of such stage-carriage.

Particulars to be painted on conspicuous part of carriage.

**6.** The proprietor of any licensed stage-carriage, who shall let such stage-carriage for hire without the particulars specified in section 3 being painted on such carriage in the manner directed in the last preceding section, shall be liable to a fine not exceeding one hundred rupees.

Penalty for letting carriage without having particulars painted.

**7.** Whoever lets for hire any stage-carriage without the same being licensed as provided by this Act shall be liable, on a first conviction, to a fine not exceeding one hundred rupees, and, on any subsequent conviction, to a fine which may extend to five hundred rupees.

Penalty for letting for hire unlicensed carriage.

**8.** Any proprietor or agent of a proprietor, or any driver of a licensed stage-carriage, who knowingly permits such carriage to by drawn by a less number of horses, or who knowingle permits a larger number of passengers or a greater weight of luggage to be carried by such stage-carriage than shall be provided by the license, shall be liable, on a first conviction, to a fine not exceeding one hundred rupees, and, on any subsequent conviction, to a fine which may extend to five hundred rupees.

Penalty for allowing carriage to be drawn by fewer animals, or more passengers, etc., to be carried, than provided by license.

In every case where such stage-carriage shall be proved to have been drawn by a less number of horses, or to have carried a larger number of passengers or a greater weight of luggage than shall be provided by the license, the proprietor of such carriage shall be held to have knowingly permitted such offence, unless he shall prove that the offence was not committed with his connivance, and that he had taken every reasonable precaution, and had made reasonable provision, to prevent the commission of the offence.

**9.** Any person who shall cruelly beat, ill-treat, over-drive, abuse, torture, or cause or procure to be cruelly beaten, ill-treated, over-driven, abused, or tortured, any horse employed in drawing, or harnessed to, any stage-carriage, or who shall harness to or drive in any stage-carriage any horse which, from sickness, age, wounds, or other cause, is unfit to be driven in such stage-carriage, shall, for every such offence, be liable to a fine not exceeding one hundred rupees.

Penalty for ill-treating animals.

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* This paragraph of s. 4 has been substituted for the original paragraph by the Stage-Carriages Act (1861) Amendment Act (I. of 1898), s. 3. That paragraph was identical with the paragraph as it now stands, save that it did not contain the words "or such less sum as the Local Government may fix" after the word "rupees."

**10.** Any Magistrate or Chief Commissioner of Police within the local limits of whose jurisdiction any stage-carriage shall ply, or who has granted the license of any stage-carriage, may cancel the license of such stage-carriage if it shall appear to him that such stage-carriage, or any horse or any harness used with such carriage, is unserviceable or unsafe, or otherwise unfit for public accommodation or use.

Revocation of license.

**11.** In any station or place in which a Magistrate shall reside and be, any police-officer may, in any place within two miles of the office of such Magistrate, seize any stage-carriage with the horse harnessed thereto, if the full particulars of the license of such stage-carriage be not distinctly painted on such stage-carriage in the manner provided in section 5 of this Act.

Penalty for not conforming to provisions of section 5.

Such carriage, with the horse harnessed thereto, shall be taken without delay by such police-officer before such Magistrate, who shall forthwith proceed to hear and determine the complaint of such police-officer; and if, thereupon, any fine is imposed by such Magistrate, and such fine is paid, such stage-carriage and horse shall be immediately released: and, if such fine be not paid, such stage-carriage and horse may be detained for twenty days as security for the payment thereof; and, if the fine be not sooner paid, they may be sold, and the proceeds applied (so far as they extend) to the payment of the said fine and all costs and charges incurred on account of the detention and sale; and the surplus (if any), when claimed, shall be paid to the proprietor of such carriage and horse; and, if such surplus be not claimed within a further period of two months from such sale, the same shall be forfeited to the State.

If the proceeds of such sale do not fully pay the fine and costs and charges aforesaid, the balance may be recovered as hereinafter provided.

**12.** If any driver of any stage carriage, or any other person having the care thereof, shall, through intoxication, neglect, or by wanton or furious driving, or by any other misconduct, endanger the safety of any passenger or other person, or shall injure or endanger the property of the proprietor of such stage-carriage or of any other person, every such person so offending shall be liable to a fine not exceeding one hundred rupees.

Penalty for misconduct on part of drivers.

**13.** Whenever the driver of any stage-carriage, or the owner of any horse employed in drawing any stage-carriage, shall have committed any offence against this Act for the commission whereof any penalty is by this Act imposed, other than an offence specified in section 8, and such driver or owner shall not be known, or, being known, cannot be found, or if the penalty cannot be recovered from such driver or owner, the proprietor of such carriage shall be liable to every such penalty as if he had been the driver of such carriage or owner of such horse at the time when such offence was committed:

Penalty when recoverable from proprietor.

Provided that, if any such proprietor shall make out, to the satisfaction of the Magistrate before whom any complaint or information shall be heard, by sufficient evidence that the offence was committed by such driver or owner without the privity or knowledge of such proprietor, and that no profit, advantage, or benefit, either directly or indirectly, has accrued or can accrue to such proprietor therefrom, and that he has used his endeavour to find out such driver or owner, and has done all that was in his power to recover the amount of the penalty from him, the Magistrate may discharge the proprietor from such penalty, and shall levy the same upon such driver or owner when found.

Proviso.

1861.

Act 16.

**14.** Whenever any charge is made before any Magistrate of any offence under this Act on which it is necessary to issue a summons to the proprietor of a stage-carriage, the Magistrate shall issue such summons directed to such proprietor or his nearest agent, and may transmit such summons by letter-post, which shall be deemed to be good service thereof.

Issue of summons.

The letter shall be registered at the post-office, and the cost of the registration shall be borne by the Government in the first instance, but may be charged as costs in the case.

The summons shall allow a reasonable time, in reference to the distance to which the summons is sent, for the appearance of such proprietor or his agent as aforesaid.

**15.** All penalties incurred under this Act shall be adjudged by a Magistrate or Chief Commissioner of Police as aforesaid, and all orders made under this Act by such Magistrate or Chief Commissioner of Police shall be final.

Adjudication of penalties.

**16** All penalties imposed under this Act, or any balance of any fine, costs, or charges as mentioned in section 11 of this Act, may, in case of non-payment or non-recovery thereof, be levied by distress and sale of the moveable property of the offender by warrant under the hand of the Magistrate who imposed the same.

Recovery of penalties, &c.

**17.** In case any such penalties shall not be forthwith paid, such Magistrate may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such Magistrate for his appearance at such place and time as shall be appointed for the return of the warrant of distress.

Offender may be apprehended and detained in custody until return of warrant of distress.

**18.** If, upon the return of such warrant, it shall appear that no sufficient distress can be had whereon to levy such penalty, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such Magistrate, by the confession of the offender or otherwise, that he has not sufficient goods and chattels whereupon such penalty could be levied if warrant of distress were issued, such Magistrate may, by warrant under his hand, commit the offender, provided he is not a European British subject, to prison, there to be imprisoned, according to the discretion of such officer, for any term not exceeding two calendar months, when the amount of penalty shall not exceed fifty rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount.

Imprisonment of offender if distress not sufficient.

**19.** If the offender shall be a European British subject, the Magistrate shall record the facts and transmit such record to the District Court of the district wherein the offender is convicted, and the amount of penalty and the costs (if any) shall be levied in the manner provided for the execution of decrees of the Civil Court.

Recovery of penalty and costs from European British subjects.

**20.** On complaint made before any Magistrate of any offence committed under this Act, it shall not be necessary to prove that the offence was committed within the local limits of such Magistrate or other officer.

Jurisdiction.

**20A.*** (*1*) The Local Government may, by notification in the official Gazette, make rules to carry out the purposes and objects of this Act in the territories under its administration or any part of the said territories.

Power to make rules.

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may—

(*a*) prescribe forms for licenses under this Act, the sums payable for the same, and the conditions on which they may be granted, and the cases in which they may be revoked;

(*b*) provide for the inspection of stage-carriages, and of the animals employed in drawing them; and

(*c*) regulate the number and length of the stages for which animals may be driven in stage-carriages, and the manner in which they shall be harnessed and yoked.

(*3*) In making any rule under this section the Local Government may direct that a breach thereof shall be punishable with fine which may extend to one hundred rupees.

**21.** The term "Magistrate" in this Act shall include all Magistrates and other persons exercising the powers of a Magistrate:†

Interpretation-clause.

The term "British India" in this Act shall denote the territories that are or shall be vested in Her Majesty by the Statute 21 & 22 Vict., c. 106,‡ entitled "An Act for the Better Government of India:"

All expressions and provisions which in this Act are applied to horses shall also apply to all other animals employed in drawing any carriage§ ordinarily used for the purpose of conveying passengers for hire to or from any place in British India:‖

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number:¶

Words importing the masculine gender shall include the feminine.

**22.**** This Act, as amended by subsequent Acts, extends to the whole of British India: but it shall not apply to carriages ordinarily plying for hire within the limits of any municipality or cantonment or other place in which any law for the regulation of carriages is for the time being in force.

Extent of Act.

**23.**** The Local Government may, by notification in the official Gazette, exempt any carriages or class of carriages from all or any of the provisions of this Act.

Power to Local Government to exempt.

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* S. 20A has been added by the Stage Carriages Act (1861) Amendment Act (I. of 1898), s. 4.

† As to officers exercising the powers of a Magistrate, see s. 3 (*2*) of the new Code of Criminal Procedure (Act V. of 1898).

‡ For "The Government of India Act, 1858" (21 & 22 Vict., c. 106), see the "Collection of Statutes relating to India," Vol. II, p. 645; *cf.* definition of "British India," see also the General Clauses Act (X. of 1897), s. 3 (*7*).

§ That is, a "stage-carriage."—See s. 1, *supra*.

‖ This paragraph has been substituted for the original paragraph by the Stage Carriages Act (1861) Amendment Act (XVI. of 1876), s. 1. The original paragraph ran as follows: "The term horse shall include ponies and mules."

¶ *Cf.* s. 3 of the General Clauses Act (X. of 1897).

** Ss. 22 and 23 have been added by the Stage Carriages Act (1861) Amendment Act (I. of 1898), s. 5. The original s. 22, regarding the commencement of this Act as passed, was repealed by the Repealing Act (XIV. of 1870).

[*EXTRACTS.*]

# ACT NO. II. OF 1899.

## THE INDIAN STAMP ACT, 1899.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*Received the Governor-General's assent on the 27th January 1899.*

*An Act to consolidate and amend the Law relating to Stamps.*

## CHAPTER II.

### STAMP-DUTIES.

* * * * * * *

**Cancellation of adhesive stamps.**

**12.** (*1*) (*a*) Whoever affixes any adhesive stamp to any instrument chargeable with duty, and which has been executed by any person, shall, when affixing such stamp, cancel the same so that it cannot be used again; and S. 11, Act of 1879.

(*b*) whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

(*2*) Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again shall, so far as such stamp is concerned, be deemed to be unstamped.

(*3*) *The person required by sub-section (1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials, or the name or initials of his firm with the true date of his so writing, or in any other effectual manner.* New.

* * * * * * *

**Facts affecting duty to be set forth in instrument.**

**27.** The consideration, if any, and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein. S. 27, Act of 1879.

* * * * * * *

**Obligation to give receipt in certain cases.**

**30.** Any person receiving any money exceeding twenty rupees in amount, or any bill of exchange, cheque, or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction *or part-satisfaction* of a debt any moveable property exceeding twenty rupees in value, shall, on demand by the person paying or delivering such money, bill, cheque, note, or property, give a duly-stamped receipt for the same. S. 58, Act of 1879, the italics only being newly added.

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## CHAPTER IV.

### INSTRUMENTS NOT DULY STAMPED.

* * * * * * *

S. 34, Act I. of 1879.

**35.** No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having, by law or consent of parties, authority to receive evidence, or shall be acted upon, registered, or authenticated by any such person, or by any public officer, unless such instrument is duly stamped.

Instruments not duly stamped inadmissible in evidence, etc.

Provided that—

"1st," omitted at the beginning.

(*a*) any such instrument not being an instrument chargeable with a duty of one anna only, or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

Instruments admissible on payment of duty and penalty:

New.

(*b*) *where any person, from whom a stamped receipt could have been demanded, has given an unstamped receipt, and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;*

New.

(*c*) *where a contract or agreement of any kind is effected by correspondence consisting of two or more letters, and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;*

"2nd," omitted at the beginning.

(*d*) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 189[8].*

and in certain criminal proceedings;

New.

(*e*) *nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.*

and when executed by or on behalf of Government.

* * * * * * *

S. 40, Act I. of 1879.

**48.** The *taking of proceedings or the* payment of a penalty under this chapter in respect of *any* instrument shall not bar the prosecution of any person who appears to have committed an offence against the Stamp-law in respect of such instrument:

Prosecution for offence against Stamp-law.

The words first italicized are new, and the word next italicized, *any*, substituted for "an."

*Provided that* no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty.

"*Provided that*" substituted for "But"

* * * * * * *

* Act V. of 1898.

## CHAPTER VI.

### REFERENCE AND REVISION.

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**Revision of certain decisions of Courts regarding the sufficiency of stamps.**

**61.** (*1*) When any Court, in the exercise of its civil or revenue jurisdiction, *or any Criminal Court in any proceeding under Chapter XII. or Chapter XXXVI. of the Code of Criminal Procedure, 1898*,* makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section *35*, the Court to which appeals lie from, or references are made by, such first-mentioned Court, may, of its own motion, or on the application of the Collector, take such order into consideration. S. 50, Act 14 of 1879.

(*2*) *If such Court, after such consideration,* is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section *35*, or without the payment of a higher duty and penalty than those paid, *it* may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is to produce the same, and may impound the same when produced.

(*3*) When any declaration has been recorded under *sub-section* (*2*), the Court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument.

(*4*) The Collector may thereupon, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section *42*, or in section *43*, prosecute any person for any offence against the Stamp law which the Collector considers him to have committed in respect of such instrument:

Provided that—

(*a*) no such prosecution shall be instituted where the amount (including duty and penalty), which, according to the determination of such Court, was payable in respect of the instrument under section *35*, is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty:

(*b*) except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section *42*.

In s. 61 (*1*), the italicized words are new, and the italicized figures *35* have been substituted for "34" throughout the section.

In sub-s. (*2*), the words first italicized have been substituted for the words, "if it," and the italicized word *it* is new.

In sub-s. (*3*), the italicized word and figure, *sub-section* (*2*), have been substituted for "this section."

In sub-s. (*4*), the italicized figures *42* and *43* have been substituted for "39" and "40," respectively.

In the proviso, the italicized figures *35* in cl. (*a*) and *42* in cl. (*b*) have been substituted for "34" and "39," respectively.

* Act V. of 1898.

## CHAPTER VII.

### CRIMINAL OFFENCES AND PROCEDURE.

S. 61, Act I. of 1879.

**62.** (*1*) Any person—

Penalty for executing, etc., instrument not duly stamped.

(*a*) drawing, making, issuing, endorsing, or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying, or receiving payment of, or in any manner negotiating, any bill of exchange, cheque, or promissory note without the same being duly stamped, or

(*b*) executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped, or

(*c*) voting or attempting to vote under any proxy not duly stamped,

shall for every such offence be *punishable* with fine which may extend to five hundred rupees:

Provided that, when any penalty has been paid in respect of any instrument under section *35*, section *40*, or section *61*, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

S. 35 (para. 2), Act VI. of 1882.

(*2*) If a share-warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall *be punishable with fine which may extend to five hundred rupees.*

In s. 62, the italicized word *punishable* has been substituted for *punished*; and the italicized figures *35*, *40*, and *61* in the proviso have been substituted for the figures, "34," "37," and "50," respectively.

S. 62, Act I. of 1879.

**63.** Any person required by section *12* to cancel an adhesive stamp, and failing to cancel such stamp in manner prescribed by that section, shall be *punishable* with fine which may extend to one hundred rupees.

Penalty for failure to cancel adhesive stamp.

S. 63, Act I. of 1879.

Penalty for omission to comply with provisions of section 27.

**64.** Any person who, with intent to defraud the Government,—

(*a*) executes any instrument in which all the facts and circumstances required by section 27 to be set forth in such instrument are not fully and truly set forth, or,

(*b*) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances, *or*

(*c*) *does any other act calculated to deprive the Government of any duty or penalty under this Act,*

shall be *punishable* with fine which may extend to five thousand rupees.

In s. 64, the words, "of any duty," after the word "Government," have been omitted; the italicized word *or* at the end of cl. (*b*) has been added; cl. (*c*) has been newly inserted, the italicized word *punishable* being substituted for "punished." Throughout the penal clauses, *punishable* has been substituted for *punished*.

S. 64, Act I. of 1879.

**65.** Any person who—

Penalty for refusal to give receipt, and for devices to evade duty on receipts.

(*a*) being required under section 30 to give a receipt, refuses or neglects to give the same, or

(*b*) with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered,

shall be *punishable* with fine which may extend to one hundred rupees.

S. 65, Act I. of 1879, *Any* being substituted for "Every."

**66.** *Any* person who—

Penalty for not making out policy or making one not duly stamped.

(*a*) receives, or takes credit for, any premium or consideration for any contract of insurance, and does not, within one month after receiving, or taking credit for, such premium or consideration, make out and execute a duly-stamped policy of such insurance, or

(*b*) makes, executes, or delivers out any policy which is not duly stamped, or pays or allows in account, or agrees to pay or allow in account, any money upon, or in respect of, any such policy,

shall be *punishable* with fine which may extend to two hundred rupees.

S. 66, Act I. of 1879.

**67.** Any person drawing or executing a bill of exchange or a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist, shall be *punishable* with fine which may extend to one thousand rupees.

Penalty for not drawing full number of bills or marine policies purporting to be in sets.

S. 67, Act I. of 1879.

**68.** *Any* person who—

Penalty for post-dating bills; and

(*a*) with intent to defraud the Government of duty, draws, makes, or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made; *or*

(*b*) knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays, or receives payment of, such bill or note, or in any manner negotiates the same; *or*

for other devices to defraud the revenue.

(*c*) with the like intent, practises or is concerned in any act, contrivance, or device not specially provided for by this Act or any other law for the time being in force,

shall be *punishable* with fine which may extend to one thousand rupees.

S. 67, Act I. of 1879.

In s. 68, the italicized words, *Any person who*, have been substituted for the word "Whoever," and the italicized word, *or*, at the end of both the cls. (*a*) and (*b*), has been substituted for the words, "and whoever."

S. 68, Act I. of 1879.

Penalty for breach of rule relating to sale of stamps and for unauthorized sale.

**69.** (*a*) Any person appointed to sell stamps who disobeys any rule made under section *74*, and

(*b*) any person not so appointed who sells or offers for sale any stamp (*other than a one-anna adhesive stamp*),

shall be *punishable* with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

In s. 69, the italicized figures *74* have been substituted for "*55*," and the italicized words have been added.

S. 69, Act I. of 1879.

**70.** (*1*) No prosecution in respect of any offence punishable under this Act or any Act *hereby* repealed shall be instituted without the sanction of the Collector or such other officer as the Local Government generally, or the Collector specially, authorizes in that behalf.

Institution and conduct of prosecutions.

(*2*) The Chief Controlling Revenue-authority, or any officer *generally or specially* authorized by it in this behalf, may stay any such prosecution, or compound any such offence.

New.

(*3*) *The amount of any such composition shall be recoverable in the manner provided by section 48.*

In s. 70, sub-s. (*1*), the words, "or the General Stamp Act, 1869,*" after the word "Act" first occurring, have been omitted, and the italicized word *hereby* has been substituted for "thereby;" and the italicized words in sub-s. (*2*) have been inserted.

S. 70, Act I. of 1879, *as* being substituted for "and."

**71.** No Magistrate other than a Presidency Magistrate *or* a Magistrate whose powers are not less than those of a Magistrate of the second class shall try any offence under this Act.

Jurisdiction of Magistrates.

S. 71, Act I. of 1879.

**72.** Every such offence committed in respect of any instrument may be tried in any district or presidency-town in which such instrument is found, as well as in any district or presidency-town in which such offence might be tried under the *Code of* Criminal Procedure * for the time being in force.

Place of trial.

The italicized words, *Code of*, have been substituted for "law relating to."

Old s. 72 has been omitted here. It ran as follows :—

"72. *Operation of other laws not barred.*—Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act, or the rules made under it:

"Provided that no person shall be punished twice for the same offence."

## CHAPTER VIII.

### SUPPLEMENTAL PROVISIONS.

* * * * * * *

S. 55, Act I. of 1879.

**74.** The Local Government, subject to the control of the Governor-General in Council, may make rules for regulating—

Powers to make rules relating to sale of stamps.

(*a*) the supply and sale of stamps and stamped papers,

(*b*) the persons by whom alone such sale is to be conducted, and

(*c*) the duties and remuneration of such persons:

New.

*Provided that such rules shall not restrict the sale of one-anna adhesive stamps.*

"Consistent herewith" after "rules" in line 3 omitted.

* Act V. of 1898.

THE mere engrossing of a document, requiring a stamp, on unstamped paper, constitutes no offence under the Stamp Act (X. of 1862).—REG. *v.* JOTI BIN SATU, 1 Bom. H. C. R. 37. [Newton and Tucker, JJ. Aug. 12, 1863.]

THE refusal to give a stamped receipt for money paid not being in itself an offence at law, to make a false charge against a party of refusing to give such a stamped receipt, is not an indictable offence.—REG. *v* GAPAU KOM KUSAJI, 1 Bom. H. C. R. 92. [Erskine, Newton, and Westropp, JJ. Nov. 13, 1863.]

HELD that the mere engrossing of a deed on stamped paper does not constitute an offence under s. 3 of Act X. of 1862, nor does the signing such a deed as a witness.—REG. *v.* JETHA MOTI; REG *v.* VIRJI KUVARJI, 2 Bom. H. C. R. 129. [Couch and Warden, JJ. Mar. 16, 1865.]

THE passing off a one-anna stamp as a one-rupee stamp is not counterfeiting a one-rupee stamp.—QUEEN *v.* SHUROOP CHUNDER DOSS, 2 W. R. 65. [Jackson and Glover, JJ. April 24 1865.]

CONVICTION and sentence for an offence under the Stamp Act reversed on a reference by a Sessions Judge, as the proceedings of the Magistrate who tried the case were highly irregular.—REG. *v.* DEVSANVAT BIN SHIVRAMSANVAT, 3 Bom. H. C. R. 34. [Couch, C.J., and Newton and Warden, JJ. Oct. 3, 1866.]

THE words in s. 3 of Act X. of 1862, "unless in any case in which a higher penalty is imposed" and "not exceeding," apply both to the penalty of Rs. 100 and to one higher than ten times the value of the omitted stamp. Attesting witnesses and persons who draft documents, and note the fact with their signatures at the foot, do not come within the words, "make, execute, sign, or be a party to" used in the section, and are therefore not punishable under it.—PRO. FEB. 15, 1867, 3 Mad. H. C. R. Ap. 27.

CONVICTION and sentence under s. 3 of Act X. of 1862 (Stamp Act) reversed, because no complaint had been made before the trying Magistrate. A memorandum, under the signature of the Collector, sanctioning the prosecution, cannot be accepted in the place of a complaint so as to authorize the issuing of a summons.—REG. *v.* BAI DIVALI, 5 Bom. H. C. R. 48. [Couch, C.J., and Newton, J. June 18, 1868.]

A COMPLAINT preferred by a Munsif under s. 168 of the Criminal Procedure Code need not, though it do not bear the seal of the Munsif's Court, be on stamped paper.—REG. *v.* SAJJAN VALAD VITHU, 5 Bom H.C.R. 104. [Newton and Tucker, JJ. Dec. 17, 1868.]

A PROSECUTION, under s. 3 of Act X. of 1862, not having been authorized by the Collector of the stamp-revenue of the district or any other officer specially authorized by the Government in that behalf, is, under s. 52 of that Act, altogether irregular.—QUEEN *v.* ADJOODHYA PERSHAD, 2 N.-W. P. 188. Spankie, J. May 13, 1870.]

S. 409 of the Penal Code does not limit the mode in which a trust arises, whether by specific order, or by reason of its being part of the proper duty of a public functionary. Where, therefore, it was proved that the head clerk of an office entrusted the management of stamps, with the knowledge and sanction of his superiors, to one of his assistants, the latter was held to be guilty of criminal misappropriation by a public servant within the meaning of s. 409 when he made away with the stamps.—QUEEN *v.* RAM DHUN DEY, 13 W. R. 77. [Jackson and Glover, JJ. May 28, 1870.]

INTENTION to evade payment of stamp-duty is not an essential ingredient in the offence described by s. 29 of Act XVIII. of 1869. *Held* that the donor under a deed insufficiently stamped was properly convicted, but that the donee had committed no offence under the section.—PRO., Nov. 28, 1870, 6 Mad. H. C. R. Ap. 5.

THE exemption of the Government of India, dated the 19th September 1870, cannot be extended to copies of the statement of evidence and grounds of conviction. Persons desirous of obtaining copies of such documents for the purpose of appeal must furnish stamped paper on which the copies are to be written.—PRO., JAN 5, 1871, 6 Mad. H. C R. Ap. 12.

THE illegal seizure and detention of cattle, to which s. 14 of Act III. of 1857 refers, is not an "offence" within the meaning of s. 31 and Sch. II., art. 1, cl. *b*, of the Court-fees Act (VII. of 1870). Complaints of such illegal seizure and detention do not require a stamp. If such complaints be stamped, it is not competent for the Court to direct that the accused shall repay the amount of such stamp to the complainant.—REG. *v.* AVJI BIN NARU, 8 Bom. H. C. R. 22. [Bayley and Melvill, JJ. May 17, 1871.]

THE accused, being entrusted to put a proper amount of stamps on a letter, and return such as might not be required, did not return them, but misappropriated stamps to the value of two annas, and was convicted and punished under s. 49 of the Post-office Act (XIV. of 1866), instead of under the Penal Code for criminal breach of trust. As the accused had not been sentenced to a larger amount of punishment than could

Act 2. have been awarded for criminal breach of trust, nor shown to have been prejudiced by the error of convicting him under the Post-office Act, the High Court could not, under s. 426, Code of Criminal Procedure, reverse or alter the sentence, pointing out at the same time that this was one of those cases in which it was a mistake to look at the smallness of the amount misappropriated rather than to the gravity of the offence.—IN THE MATTER OF NOBIN CHUNDER DUTT, 17 W. R. 50. [Couch, C.J., and Ainslie, J. April 13, 1872.]

By s. 6 of Act I. of 1868 an offence committed under s. 3 of Act X. of 1862, when that enactment was in force, is still an offence, and may be tried under that enactment. By force of s. 3, cl. 1, of Act I. of 1868, the mere repealing of s. 2 and Sch. III. of Act XVIII. of 1869 by Act XIV. of 1870 did not *per se* revive the repealed portions of Act X. of 1862.—PRO., JULY 30, 1872, 7 Mad. H. C. R. Ap. 8.

THAT which the Magistrate has to adjudicate upon, on a prosecution coming before him under s. 24 of the Stamp Act, is, whether an offence against the Act has been committed, and whether the prosecution has been brought before him by the proper officer. Any person who makes himself liable by committing an offence within the terms of s. 29 and the following sections, and who is prosecuted by the Collector or other officer duly empowered, may be convicted by the Magistrate under s. 44. If an instrument called a promissory note or other document of that kind, and as such liable to the duty imposed by the Act, is not duly stamped, the person subject to penalty is the person who makes it, and not the person in whose favour it is made. The Magistrate of the District should not himself try a case in which he instituted the prosecution as Collector.—QUEEN *v.* NADI CHUND PODDAR, 24 W. R. 1. [Jackson and McDonell, JJ. April 29, 1875.]

THE accused was prosecuted under Act XVIII. of 1869, s. 29, for executing a document on insufficiently-stamped paper. The document recited that, "whereas A and B have sold to me 2 gandas 3 cowries of land under a kobala, dated the 9th of Jeyt 1283, in lieu of a consideration of Rs. 695, and whereas I have returned to the vendors in all 4 cottas of land worth about Rs. 25, and whereas, in lieu of the said land, the said vendors have given me 4 cottas of zerait land held by them, now I or my heirs shall have no objection or contest whatever in regard to the mutual exchange of lands between the vendors and me, the purchaser; hence I have executed this chitti by way of conveyance or deed of exchange, which may be of service when required." This document bore a stamp of eight annas, and it was executed only by the accused, and presented by him for registration. *Held* that the document was an instrument of transfer within the meaning of art. 38, Sch. II., Act XVIII. of 1869. *Held* also that a Magistrate is bound, for the purpose of ascertaining whether any and what penalty should be imposed, to consider whether a person, prosecuted under s. 29, Act XVIII. of 1869, had any intention to defraud by evading payment of stamp-duty.—EMPRESS *v.* DWARKANATH CHOWDHRY, I. L. R., 2 Cal. 399. [Garth, C.J., and Kemp, Macpherson, Markby, and Ainslie, JJ. Jan. 22, 1877.]

A MAGISTRATE, who has been authorized by the Collector of a district, under s. 43 of the Stamp Act, to prosecute offenders against the stamp-laws, is not competent also to try persons whom he prosecutes. The Collector should appoint some person other than a Magistrate to conduct the prosecution.—EMPRESS *v.* GANGADHUR BHUNJO, I. L. R., 3 Cal. 622; 2 C. L. R. 179. [Markby and Prinsep, JJ. April 16, 1878.]

THE Collector, being primarily responsible for the prosecution of offences against the Stamp Acts of 1869 and 1879, should not himself try, as a Magistrate, a person accused of an offence against either of those Acts.—EMPRESS *v.* DEOKI NANDAN LAL, I. L. R., 2 All. 806. [Straight, J. April 12, 1880.]

SIX persons acted as arbitrators in a dispute between two of their fellow-villagers, and delivered their award in writing. Subsequently, the award was filed in evidence by one of the disputants in the civil suit in the Court of the Munsif of Cuttack, who, on the ground that the document bore no stamp, impounded it, and forwarded it to the Collector, who ordered the writer to be prosecuted. The Deputy Magistrate, to whom the case was referred, summoned the six persons who had acted as arbitrators, and fined them Rs. 25 each. On a reference to the High Court by the District Magistrate, *held* that the conviction was illegal, and should be set aside; *held* also that the procedure laid down in s. 37 of the Stamp Act must be strictly followed, and that, before a prosecution can be instituted under s. 40, the Collector is bound to form an opinion as to whether the offence was committed with the intention of evading payment of the proper duty.—EMPRESS *v.* SODDANUND MAHANTY, I. L. R., 8 Cal. 259; 10 C. L. R. 365. [Pontifex and Field, JJ. Dec. 14, 1881.]

THE sale of court-fee stamps without a license is not an offence.—EMPRESS *v.*

JALLU, I. L. R., 4 All. 216. [Stuart, C.J., and Straight, Oldfield, Brodhurst, and Tyrrel, JJ. Jan. 17, 1882.]

S. 51, Ch. VI. of Act I. of 1879, enacts that, "subject to such rules as may be made by the Governor-General in Council as to the evidence which the Collector may require, allowance shall be made by the Collector for impressed stamps spoiled in the cases hereinafter mentioned," &c. According to a rule made with reference to that section, "the Collector may require every person claiming a refund under Ch. VI. of the said Act, or his duly-authorized agent, to make an oral deposition on oath, &c. *Held*, therefore, that the Collector himself is the officer, and no other, to whom power is given by law to make inquiries into applications for allowances for spoiled stamps, to take evidence on oath in reference thereto, and to grant or refuse such applications, and he cannot delegate his authority in the matter. *Held*, therefore, where a person had applied for a refund under Ch. VI. of Act I. of 1879, and the Collector made over the application for inquiry to a Deputy Collector, that the Deputy Collector was not entitled to put the witnesses produced by the applicant on their oaths, and consequently, in reference to the statement of such witnesses, no charge under s. 181 or s. 193 of the Penal Code was sustainable.—EMPRESS v. NIAZ ALI, I. L. R., 5 All. 17. [Stuart, C.J., and Straight, J. July 24, 1882.]

A EXECUTED to B on plain paper an instrument which should have been executed on a paper bearing a four-anna stamp. B filed a suit against A in the Civil Court, and produced the instrument in evidence. The Civil Court called upon A to pay the duty and penalty, and, on A's refusal to pay, impounded the instrument, and sent it to the Collector. The Collector, concurring with the opinion of the Civil Court, sanctioned the prosecution, in the Criminal Court, of both A and B, but without requiring the payment of the duty and penalty. The prosecution resulted in the conviction of A under s. 61 of the Stamp Act (I. of 1879), and of B of abetment of A's offence. *Held* that the convictions were illegal, inasmuch as the Collector failed to allow an opportunity of paying the duty and penalty. *Held*, further, that mere receipt of an unstamped instrument did not constitute the offence of an abetment of the execution of such an instrument.—EMPRESS v. JANKI, I. L. R., 7 Bom. 82. [West and Pinhey, JJ. Nov. 2, 1882.]

THE term "accepting" used in s. 61 of the Stamp Act, 1879, does not mean "receiving," but "executing as acceptor." To receive a promissory note not duly stamped, and put it in suit, does not constitute an offence under s. 61 of the Stamp Act, 1879.—QUEEN v. GOLAM HOSSEIN SAHEB, I. L. R., 7 Mad. 71. [Turner, C.J. June 7, 1883.]

A COLLECTOR is not bound to hold a formal inquiry, or to record proceedings, before directing a prosecution under s. 40 of the Stamp Act, 1879, for an offence against the Stamp-law. The law does not require intention to be proved as a part of such offence.—QUEEN-EMPRESS v. PALANI, I. L. R., 7 Mad. 537. [Turner, C.J., and Hutchins, J. July 25, 1884.]

PROSECUTION for an offence committed in contravention of s. 64 of the Stamp Act (I. of 1879) cannot be instituted unless with the previous sanction of the Collector under s. 69 of the same Act.—QUEEN-EMPRESS v. JETHMAL, I. L. R., 9 Bom. 27. [West and Nanabhai Haridas, JJ. Aug. 24, 1884.]

AN entry made by a creditor in the khatta-book of the debtor, and signed by him for the payment of a sum of money in discharge of a debt, is a "receipt" within the meaning of s. 3, cl. 17, of the Stamp Act, and, as such, must be stamped under art. 52, Sch. I., of that Act.—QUEEN-EMPRESS v. JAGGERNATH, I. L. R., 11 Cal. 267. [Tottenham and Ghose, JJ. Feb. 24, 1885.]

A DEBTOR, having paid a sum of money to his creditor, accepted from the latter an unstamped receipt, promising to affix a stamp thereto. *Held* that this did not constitute abetment, within the meaning of s. 107 of the Penal Code, of the offence of making an unstamped receipt. *Empress* v. *Bahadur Singh* (Weekly Notes, 1885. p. 30) distinguished. *Empress* v. *Janki* (I. L. R., 7 Bom. 82) and *Empress* v. *Bhairon* (Weekly Notes, 1884, p. 37) referred to.—QUEEN-EMPRESS v. MITTHU LAL, I. L. R., 8 All. 18 [Petheram, C.J. Oct. 26, 1885.]

THE first paragraph of s. 11 of the General Stamp Act (I. of 1879) applies to cases in which the instrument chargeable with duty may be stamped after execution. A bill for the monthly salary of a Government official was sent to the Treasury for payment, when it was discovered that the one-anna receipt stamp affixed thereto was not cancelled, and a prosecution was thereupon instituted by the Collector against the official in question, who had executed the instrument, under s. 62 of the General Stamp Act. The accused was convicted under that section by the Deputy Magistrate, and the District Magistrate on appeal, holding that, upon the evidence, the conviction should have been for abetment, and not for the principal offence,

Act 2. altered the finding accordingly to a conviction under s. 109 of the Penal Code, read with ss. 11 and 62 of the General Stamp Act. *Held* that the receipt to the salary-bill in question was an instrument which was required to be stamped before or at the time of execution, and was not of the kind contemplated by the first paragraph of s. 11 of the General Stamp Act; that consequently there was no abetment of any offence under ss. 11 and 62 of the Act; that the offence which appeared to have been committed was one under the 2nd paragraph of s. 61; but that, no sanction having been given by the Collector under s. 69 for a prosecution under s. 61, it was not advisable to interfere further than by setting aside the conviction and sentence.—QUEEN-EMPRESS *v.* RAHAT ALI KHAN, I. L. R., 9 All. 210. [Edge, C.J. Nov. 30, 1886.]

M ACKNOWLEDGED receipt of a cheque for Rs. 100 by letter. The letter was not stamped. *Held* that M was properly convicted under s. 61 of the Indian Stamp Act, 1879.—QUEEN-EMPRESS *v.* MUTTIRULANDI, I. L. R., 11 Mad. 329. [Collins, C.J., and Muttusami Ayyar, J. Oct. 20, 1887.]

A DISTRICT JUDGE impounded a partition-deed produced before him, and forwarded it to the Collector under s. 35 of the Stamp Act, 1879, being of opinion that the executant of the deed had committed an offence under s. 63. The Collector, under s. 69, sanctioned the prosecution of the executant, who was convicted by the Magistrate of an offence under s. 63 of the Act. On appeal the Sessions Court acquitted him on the ground that the Collector had not complied with s. 37 (*b*) or s. 40 of the Act. *Held* that the acquittal was wrong. *Empress* v. *Dwarkanath Chowdhry* (I. L. R., 2 Cal. 399), *Empress* v. *Soddanund Mahanty* (I. L. R., 8 Cal. 259), *Empress* v. *Janki* (I. L. R., 7 Bom. 82), considered.—QUEEN-EMPRESS *v.* VENKATRAYADU, I. L. R., 12 Mad. 231. [Collins, C.J., and Wilkinson, J. Jan. 18, 1888.]

DOCUMENTS which are in form acknowledgments only are not converted into bonds as defined in s. 3, cl. 4 (*b*), of the Stamp Act (I. of 1870), merely because they contain memoranda as to the rate of interest at which the loan is made, and are attested by witnesses. No document can be a bond within the above section, unless it is one which, by itself, creates an obligation to pay the money.—HIRA LAL SIRCAR *v.* QUEEN-EMPRESS, I. L. R., 22 Cal. 757. [Petheram, C.J., and Beverley, J. May 10, 1895.]

THE amount payable on a conveyance under the Stamp Act, Sch. I., art. 21, is properly calculated on the consideration set forth therein, and not on the intrinsic value of the property conveyed.—REFERENCE UNDER STAMP ACT, s. 46, I. L. R., 20 Mad. 27. [Collins, C.J., and Subramania Ayyar and Davies, JJ. Sep. 5, 1896.]

UNDER s. 61 of Act I. of 1879, the "person accepting" a promissory note not duly stamped is the person who executes such note as acceptor, not a person who merely receives the note. The mere receiver of an unstamped or insufficiently stamped promissory note is not as such liable to any penalty under this section either as principal or abettor. *Queen* v. *Gulam Husain Saheb* (I. L. R., 7 Mad. 71), *The Queen* v. *Nadi Chand Peddar* (24 W. R. 1), *Empress* v. *Janki* (I. L. R., 7 Bom. 82), and *Empress* v. *Gopal Das* (Weekly Notes, 1883, p. 145), referred to.—QUEEN-EMPRESS *v.* NIHAL CHAND, I. L. R., 20 All. 440. [Aikman, J. May 26, 1898.]

A made a payment of Rs. 22 to B. At A's request, C made a memorandum in writing to the following effect: "B has received Rs. 22," but affixed no stamp to it. He was charged and convicted, under s. 61 of the Stamp Act (I. of 1879), for not affixing a receipt-stamp to the memorandum. *Held* (reversing the conviction) that the memorandum was not a receipt. To constitute a receipt within the meaning of s. 3 (17) of the Stamp Act, there must be an acknowledgment, either express or implied, of the receipt, and not a mere statement that money was received.—*In re* JAMNADAS HARINARAN, I. L. R., 23 Bom. 54. [Parsons and Ranade, JJ. Dec. 26, 1897.]

THE expression "signing otherwise than as a witness, etc.," as used in s. 61 of the Stamp Act, means the writing of a person's name by himself or by his authority, with the intent of authenticating a document as being that of the person whose name is so written. An ordinary agent authorized to sign on behalf of his principal would fall within this description, and consequently within the purview of the section. Where, therefore, a person signed a firm's name to certain letters under the authority of the firm, the circumstance that the body of the letters were written at the dictation of the manager of the firm was held not to be sufficient to distinguish his case from that of any other agent. The term "person" in sections 61 and 64 of the Stamp Act, includes the members of a trading partnership. So where certain persons, members of a firm carrying on business in Calcutta as general dealers (which firm had acknowledged the receipt of certain sums of

money from one *L*, and had refused to grant him a stamped receipt), were charged under section 61 of the Stamp Act with having granted an unstamped receipt, and under section 64 of that Act with having refused to grant a duly stamped receipt, it was held that their liability depended on whether they were in contemplation of law the persons who signed the letters of acknowledgment or refusal to give the receipt, and not on whether they were present at the writing of the letters, or knew of the writing of them; provided that it was established by evidence that a requisition for a receipt had been made under section 58 of that Act.—QUEEN-EMPRESS *v.* KHETTER MOHUN CHOWDHRY, I. L. R., 27 Cal. 324. [Prinsep and Hill, JJ. Jan. 8, 1900.]

ART. 29 of Sch. I. of the Stamp Act (I. of 1879) applies to an instrument evidencing an agreement to secure the repayment of a loan, executed at the time the loan is made, and not to the case of an assignment by way of mortgage of a valuable security to secure a pre-existing debt. It contemplates an instrument contemporaneous with the advance and with the loan. For the purpose of ascertaining what stamp-duty is payable on an instrument alleged to be a mortgage, it is necessary to see if the instrument is a mortgage as defined in the Stamp Act.—QUEEN-EMPRESS *v.* DEBENDRA KRISHNA MITTER, I. L. R., 27 Cal. 587. [Maclean, C.J., and Macpherson, J. Feb. 23, 1900.]

Two letters were written to petitioner in which the writer recommended him to advance sums of money to the bearers of the letters, and bound himself to repay those sums, if lent, in case of default on the part of the borrowers. The loans were made by petitioner, who kept the letters. A prosecution having been subsequently commenced against petitioner under section 67 of the Stamp Act, 1879, for defrauding Government of stamp revenue by an illegal device, and he having been convicted on the ground that when the loans were granted the documents became letters of guarantee, and as such liable to stamp duty: *Held* that the execution of a document which on its face required to be and was not stamped could not be said to be an act "contrivance or device not specially provided for by this Act or any other law for the time being in force;" and that punishment for the act of the executant of such a document, if it were punishable at all, was provided for under section 61 of the Stamp Act, 1879, and it could not therefore be dealt with under section 67. Also that the act of a person receiving an unstamped document might amount to abetment of an offence, having regard to section 61 of the Stamp Act, 1879, and to the definition of an "offence" in s. 40 of the Indian Penal Code, and, if so, would be an act provided for by "any other law for the time being in force," and so not within the terms of s. 67 of the Stamp Act, 1879.—QUEEN-EMPRESS *v.* SOMASUNDARAM CHETTI, I. L. R., 23 Mad. 155. [Subrahmania Ayyar, C.J., and O'Farrell, J. Aug. 24; Sep. 14, 19, 1899.]

# ACT NO. XIII. OF 1885.*

## INDIAN TELEGRAPH ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 22ND JULY 1885.

*An Act to amend the Law relating to Telegraphs in India.*

WHEREAS it is expedient to amend the law relating to telegraphs in India; Preamble. It is hereby enacted as follows:—

### PART I.

PRELIMINARY.

Short title. **1.** (*1*) This Act may be called "The Indian Telegraph Act, 1885."

Local extent. (*2*) It extends to the whole of British India and, so far as regards subjects of Her Majesty, to the dominions of Princes and States in India in alliance with Her Majesty; and

Commencement. (*3*) It shall come into force on the first day of October 1885.

Repeal and savings. **2.** The Indian Telegraph Act, 1876, is hereby repealed.

But all licenses granted, and rules made under that Act, or any Act thereby repealed, and now in force, shall, so far as they could be granted or made under this Act, be deemed to have been respectively granted and made hereunder.

Definitions. **3.** In this Act, unless there is something repugnant in the subject or context,—

(*1*) "Telegraph" means an electric, galvanic, or magnetic telegraph, and includes appliances and apparatus for transmitting or making telegraphic, telephonic, or other communications by means of electricity, galvanism, or magnetism:

(*2*) "Telegraph-officer" means any person employed either permanently or temporarily in connection with a telegraph established, maintained, or worked by the Government or by a person licensed under this Act:

(*3*) "Message" means any communication sent by telegraph, or given to a telegraph-officer to be sent by telegraph or to be delivered:

(*4*) "Telegraph line" means a wire or wires used for the purpose of a telegraph, with any casing, coating, tube, or pipe enclosing the same, and any appliances and apparatus connected therewith for the purpose of fixing or insulating the same:

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* For Statement of Objects and Reasons, see Gazette of India, 1884, Pt. V., p. 481; for Report of the Select Committee, see *ibid*, 1885, Pt. IV., p. 192; and for proceedings in Council, see *ibid*, 1884, Supplement, pp. 1169 and 1296, and *ibid*, 1885, Supplement, p. 1181.

This Act has been declared in force in Upper Burma (except the Shan States) by the Upper Burma Laws Act (XX. of 1886), s. 6 (*1*), see now s. 4 and the First Schedule to the Burma Laws Act (XIII. of 1898), by which Act XX. of 1886 has been repealed; and in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III. of 1872), s. 3, as amended by the Santhál Parganas Laws Regulation (III. of 1886), s. 2; and British Baluchistan, see s. 3 and schedule to the British Baluchistan Laws Regulation (I. of 1890).

(5) "Post" means a post, pole, standard, stay, strut, or other above-ground contrivance for carrying, suspending, or supporting a telegraph line:

(6) "Telegraph-authority" means the Director-General of Telegraphs, and includes any officer empowered by him to perform all or any of the functions of the telegraph-authority under this Act:

(7) "Local authority" means any municipal committee, district board, body of port commissioners, or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund.

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## PART II.

### PRIVILEGES AND POWERS OF THE GOVERNMENT.

Exclusive privilege in respect of telegraphs and power to grant licenses.

**4.** Within British India, the Governor-General in Council shall have the exclusive privilege of establishing, maintaining, and working telegraphs:

Provided that the Governor-General in Council may grant a license, on such conditions and in consideration of such payments as he thinks fit, to any person to establish, maintain, or work a telegraph within any part of British India.

Power for Government to take possession of licensed telegraphs, and to order interception of messages.

**5.** (1) On the occurrence of any public emergency, or in the interest of the public safety, the Governor-General in Council or a Local Government, or any officer specially authorized in this behalf by the Governor-General in Council, may—

(a) take temporary possession of any telegraph established, maintained, or worked by any person licensed under this Act, or

(b) order that any message or class of message to or from any person or class of persons, or relating to any particular subject, brought for transmission by, or transmitted, or received by, any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government or an officer thereof, mentioned in the order.

(2) If any doubt arises as to the existence of a public emergency, or whether any act done under sub-section (1) was in the interest of the public safety, a certificate signed by a Secretary to the Government of India or to the Local Government shall be conclusive proof on the point.

Power to establish telegraph on land of Railway Company.

**6.** Any Railway Company, on being required so to do by the Governor-General in Council, shall permit the Government to establish and maintain a telegraph upon any part of the land of the Company, and shall give every reasonable facility for working the same.

Power to make rules for the conduct of telegraphs.

**7.** (1) The Governor-General in Council may, from time to time, by notification in the Gazette of India, make rules* consistent with this Act for the conduct of all or any telegraphs established, maintained, or worked by the Government or by persons licensed under this Act.

(2) Rules under this section may provide for all or any of the following, among other matters, that is to say:—

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* For rules framed under this section, see Gazette of India, 1897, Pt. I., p. 559, and *ibid*, 1898, Pt. I., p. 139.

(*a*) the rates at which, and the other conditions and restrictions subject to which, messages shall be transmitted;

(*b*) the precautions to be taken for preventing the improper interception or disclosure of messages;

(*c*) the period for which, and the conditions subject to which, telegrams and other documents belonging to, or being in the custody of, telegraph-officers shall be preserved; and

(*d*) the fees to be charged for searching for telegrams or other documents in the custody of any telegraph-officer.

(3) When making rules for the conduct of any telegraph established, maintained, or worked by any person licensed under this Act, the Governor-General in Council may, by the rules, prescribe fines for any breach of the same:

Provided that the fines so prescribed shall not exceed the following limits, namely:—

(i) when the person licensed under this Act is punishable for the breach, one thousand rupees; and, in the case of a continuing breach, a further fine of two hundred rupees for every day after the first during the whole or any part of which the breach continues;

(ii) when a servant of the person so licensed, or any other person, is punishable for the breach, one-fourth of the amounts specified in clause i.

Revocation of licenses.

**8.** The Governor-General in Council may, at any time, revoke any license granted under section 4, on the breach of any of the conditions therein contained, or in default of payment of any consideration payable thereunder.

Government not responsible for loss or damage.

**9.** The Secretary of State for India in Council shall not be responsible for any loss or damage which may occur in consequence of any telegraph-officer failing in his duty with respect to the receipt, transmission, or delivery of any message; and no such officer shall be responsible for any such loss or damage, unless he causes the same negligently, maliciously, or fraudulently.

## PART III.

### POWER TO PLACE TELEGRAPH LINES AND POSTS.

Power for telegraph-authority to place and maintain telegraph lines and posts.

**10.*** The telegraph-authority may, from time to time, place and maintain a telegraph-line under, over, along, or across, and posts in or upon, any immoveable property:

Provided that—

(*a*) the telegraph-authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the Government, or to be so established or maintained;

(*b*) the Government shall not acquire any right other than that of user only in the property under, over, along, across, in, or upon which the telegraph-authority places any telegraph-line or post; and

* For power of Governor-General in Council to confer upon any public officer any of the powers of the telegraph-authority with respect to the placing of lines and posts, see the Electricity Act (XIII. of 1887), s. 6.

(*c*) except as hereinafter provided, the telegraph-authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and

(*d*) in the exercise of the powers conferred by this section, the telegraph-authority shall do as little damage as possible; and, when it has exercised those powers in respect of any property other than that referred to in clause (*c*), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

Power to enter on property in order to repair or remove telegraph-lines or posts.

**11.** The telegraph-authority may, at any time, for the purpose of examining, repairing, altering, or removing any telegraph-line or post, enter on the property under, over, along, across, in, or upon which the line or post has been placed.

*Provisions applicable to Property vested in or under the Control or Management of Local Authorities.*

Power for local authority to give permission under section 10, clause (*c*), subject to conditions.

**12.** Any permission given by a local authority under section 10, clause (*c*), may be given subject to such reasonable conditions as that authority thinks fit to impose, as to the payment of any expenses to which the authority will necessarily be put in consequence of the exercise of the powers conferred by that section, or as to the time or mode of execution of any work, or as to any other thing connected with or relative to any work undertaken by the telegraph-authority under those powers.

Power for local authority to require removal or alteration of telegraph-line or post.

**13.** When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph-authority under, over, along, across, in, or upon any property vested in or under the control or management of a local authority, and the local authority, having regard to circumstances which have arisen since the telegraph-line or post was so placed, considers it expedient that it should be removed, or that its position should be altered, the local authority may require the telegraph-authority to remove it or alter its position, as the case may be.

Power to alter position of gas or water-pipes or drains.

**14.** The telegraph-authority may, for the purpose of exercising the powers conferred upon it by this Act in respect of any property vested in or under the control or management of a local authority, alter the position thereunder of any pipe (not being a main) for the supply of gas or water, or of any drain (not being a main drain):

Provided that—

(*a*) when the telegraph-authority desires to alter the position of any such pipe or drain, it shall give reasonable notice of its intention to do so, specifying the time at which it will begin to do so, to the local authority, and, when the pipe or drain is not under the control of the local authority, to the person under whose control the pipe or drain is;

(*b*) a local authority or person receiving notice under clause (*a*) may send a person to superintend the work, and the telegraph-authority shall execute the work to the reasonable satisfaction of the person so sent.

**15.** (*1*) If any dispute arises between the telegraph-authority and a local authority in consequence of the local authority refusing the permission referred to in section 10, clause (*c*), or prescribing any condition under section 12, or in consequence of the telegraph-authority omitting to comply with a requisition made under section 13, or otherwise in respect of the exercise of the powers conferred by this Act, it shall be determined by such officer as the Local Government may appoint either generally or specially in this behalf.

Disputes between telegraph-authority and local authority.

(*2*) An appeal from the determination of the officer so appointed shall lie to the Local Government; and the order of the Local Government shall be final.

*Provisions applicable to other Property.*

**16.** (*1*) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (*d*) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph-authority shall be permitted to exercise them.

Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority.

(*2*) If, after the making of an order under sub-section (*1*), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code.

(*3*) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (*d*), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(*4*) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph-authority may pay into the Court of the District Judge such amount as he deems sufficient, or, where all the disputing parties have in writing admitted the amount tendered to be sufficient, or the amount has been determined under sub-section (*3*), that amount; and the District Judge, after giving notice to the parties, and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation, or, as the case may be the proportions in which the persons interested are entitled to share in it.

(*5*) Every determination of a dispute by a District Judge under sub-section (*3*) or sub-section (*4*) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph-authority from the person who has received the same.

**17.** (*1*) When, under the foregoing provisions of this Act, a telegraph-line or post has been placed by the telegraph authority under, over, along, across, in, or upon any property not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof, or to a higher or lower level or altered in form, he may require the telegraph-authority to remove or alter the line or post accordingly:

Removal or alteration of telegraph-line or post on property other than that of a local authority.

Provided that, if compensation has been paid under section 10, clause (*d*), he shall, when making the requisition, tender to the telegraph-authority the amount

requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.

(2) If the telegraph-authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate to order the removal or alteration.

(3) A District Magistrate receiving an application under sub-section (2) may, in his discretion, reject the same, or make an order, absolutely or subject to conditions, for the removal of the telegraph-line or post to any other part of the property, or to a higher or lower level, or for the alteration of its form, and the order so made shall be final.

*Provisions applicable to all Property.*

**Removal of trees interrupting telegraphic communication.**

**18** (1) If any tree standing or lying near a telegraph-line interrupts, or is likely to interrupt, telegraphic communication, a Magistrate of the first or second class may, on the application of the telegraph authority, cause the tree to be removed or dealt with in such other way as he deems fit.

(2) When disposing of an application under sub-section (1), the Magistrate shall, in the case of any tree in existence before the telegraph-line was placed, award to the persons interested in the tree such compensation as he thinks reasonable, and the award shall be final.

**Telegraph-lines and posts placed before the passing of this Act.**

**19.** Every telegraph-line or post placed before the passing of this Act under, over, along, across, in, or upon any property for the purposes of a telegraph established or maintained by the Government, shall be deemed to have been placed in exercise of the powers conferred by, and after observance of all the requirements of, this Act.

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## PART IV.

### PENALTIES.

**Establishing, maintaining, or working unlicensed telegraph, or breaking condition of license.**

**20.** If any person establishes, maintains, or works a telegraph within British India, otherwise than as permitted by a license granted under section 4, or breaks any condition contained in such a license, he shall be punished with fine which may extend to one thousand rupees, and with a further fine which may extend to five hundred rupees for every week during which the line is maintained or worked, or the breach of the condition continues.

**Using such telegraphs.**

**21.** If any person, knowing or having reason to believe that a telegraph has been established or is maintained or worked in contravention of this Act, transmits or receives any message by such telegraph, or performs any service incidental thereto, or delivers any message for transmission by such telegraph, or accepts delivery of any message sent thereby, he shall be punished with fine which may extend to fifty rupees.

**Opposing establishment of telegraphs on railway-land.**

**22.** If a Railway Company, or an officer of a Railway Company, neglects or refuses to comply with the provisions of section 6, it or he shall be punished with fine which may extend to one thousand rupees for every day during which the neglect or refusal continues.

Intrusion into signal-room, trespass in telegraph-office, or obstruction.

**23.** If any person—

(*a*) without permission of competent authority, enters the signal-room of a telegraph-office of the Government, or of a person licensed under this Act, or

(*b*) enters a fenced enclosure round such a telegraph-office in contravention of any rule or notice not to do so, or

(*c*) refuses to quit such room or enclosure on being requested to do so by any officer or servant employed therein, or

(*d*) wilfully obstructs or impedes any such officer or servant in the performance of his duty,

he shall be punished with fine which may extend to five hundred rupees.

Unlawfully attempting to learn contents of messages.

**24.** If any person does any of the acts mentioned in section 23 with the intention of unlawfully learning the contents of any message, or of committing any offence punishable under this Act, he may (in addition to the fine with which he is punishable under section 23) be punished with imprisonment for a term which may extend to one year.

Intentionally damaging or tampering with telegraphs.

**25.** If any person, intending—

(*a*) to prevent or obstruct the transmission or delivery of any message, or

(*b*) to intercept, or to acquaint himself with, the contents of any message, or

(*c*) to commit mischief,

damages, removes, tampers with, or touches any battery, machinery, telegraph-line, post, or other thing whatever, being part of, or used in or about, any telegraph, or in the working thereof,

he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Telegraph-officer or other official making away with or altering, or unlawfully intercepting or disclosing, messages, or divulging purport of signals.

**26.** If any telegraph-officer, or any person, not being a telegraph-officer, but having official duties connected with any office which is used as a telegraph-office,—

(*a*) wilfully secretes, makes away with, or alters, any message which he has received for transmission or delivery, or

(*b*) wilfully, and otherwise than in obedience to an order of the Governor-General in Council, or of a Local Government, or of an officer specially authorized by the Governor-General in Council to make the order, omits to transmit, or intercepts or detains, any message or any part thereof, or otherwise than in pursuance of his official duty, or in obedience to the direction of a competent Court, discloses the contents, or any part of the contents, of any message, to any person not entitled to receive the same, or

(*c*) divulges the purport of any telegraphic signal to any person not entitled to become acquainted with the same,

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he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Telegraph-officer fraudulently sending messages without payment.

**27.** If any telegraph-officer transmits by telegraph any message on which the charge prescribed by the Government, or by a person licensed under this Act, as the case may be, has not been paid intending thereby to defraud the Government or that person, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Misconduct.

**28.** If any telegraph-officer, or any person not being a telegraph-officer, but having official duties connected with any office which is used as a telegraph-office, is guilty of any act of drunkenness, carelessness, or other misconduct, whereby the correct transmission or the delivery of any message is impeded or delayed, or if any telegraph-officer loiters or delays in the transmission or delivery of any message, he shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

Sending fabricated message.

**29.** If any person transmits or causes to be transmitted by telegraph a message which he knows to be false or fabricated, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Retaining a message delivered by mistake.

**30.** If any person fraudulently retains, or wilfully secretes, makes away with, or detains a message, which ought to have been delivered to some other person, or, being required by a telegraph-officer to deliver up any such message, neglects or refuses to do so, he shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

Bribery.

**31.** A telegraph-officer shall be deemed a public servant within the meaning of sections 161, 162, 163, 164, and 165 of the Indian Penal Code; and in the definition of "legal remuneration" contained in the said section 161, the word "Government" shall, for the purposes of this Act, be deemed to include a person licensed under this Act.

Attempts to commit offences.

**32.** Whoever attempts to commit any offence punishable under this Act shall be punished with the punishment herein provided for the offence.

## PART V.

### SUPPLEMENTAL PROVISIONS.

Power to employ additional police in places where mischief to telegraphs is repeatedly committed.

**33.** (*1*) Whenever it appears to the Local Government that any act causing or likely to cause wrongful damage to any telegraph is repeatedly and maliciously committed in any place, and that the employment of an additional police-force in that place is thereby rendered necessary, the Local Government may send such additional police-force as it thinks fit, to the place, and employ the same therein so long as, in the opinion of that Government, the necessity of doing so continues.

(*2*) The inhabitants of the place shall be charged with the cost of the additional police-force, and the District Magistrate shall, subject to the orders of the

Local Government, assess the proportion in which the cost shall be paid by the inhabitants according to his judgment of their respective means.

(*3*) All moneys payable under sub-section (*2*) shall be recoverable either under the warrant of a Magistrate by distress and sale of the moveable property of the defaulter within the local limits of his jurisdiction, or by suit in any competent Court.

(*4*) The Local Government may, by order in writing, define the limits of any place for the purposes of this section.

**34.*** (*1*) This Act, in its application to the presidency-towns, shall be read as if for the words "District Magistrate" in section 16, sub-section (*1*), and section 17, sub-sections (*2*) and (*3*), for the words "Magistrate of the first or second class" in section 18, sub-section (*1*), and for the word "Magistrate" in section 18, sub-section (*2*), there had been enacted the words "Commissioner of Police," and for the words "District Judge" in section 16, sub-sections (*3*), (*4*), and (*5*), the words "Chief Judge of the Court of Small Causes."

**Application of Act to presidency-towns and Rangoon.**

(*2*) Section 16, in its application to the town of Rangoon, shall be read as if, for the words "District Judge," whenever they occur in that section, there had been enacted the words "Judge of the Court of Small Causes."

(*3*) The fee in respect of an application to the Chief Judge of a Presidency Court of Small Causes under sub-section (*3*) of section 16 shall be the same as would be payable under the Court Fees Act, 1870, in respect of such an application to a District Judge beyond the limits of a presidency-town, and fees for summonses and other processes in proceedings before the Chief Judge under sub-section (*3*) or sub-section (*4*) of that section shall be payable according to the scale set forth in the fourth schedule to the Presidency Small Cause Courts Act, 1882.

* S. 34 has been added by the Indian Telegraphs (Presidency-towns) Act (XI. of 1888).

# ACT NO. VI. OF 1878.*

## THE INDIAN TREASURE-TROVE ACT, 1878.

RECEIVED THE G.-G.'S ASSENT ON THE 13TH FEBRUARY 1878.

*An Act to amend the Law relating to Treasure-trove.*

Preamble. WHEREAS it is expedient to amend the law relating to treasure-trove: It is hereby enacted as follows:—

*Preliminary.*

Short title. **1.** This Act may be called "The Indian Treasure Trove Act, 1878;"

Extent. It extends to the whole of British India;

Commencement. And it shall come into force at once.

**2.** [*Repealed by Act XII. of 1891.*]

Interpretation-clause. **3.** In this Act—

"Treasure." "Treasure" means anything of any value hidden in the soil, or in anything affixed thereto:

"Collector." "Collector" means (1) any Revenue-officer in independent charge of a district, and (2) any officer appointed by the Local Government to perform the functions of a Collector under this Act.†

"Owner." When any person is entitled, under any reservation in an instrument of transfer of any land or thing affixed thereto, to treasure in such land or thing, he shall, for the purposes of this Act, be deemed to be the owner of such land or thing.

*Procedure on finding Treasure.*

Notice by finder of treasure. **4.** Whenever any treasure, exceeding in amount or value ten rupees, is found, the finder shall, as soon as practicable, give to the Collector notice in writing—

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* For the Statement of Objects and Reasons, see Gazette of India, 1877, Pt. V., p. 1463; for discussions in Council, see *ibid*, Supplement, pp 1288 and 1326; *ibid*, 1878, pp. 207 and 287.

This Act has been declared in force in—

(1) Angul and the Khondmals by the Angul District Regulation (I. of 1894), s. 3;

(2) The Santhál Parganas by the Santhál Parganas Settlement Regulation (III. of 1872), s. 3, as amended by the Santhál Parganas Laws Regulation (III. of 1886), s. 3;

(3) Upper Burma generally (except the Shan States), by the Upper Burma Laws Act (XX. of 1886), s. 6.

It has also been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following portions of the de-regulationized Scheduled Districts of the Chutea Nagpur Division, namely:—

The Districts of Hazáribágh, Lohárdaga, and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum, see Gazette of India, 1881, Pt. I., p 504. The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894.

† In Bombay Mamlatdars have been appointed to perform the functions of Collectors under the Act, see Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, p. 163.

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(*a*) of the nature and amount or approximate value of such treasure;

(*b*) of the place in which it was found;

(*c*) of the date of the finding;

and either deposit the treasure in the nearest Government Treasury, or give the Collector such security as the Collector thinks fit, to produce the treasure at such time and place as he may, from time to time, require.

Notification requiring claimants to appear.

**5.** On receiving a notice under section 4, the Collector shall, after making such enquiry (if any) as he thinks fit, take the following steps (namely):—

(*a*) he shall publish a notification in such manner as the Local Government from time to time prescribes in this behalf to the effect that, on a certain date (*mentioning it*) certain treasure (*mentioning its nature, amount, and approximate value*) was found in a certain place (*mentioning it*), and requiring all persons claiming the treasure or any part thereof to appear personally or by agent before the Collector on a day and at a place therein mentioned, such day not being earlier than four months, or later than six months, after the date of the publication of such notification;

(*b*) when the place in which the treasure appears to the Collector to have been found was, at the date of the finding, in the possession of some person other than the finder, the Collector shall also serve on such person a special notice in writing to the same effect.

Forfeiture of right on failure to appear.

**6.** Any person having any right to such treasure or any part thereof as owner of the place in which it was found or otherwise, and not appearing as required by the notification issued under section 5, shall forfeit such right.

Matters to be enquired into and determined by the Collector.

**7.** On the day notified under section 5 the Collector shall cause the treasure to be produced before him, and shall enquire as to and determine—

(*a*) the person by whom, the place in which, and the circumstances under which, such treasure was found; and,

(*b*) as far as is possible, the person by whom, and the circumstances under which, such treasure was hidden.

Time to be allowed for suit by person claiming the treasure.

**8.** If, upon an enquiry made under section 7, the Collector sees reason to believe that the treasure was hidden, within one hundred years before the date of the finding, by a person appearing as required by the said notification, and claiming such treasure, or by some other person under whom such person claims, the Collector shall make an order adjourning the hearing of the case for such period as he deems sufficient, to allow of a suit being instituted in the Civil Court by the claimant to establish his right.

When treasure may be declared ownerless.

**9.** If, upon such enquiry, the Collector sees no reason to believe that the treasure was so hidden, or

if, where a period is fixed under section 8, no suit is instituted as aforesaid within such period to the knowledge of the Collector, or

if such suit is instituted within such period, and the plaintiff's claim is finally rejected,

the Collector may declare the treasure to be ownerless,

Appeal against such declaration.

Any person aggrieved by a declaration made under this section may appeal against the same, within two months from the date thereof, to the Chief Controlling Revenue Authority.

Subject to such appeal every such declaration shall be final and conclusive.

Proceedings subsequent to declaration.

**10.** When a declaration has been made in respect of any treasure under section 9, such treasure shall, in accordance with the provisions hereinafter contained, either be delivered to the finder thereof, or be divided between him and the owner of the place in which it has been found in manner hereinafter provided.

When no other person claims as owner of place, treasure to be given to finder.

**11.** When a declaration has been made in respect of any treasure as aforesaid, and no person other than the finder of such treasure has appeared as required by the notification published under section 5, and claimed a share of the treasure as owner of the place in which it has been found, the Collector shall deliver such treasure to the finder thereof.

When only one such person claims, and his claim is not disputed, treasure to be divided:

**12.** When a declaration has been made as aforesaid in respect of any treasure, and only one person other than the finder of such treasure has so appeared and claimed, and the claim of such person is not disputed by the finder, the Collector shall proceed to divide the treasure between the finder and the person so claiming according to the following rule (namely):—

If the finder and the person so claiming have not entered into any agreement then in force as to the disposal of the treasure, three-fourths of the treasure shall be allotted to such finder, and the residue to such person. If such finder and such person have entered into any such agreement, the treasure shall be disposed of in accordance therewith:

Provided that the Collector may in any case, if he thinks fit, instead of dividing any treasure as directed by this section,

(*a*) allot to either party the whole or more than his share of such treasure, on such party paying to the Collector for the other party such sum of money as the Collector may fix as the equivalent of the share of such other party, or of the excess so allotted, as the case may be; or

(*b*) sell such treasure or any portion thereof by public auction, and divide the sale-proceeds between the parties according to the rule hereinbefore prescribed:

Provided also that, when the Collector has, by his declaration under section 9, rejected any claim made under this Act by any person other than the said finder or person claiming as owner of the place in which the treasure was found, such division shall not be made until after the expiration of two months without an appeal having been presented under section 9 by the person whose claim has been so rejected, or, when an appeal has been so presented, after such appeal has been dismissed.

and shares to be delivered to parties.

When the Collector has made a division under this section, he shall deliver to the parties the portions of such treasure, or the money in lieu thereof, to which they are respectively entitled under such division.

In case of dispute as to ownership of place, proceedings to be stayed.

**13.** When a declaration has been made as aforesaid in respect of any treasure, and two or more persons have appeared as aforesaid, and each of them claimed as owner of the place where such treasure was found, or the right of any

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person who has so appeared and claimed is disputed by the finder of such treasure, the Collector shall retain such treasure, and shall make an order staying his proceedings with a view to the matter being enquired into and determined by a Civil Court.

Settlement of such dispute,

**14.** Any person who has so appeared and claimed may, within one month from the date of such order, institute a suit in the Civil Court to obtain a decree declaring his right; and in every such suit the finder of the treasure and all persons disputing such claim before the Collector shall be made defendants.

and division thereupon.

**15.** If any such suit is instituted, and the plaintiff's claim is finally established therein, the Collector shall, subject to the provisions of section 12, divide the treasure between him and the finder.

If no such suit is instituted as aforesaid, or if the claims of the plaintiffs in all such suits are finally rejected, the Collector shall deliver the treasure to the finder.

Power to acquire the treasure on behalf of Government.

**16.** The Collector may, at any time after making a declaration under section 9, and before delivering or dividing the treasure as hereinbefore provided, declare, by writing under his hand, his intention to acquire, on behalf of the Government, the treasure or any specified portion thereof, by payment, to the persons entitled thereto, of a sum equal to the value of the materials of such treasure or portion, together with one-fifth of such value, and may place such sum in deposit in his treasury to the credit of such persons; and thereupon such treasure or portion shall be deemed to be the property of Government, and the money so deposited shall be dealt with, as far as may be, as if it were such treasure or portion.

Decision of Collector final, and no suit to lie against him for acts done *bonâ fide*.

**17.** No decision passed or act done by the Collector under this Act shall be called in question by any Civil Court, and no suit or other proceeding shall lie against him for anything done in good faith in exercise of the powers, hereby conferred.

Collector to exercise powers of Civil Court.

**18.** A Collector making any enquiry under this Act may exercise any power conferred by the Code of Civil Procedure* on a Civil Court for the trial of suits.

Power to make rules.

**19.** The Local Government may, from time to time, make rules† consistent with this Act, to regulate proceedings hereunder.

Such rules shall, on being published in the local Gazette, have the force of law.

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* See Act XIV. of 1882, s. 3.

† For rules made under the powers conferred by this section in—
Bombay, see Bombay List of Local Rules and Orders, Vol. I., Ed. 1896, p. 163;
Burma, see Burma Laws List, Ed. 1897, p. 80;
Madras, see Madras List of Local Rules and Orders, Vol. I., Ed. 1898, p. 111;
North-Western Provinces and Oudh, see North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 55;
Central Provinces, see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 23;
Assam, see Assam List of Local Rules and Orders, Ed. 1893, p. 107.

*Penalties.*

**20.** If the finder of any treasure fails to give the notice, or does not either make the deposit or give the security required by section 4, or alters or attempts to alter such treasure so as to conceal its identity, the share of such treasure, or the money in lieu thereof, to which he would otherwise be entitled, shall vest in Her Majesty,

Penalty on finder failing to give notice, &c.

and he shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

**21.** If the owner of the place in which any treasure is found abets, within the meaning of the Indian Penal Code, any offence under section 20, the share of such treasure, or the money in lieu thereof, to which he would otherwise be entitled, shall vest in Her Majesty,

Penalty on owner abetting offence under section 20.

and he shall, on conviction before a Magistrate, be punished with imprisonment which may extend to six months, or with fine, or with both.

## SCHEDULE.

[*Repealed by the Repealing and Amending Act* (*XII. of 1891*).]

# ACT NO. VI. OF 1864.*

## THE WHIPPING ACT.

RECEIVED THE G.-G.'S ASSENT ON THE 18TH FEBRUARY 1864.

*An Act to authorize the Punishment of Whipping in certain cases.*

Preamble.

WHEREAS it is expedient that, in certain cases, offenders should be liable, under the provisions of the Indian Penal Code, to the punishment of whipping; It is enacted as follows:—

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* Short title, "The Whipping Act, 1864." See the Indian Short Titles Act (XIV. of 1897).

For the Statement of Objects and Reasons of the Bill, which was passed into law as Act VI. of 1864, see Calcutta Gazette, 1862, p. 751; for Proceedings relating to the Bill see *ibid*, Supplement, pp. 28 and 72; Gazette of India, 1864, Supplement, pp. 28, 68, and 77.

Act VI. of 1864 was declared, by the Laws Local Extent Act (XV. of 1874), s. 3, to be in force in the whole of British India, except as regards the Scheduled Districts.

It has been applied to the Santhál Parganas by the Santhál Parganas Settlement Regulation (III. of 1872), s. 3, as amended by the Santhal Parganas Laws Regulation (III. of 1886); to British Baluchistan and the Agency Territories, by the British Baluchistan Laws Regulation (I. of 1890), s. 3, and the Baluchistan Agency Laws Law, s. 4 (*1*), respectively; to Angul and the Khondmals, by the Angul District Regulation (I. of 1894), s. 3; and, save s. 6, to Upper Burma generally (except the Shan States), by the Upper Burma Laws Act (XX. of 1886), s. 6. It has been applied, save s. 6, as to which see appendix *infra*, to the Shan States [except the States of Hkamti Long and Mong-Mit (Momeik)] by the Shan States Laws and Criminal Justice Order, 1895, Burma Gazette, 1895, Pt. I., p. 262, and to the Shan State of Mong-Mit (Momeik) and its dependency Mong-Lang, by Notification No. 15, Burma Gazette, 1895 Pt. I., p. 252. Under the notification last mentioned, all enactments then in force in Upper Burma, except those in force in the town of Mandalay only, were extended to that State; to hill-tribes to which the Kachin Hill-tribes Regulation (I. of 1895) is applied.—See Regulation I. of 1895, ss. 1 (*3*) and 3 (*1*), and to hill-tribes to which the Chin Hills Regulation (V. of 1896) is applied.—See s. 3 and schedule.

It has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely:—

| | See *Gazette of India*— |
|---|---|
| Kumáon and Garhwál ... ... ... | 1876, Pt. I., p. 605. |
| Sindh ... ... ... ... ... | 1878, Pt. I., p. 482. |
| The District of Kámrup, Nowgong, Darrang, Sibsagar, Lakhimpur, Goálpára (excluding the Eastern Dvárs), and Cachar (excluding the North Cachar Hills) ... | 1878, Pt. I., p. 533. |
| Coorg ... ... ... ... ... | 1878, Pt. I., p. 747. |
| Aden ... ... ... ... ... | 1879, Pt. I., p. 434. |
| Jaunsar Báwar ... ... ... ... | 1879, Pt. I., p. 382. |
| The Scheduled portion of the Mirzápur District ... | 1879, Pt. I., p. 383. |
| The District of Sylhet ... ... ... | 1879, Pt. I., p. 631. |
| The Scheduled Districts of the Central Provinces ... | 1879, Pt. I., p 771. |
| West Jalpáiguri, the Western Dvárs, the Western Hills of Dárjiling, the Dárjiling Tarái, and the Damson Sub-division of the Dárjiling District ... | 1881, Pt. I., p. 74. |
| The Districts of Hazáribágh, Lohárdaga, and Mánbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum ... ... ... | 1881, Pt. I., p. 374. |
| The Porahat Estate in the Singbhum District ... | 1897, Pt. I., p 1059. |
| The Andaman and Nicobar Islands ... ... | 1882, Pt. I., p. 148. |
| The Districts of Hazára, Pesháwar, Kohát, Bannu, Dera Ismail Khán, and Dera Gházi Khán ... | 1886, Pt. I., p. 48. |
| The District of Lahaul ... ... ... | 1886, Pt. I., p. 301. |
| The North Cachar Hills in the Cachar District, and the Eastern Dvárs in the Goalpárá District ... | 1897, Pt. I., p. 299. |

1864. Act 6.

Whipping added to punishments described in section 53 of Penal Code.

**1.** In addition to the punishments described in section 53 of the Indian Penal Code, offenders are also liable to whipping under the provisions of the said Code.

Offences punishable with whipping in lieu of other punishment prescribed by Penal Code.

**2.*** Whoever commits any of the following offences may be punished with whipping in lieu of any punishment to which he may, for such offence, be liable under the Indian Penal Code, that is to say :—

*Group A.*

(*1*) theft, as defined in s. 378 of the said Code ;

(*2*) theft in a building, tent, or vessel, as defined in s. 380 of the said Code ;

(*3*) theft by a clerk or servant, as defined in s. 381 of the said Code ;

(*4*) theft after preparation for causing death or hurt as defined in s. 382 of the said Code :

*Group B.*

(*5*) extortion by threat, as defined in s. 388 of the said Code ;

(*6*) putting a person in fear of accusation in order to commit extortion, as defined in s. 389 of the said Code :

*Group C.*

(*7*) dishonestly receiving stolen property, as defined in s. 411 of the said Code ;

(*8*) dishonestly receiving property stolen in the commission of a dacoity, as defined in s. 412 of the said Code ;

*Group D.*

(*9*) lurking house-trespass, or house-breaking, as defined in ss. 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this section ;

(*10*) lurking house-trespass by night or house-breaking by night, as defined in ss. 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this section.

On second conviction of offence mentioned in section 2, whipping may be added to other punishment.

**3.*** Whoever, having been previously convicted of any one of the offences specified in the last preceding section, shall again be convicted of the same offence, or of any offence included in the same group of offences, may be punished

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It has been extended, by notification under s. 5 of the last mentioned Act, to the North-Western Provinces Tarái, see Gazette of India, 1876, Pt. I., p. 505 ; to the Gáro Hills, the Khási and Jaintia Hills, and the Nága Hills, see Gazette of India, 1897, Pt. I., p. 302 ; and to the Lushai Hills, see Gazette of India, 1898, Pt. II., p. 345.

As to punishment of whipping for certain offences in places in which the Punjab Frontier Crimes Regulation (IV. of 1887) is in force, see ss. 1 (*3*), 8, and 14 (*2*) of the Regulation, and the Punjab Frontier Crimes Regulation (IV. of 1889), s. 2

"I think that the Indian Penal Code and the Code of Criminal Procedure must be read as if the Whipping Act (VI. of 1864) formed a part of the Penal Code from the date of its enactment."—*Per* Norman C.J., 7 B. L. R. 169. See, too, 5 Mad. H. C. R. 18.

* Ss. 2, 3, and 4, have been substituted by the Indian Criminal Law Amendment Act (III. of 1895), s. 5, for those originally enacted.

with whipping in lieu of, or in addition to,* any other punishment to which he may, for such offence, be liable under the Indian Penal Code.

Offences punishable, in case of second conviction, with whipping in addition to other punishment.

4.† Whoever, having been previously convicted of any one of the following offences, shall be again convicted of the same offence, or of any offence included in the same group of offences, may be punished with whipping in addition to any other punishment to which he may be liable under the Indian Penal Code, that is to say:—

*Group A.*

(*1*) giving or fabricating false evidence in such manner as to be punishable under section 193 of the Indian Penal Code;

(*2*) giving or fabricating false evidence with intent to procure conviction of a capital offence, defined in section 194 of the said Code;

(3) giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment, as defined in section 195 of the said Code;

*Group B.*

(*4*) falsely charging any person with having committed an unnatural offence, as defined in sections 211 and 377 of the said Code:

*Group C.*

(*5*) assaulting or using criminal force to any woman with intent to outrage her modesty, as defined in section 354 of the said Code;

(6) rape, as defined in section 375 of the said Code;

(7) unnatural offences, as defined in section 377 of the said Code;

*Group D.*

(*8*) robbery or dacoity, as defined in sections 390 and 391 of the said Code;

(*9*) attempting to commit robbery, as defined in section 393 of the said Code;

(*10*) voluntarily causing hurt in committing robbery, as defined in section 394 of the said Code:

*Group E.*

(*11*) habitually receiving or dealing in stolen property, as defined in section 413 of the said Code;

*Group F.*

(*12*) forgery, as defined in section 463 of the said Code;

(*13*) forgery of a document, as defined in section 466 of the said Code;

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* By s. 391 (*3*) of the Code of Criminal Procedure (Act V. of 1898), no person shall be sentenced to whipping in addition to imprisonment when the imprisonment is for less than three months.

† Ss. 2, 3, and 4, have been substituted by the Indian Criminal Law Amendment Act (III. of 1895), s. 5, for those originally enacted.

1894. Act 6.

(*14*) forgery of a document, as defined in section 467 of the said Code;

(*15*) forgery for the purpose of cheating, as defined in section 468 of the said Code;

(*16*) forgery for the purpose of harming the reputation of any person, as defined in section 469 of the said Code:

*Group G.*

(*17*) lurking house-trespass or house-breaking, as defined in sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this section:

(*18*) lurking house-trespass by night or house-breaking by night as defined in sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this section.

Juvenile offenders punishable with whipping for offences not punishable with death.

**5.** Any juvenile offender, who commits any offence which is not, by the Indian Penal Code, punishable with death, may, whether for a first or any other offence, be punished with whipping in lieu of any other punishment to which he may, for such offence, be liable under the said Code.

*Explanation.**—In this section the expression "juvenile offender" means an offender who, in the opinion of the Court, is under sixteen years of age,† the decision of the Court on such matter being final and conclusive.

When offences specified in section 4 may be punished with whipping in frontier districts.

**6.**‡ Whenever any Local Government shall, by notification§ in the official Gazette, have declared the provisions of this section to be in force in any frontier district, or any wild tract of country within the jurisdiction of such Local Government, any person who shall in such district or tract of country, after such notification as aforesaid, commit any of the offences specified in section 4 of this Act, may be punished with whipping in lieu of any other punishment to which he may be liable under the Indian Penal Code.

**7.** [*Exemption of females and certain convicts.*] *Repealed by the Code of Criminal Procedure (Act X. of 1882).*

**8.** [*Certain classes of Magistrates to be specially empowered.*] *Repealed by the Code of Criminal Procedure (Act X. of 1872).*

**9 & 10.** [*Time and mode of whipping.*] *Repealed by the Repealing Act (XVI. of 1874).*‖

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* To s. 5 this explanation has been added by the Indian Criminal Law Amendment Act (III. of 1895), s. 6.

† See now s. 4 (*a*) of the Reformatory Schools Act (VIII. of 1897), where "a youthful offender is defined to be any boy who, at the time of conviction of the offence there referred to, is under 15 years of age."

‡ S. 6 does not apply to Upper Burma (see the Upper Burma Laws Act, XX. of 1886, s. 6) or to hill tribes to which the Kachin Hill-tribes Regulation (I. of 1895), is applied [see Reg. I of 1895, ss. 1 (3) and 3 (*1*)], or to hill-tribes to which the Chin Hills Regulation (V. of 1896) is applied (see s. 3 and sch). The revised sections applicable thereto are printed in the Appendix, *infra*.

§ For notification extending the provisions of the Act in Madras to the Hill Tracts within the jurisdiction of the Agent to the Governor, Ganjam District, see p. 7 of the Madras List of Local Rules and Orders, Ed 1894.

‖ For substituted provisions, see now ss. 390 to 395, Code of Criminal Procedure (Act V. of 1898).

**11 & 12.** [*Punishment not to be inflicted if offender not in fit state of health, nor by instalments; procedure in certain cases.*] *Repealed by the Code of Criminal Procedure (Act X. of 1872).* **1864. Act 6.**

## APPENDIX.

I. Section 6 of Act VI. of 1864, as in force in Upper Burma (except the Shan States), runs as follows [see Act XX. of 1886, s. 7 (*1*) (*c*)]:—

"6. (*1*) Notwithstanding anything in the foregoing sections of this Act, a person convicted of an offence specified in the schedule to this Act, or of any offence which the Local Government, with the previous sanction of the Governor-General in Council, may add to that schedule, may be punished with whipping, either in lieu of, or in addition to, any other punishment to which he may be liable.

"(*2*) The Local Government may at any time suspend the operation of this section in whole or in part in any district or part of a district, and, with the previous sanction of the Governor-General in Council, remove the suspension of its operation.

| Section of Indian Penal Code. | Offence. |
|---|---|
| 302 | Murder. |
| 304 | Culpable homicide not amounting to murder. |
| 307 | Attempt to murder. |
| 325 | Voluntarily causing grievous hurt. |
| 326 | Voluntarily causing grievous hurt by dangerous weapons or means. |
| 327 | Voluntarily causing hurt to extort property or a valuable security, or to constrain to do anything which is illegal, or which may facilitate the commission of an offence. |
| 329 | Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do anything which is illegal, or which may facilitate the commission of an offence. |
| 333 | Voluntarily causing grievous hurt to deter public servant from his duty. |
| 382 | Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint in order to the committing of such theft, or to retiring after committing it, or to retaining property taken by it. |
| 386 | Extortion by putting a person in fear of death or grievous hurt. |
| 387 | Putting or attempting to put a person in fear of death or grievous hurt in order to commit extortion. |
| 392 | Robbery. |
| 393 | Attempt to commit robbery. |
| 394 | Person voluntarily causing hurt in committing, or attempting to commit, robbery, or any other person jointly concerned in such robbery. |
| 395 | Dacoity. |
| 396 | Murder in dacoity. |
| 397 | Robbery or dacoity, with attempt to cause death or grievous hurt. |
| 398 | Attempt to commit robbery or dacoity when armed with deadly weapon. |
| 399 | Making preparation to commit dacoity. |
| 400 | Belonging to a gang of persons associated for the purpose of habitually committing dacoity. |
| 401 | Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts. |
| 402 | Being one of five or more persons assembled for the purpose of committing dacoity |
| 412 | Dishonestly receiving stolen property, knowing that it was obtained by dacoity. |
| 435 | Mischief by fire or explosive substance with intent to cause damage to amount of one hundred rupees or upwards, or, in case of agricultural produce, ten rupees or upwards. |
| 436 | Mischief by fire or explosive substance with intent to destroy a house, etc. |
| 440 | Mischief committed after preparation made for causing death or hurt, etc. |
| 455 | Lurking house-trespass or house-breaking, after preparation made for causing hurt, assault, etc. |
| 458 | Lurking house-trespass or house-breaking by night, after preparation made for causing hurt, etc. |
| 459 | Grievous hurt caused whilst committing lurking house-trespass or house-breaking |
| 460 | Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, etc. |
| 506 | Criminal intimidation, if threat be to cause death or grievous hurt, etc. |
| | Abetment of any of the foregoing offences. |
| | Attempt to commit any of those offences which are not themselves expressed to be attempts to commit offences." |

II. Section 6 of Act VI. of 1864 as applicable to hill-tribes to which the Kachin Hill-tribes Regulation, 1895, is applied, runs as follows [see Reg. I. of 1895, ss. 1 (*3*) and 3 (*1*)]:—

> "Notwithstanding anything in the foregoing sections of this Act, a person convicted of any offence may be punished with whipping in lieu of, or in addition to, any other punishment to which he may be liable."

III. Section 6 of Act VI. of 1864, as applicable to hill-tribes to which the Chin Hills Regulation, 1896, is applied, runs as follows (see Regulation V. of 1896, s. 3 and schedule):—

> "Notwithstanding anything in the foregoing sections, a person convicted of any offence may be punished with whipping in lieu of, or in addition to, any other punishment to which he may be liable."

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## RULINGS UNDER THE WHIPPING ACT.

IN the case of adults on a first conviction, or in the case of juvenile offenders, whether for a first or any other offence, whipping can only be *in lieu* of any other punishment.—QUEEN *v.* ABDOOL KHITMUTGUR, W. R., 1864 (Cr.), 38. [Loch and Seton-Karr, JJ. July 5, 1864.]

MEANING of the words "execution shall be stayed," in s. 11, Act VI. of 1864.—PRO., JULY 25, 1864, 3 Mad. H. C. R. Ap. 1.

WHIPPING cannot be added to a sentence of imprisonment in the case of a first conviction for the offence under punishment.—QUEEN *v.* KANTIRAM, 1 W. R. 24. [Kemp and Glover, JJ. Nov. 18, 1864.]

S. 3, Act VI. of 1864, does not allow of whipping in addition to imprisonment in the case of a fresh conviction. House-breaking by night and theft form a single and entire offence, and cannot be punished separately. —QUEEN *v.* TONAOKOCH, 2 W. R. 63. [Jackson and Glover, JJ. April 19, 1865.]

AN Honorary Magistrate of Calcutta convicted the accused of receiving stolen property with a guilty knowledge, and sentenced him to two months' imprisonment, and at the expiration of the term of his imprisonment, to 20 stripes with a light rattan. Phear, J., in quashing the conviction, remarked: "This conviction is bad on the face of it, as well because it does not disclose that the Court had jurisdiction in respect of the subject-matter of the conviction, as because the sentence is illegal. The Act of the Legislature (XIII. of 1856), s. 27, directs imprisonment or whipping. There cannot be both imprisonment and whipping: the one is in lieu of the other."—QUEEN *v.* SPARK FYZO, Bourke's Rep. 269 (O.J.). [Phear, J. June 12, 1865.]

WHIPPING may be substituted for any other punishment for the offence of theft in a dwelling-house, etc.—QUEEN *v.* JUNGHOO KHAN, 3 W. R. 36. [Kemp, J. June 26, 1865.]

IN order to legalize whipping in addition to imprisonment in the case of a second conviction, the offence must be the same in both cases—QUEEN *v.* AMARUT SHEIKH, 4 W. R. 20. [Glover, J. Oct. 28, 1865.]

IN the case of a conviction of attempting to commit house-breaking by night with intent to commit theft, a sentence of whipping was annulled as being illegal.—REG. *v.* YELLA VALAD PARSHIA, 3 Bom. H. C. R. 37. [Couch, C.J., and Newton, J. Nov. 21, 1866.]

ON a reference by a Sessions Judge, under s. 434 of the Criminal Procedure Code, a sentence of whipping in addition to one of rigorous imprisonment, in the case of an offence specified in s. 2 of Act VI. of 1864, was annulled, as the offence was not committed after previous conviction.—REG. *v.* SURYA BIN KRISHNA MANDAVAKAR, 3 Bom. H. C. R 38. [Couch, C.J., and Newton and Warden, JJ. Dec. 12, 1866.]

ON a reference by a Sessions Judge, under s. 434 of the Criminal Procedure Code, a sentence of whipping in addition to one of rigorous imprisonment, in the case of an offence specified in s. 4 of Act VI. of 1864, was annulled, as the prisoner had not been previously convicted of the same offence—REG. *v.* BARJI VALAD BAPU, 4 Bom. H. C. R. 5. [Couch, C.J., and Newton, J. July 24, 1867.]

HELD by the majority that, when a person who has not been "previously convicted" (*vide* s. 4, Act VI. of 1864) is convicted at one time of two or more offences, it is illegal to sentence him to whipping for one of those offences, in addition to imprisonment or fine for the other or others; but it is not illegal to sentence him to one whipping in lieu of all other punishments. *Held* further

1864.

RULINGS UNDER THE WHIPPING ACT—*contd.*

Act 6. that, when a person who has been "previously convicted" is convicted at one time of two or more offences, he may be punished with one, but only one, whipping in addition to any other punishment to which, under s. 46 of the Code of Criminal Procedure, he may be liable—NASSIR *v.* CHUNDER, 9 W. R. 41; B. L. R., Sup. Vol., 951. [Peacock, C.J., and Seton-Karr, Jackson, Phear, and Macpherson, JJ. Mar. 12, 1868.]

WHEN a prisoner, convicted of "house breaking in order to commit theft," and of "theft," both offences being portions of one continuous criminal act, was sentenced, on the first head of charge, to one year's rigorous imprisonment, under s. 457 of the Penal Code, and on the second head of charge to receive twenty stripes under s. 2 of the Whipping Act (VI. of 1864), the separate sentences (though not illegal) were disapproved of, as contrary to the spirit and intention of the Whipping Act.—REG. *v.* GENU BIN AKU, 5 Bom. H. C. R. 83. [Couch, C.J., and Newton, J. Sep. 16, 1868.]

UNDER Act VI. of 1864 (the Whipping Act) a juvenile offender means a person under the age of sixteen years.—REG. *v.* MUHAMMAD ALI VALAD ABDUL ALI, 8 Bom. H. C. R. 9. [Newton and Tucker, JJ. Oct. 12, 1868.]

A SENTENCE of whipping, founded on a previous conviction of the prisoner, is only warranted where the subsequent conviction is for the same specific offence as that in respect of which the previous conviction applied. A Sessions Judge has no power to suspend a sentence in a case in the absence of appeal.—PRO., OCT. 25, 1869, 5 Mad H. C. R. Ap. 1.

A SENTENCE of whipping under s. 4, Act VI. of 1864, can only be inflicted in addition to other punishment on a second conviction of the offences specified therein when the first offence was committed some time previous to the second conviction, though after the passing of the Penal Code.—QUEEN *v.* UDOY PUTNAICK, 12 W. R. 68, 4 B. L. R. A. Cr. 5. [Kemp and Glover, JJ. Oct. 28, 1869.]

WHEN a person is convicted at one time of two or more offences punishable under the Penal Code, the Court is empowered to sentence the prisoner in the one case to rigorous imprisonment, and in the other case to whipping, under Act VI. of 1864.—PRO., FEB. 18, 1870, 5 Mad. H. C. R. Ap. 18.

FOLLOWS the Full Bench decision ruling that, when a person who has been previously convicted (s. 4, Act VI. of 1864) is a second time convicted at one time of two or more offences, he may be punished with only one whipping in *addition* to any other punishment to which, under s. 46 of the Code of Criminal Procedure (Act XXV. of 1861), he may be liable.—RUTTEN BEWA *v.* BUHUR; JHOWLA *v.* BUHUR, 14 W. R. 7. [Loch and Hobhouse, JJ. June 18, 1870.]

A PRISONER convicted of "theft in a dwelling-house," who has previously been convicted of "simple theft" is not thereby rendered liable to whipping under Act VI. of 1864, s. 3.—REG. *v.* CHANGIA VALAD SHUMIA, 7 Bom. H. C. R. 68. [Westropp, C.J., and Gibbs and Lloyd, JJ. Sep. 22, 1870.]

THE Magistrate convicted the accused under s. 380 of the Penal Code, and a previous conviction having been proved under s. 379 of the Penal Code, sentence of imprisonment and whipping was passed. *Held* that, in order to justify the sentence of whipping, the previous conviction should have been in respect of the same specific offence.—PRO., OCT. 28, 1870, 5 Mad. H. C. R. Ap. 38.

S. 3 of Act VI. of 1864 (the Whipping Act) applies to juvenile as well as to adult offenders. That section does not apply to cases in which the second conviction is for an offence committed previously to the first conviction.—REG. *v.* KUSA VALAD LAKHSMAN, 7 Bom. H. C. R. 70. [Gibbs and Melvill, JJ. Nov. 17, 1870.]

A DEPUTY Magistrate passed a sentence of six months' rigorous imprisonment and whipping of 20 stripes on a person whom he convicted of house-breaking. The Sessions Judge on appeal set aside the sentence of whipping, and commuted that portion of the sentence into one of rigorous imprisonment for three months. *Held* that the Sessions Judge acted rightly in setting aside the sentence of whipping, as the conviction was a first conviction of the offence; but that the commutation of the sentence of whipping into one of three months' rigorous imprisonment amounted to an enhancement of the sentence which had been passed by the Deputy Magistrate, and was therefore illegal, having regard to s. 419 of the Code of Criminal Procedure. The High Court accordingly set aside the sentence of three months' additional rigorous imprisonment. *Per* Mitter, J.—S. 12 of the Whipping Act (VI. of 1864) refers to the Court by which a case is tried in the first instance, and not to a Court of appeal. *Quære.*—Can a sentence of fine be substituted for one of imprisonment.—QUEEN *v.* BUNDA ALI, 15 W. R. 7; 6 B. L. R. Ap. 95. [Loch and Mitter, JJ. Jan. 24, 1871.]

RULINGS UNDER THE WHIPPING ACT—*contd.* 1864. Act 6.

As a rule, before flogging is given as an additional punishment, there ought to be formal evidence upon the record of the previous convictions relied on. The conviction and identity of the prisoner ought to be proved in the regular way. A mere kaifiat is no evidence whatever.—QUEEN *v.* NUZER NUSHYO, 15 W. R. 52. [Bayley and Macpherson, JJ. April 21, 1871.]

HELD (Kemp and Phear, JJ., dissenting) that, notwithstanding s. 46 of the Code of Criminal Procedure (Act XXV. of 1861), a person convicted at the same time of two or more offences punishable under the Penal Code may, in addition to the punishments prescribed by the Penal Code, be sentenced to whipping under Act VI. of 1864. The Penal Code and the Code of Criminal Procedure must be read as if the Whipping Act formed a part of the Penal Code from the date of its enactment, and s. 46 of the Code of Criminal Procedure is applicable to all offences and punishments as prescribed by the Penal Code in its present and amended form.—MONIRUDDEEN SHAMADAR *v.* GOUR CHUNDER SHAMADAR, 15 W. R 89; 7 B. L. R. 165. [Norman, Offg C.J., and Loch, Bayley, Kemp, Phear, Macpherson, and Mitter, JJ. May 30, 1871.]

A SENTENCE of flogging cannot be carried out after the expiration of the limit of 15 days from date of sentence provided in s 9 of Act VI. of 1864.—PRO., Nov. 13, 1871, 6 Mad. H. C. R. Ap. 38.

IN passing a sentence of whipping in addition to six months' imprisonment, a Deputy Magistrate ordered that the prisoner should be brought before him at the termination of the imprisonment and that the sentence of whipping should then be carried out. On the recommendation of the Sessions Judge (who referred to ss 305 and 310, Act X. of 1872), the High Court cancelled the sentence of whipping as having become inoperative and incapable of being carried out.—HUR CHUNDER KULAL *v.* JUFER ALI, 20 W. R. 72 [Macpherson and Morris, JJ. Oct. 24, 1873.]

A SENTENCE of whipping cannot, with reference to Act VI. of 1864, s. 7, be passed on a conviction for theft under s. 379, Penal Code, as the former section only provides for sentences of imprisonment for a term not exceeding three years. The fact of previous conviction should, under Act X. of 1872, s. 439, be stated in the charge, when it is intended to prove them for the purpose of enhancing punishment. The question of proof of previous conviction is one of fact which ought to go to the jury, and must be determined by a jury.—QUEEN *v.* ESAN CHUNDER DEY, 21 W. R. 40. [Jackson and Ainslie, JJ. Feb. 5, 1874.]

UNDER Act VI. of 1864, s. 7, a sentence of whipping cannot be superadded to one of imprisonment where the imprisonment is for more than five years. A Sessions Judge has no power under s. 464, Code of Criminal Procedure, to alter or set aside a conviction and sentence once made and signed by him.—QUEEN *v.* PORAN MAL, 23 W. R. 49. [Kemp and Morris, JJ. Mar. 19, 1875.]

A SENTENCE of whipping passed on a person who is already under sentence of death or transportation or penal servitude, or imprisonment for more than five years, is illegal. If the sentence of whipping precede, instead of follow, the other sentence, the passing of the latter sentence renders the infliction of the whipping illegal.—PRO., APL. 19, 1876, I L. R., 1 Mad. 56. [Morgan, C.J., and Holloway, Innes, Kernan, and Kindersley, JJ.]

P WAS convicted by a Magistrate of the first class of dishonestly receiving stolen property. He confessed on his trial that he had twice previously been convicted of theft. He was sentenced to be whipped, to be rigorously imprisoned, and, on the expiration of the term of imprisonment, to furnish security for good behaviour. *Held* that the offence of theft not being the same offence as that of dishonestly receiving stolen property, the punishment of whipping was illegal. *Held* also, with some hesitation, that there was evidence as to general character adduced before the Magistrate which justified him in dealing with P under s. 505 of Act X. of 1872. *Held* also that the order requiring security should not have formed part of the sentence for the offence of which P was convicted. A proceeding should have been drawn out, representing that the Magistrate was satisfied, from the evidence as to general character adduced before him in the case, that P was by repute an offender within the terms of s. 505 of Act X. of 1872, and therefore security would be required from him, and an order should have been recorded to the effect that, on the expiry of imprisonment, P should be brought up for the purpose of being bound.—EMPRESS *v.* PARTAB, I. L. R., 1 All. 666. [Spankie, J. May 20, 1878.]

WHEN an accused person is liable to be punished under the Whipping Act, 1864, the charge must state the liability, and the judgment should set out the grounds thereof, when that punishment is imposed.—BADYA *v.* REG., I. L. R., 5 Mad. 158. [Innes, J. Mar. 15, 1882.]

1894.

Act V.

RULINGS UNDER THE WHIPPING ACT—*concld.*

A PERSON appointed a Magistrate of the second class under Act X. of 1872 is incompetent, since the coming into force of Act X. of 1882, to pass a sentence of whipping, unless he is specially empowered so to do according to the provisions of s. 32 of the latter Act.—EMPRESS *v.* BHAGVANT RAVJI, I. L. R., 7 Bom. 303. [Kemball and Pinhey, JJ. Mar. 20, 1883.]

BY the term "juvenile offender" in s. 5, Act VI. of 1864 (Whipping Act), is meant an offender under the age of sixteen years. *Reg.* v. *Mahammad Ali* (8 Bom. H C R. 9) referred to.—EMPRESS *v.* DIN ALI I L. R., 6 All. 482. [Duthoit J. June 14, 1884.]

A COURT has no power, under s. 395 of the Criminal Procedure Code, to revise its sentence of whipping by inflicting a fine. In cases where the sentence of whipping cannot be carried out, all that the Court can do is either to remit the whipping altogether, or to sentence the offender, in lieu of such whipping, or of so much of the sentence of whipping as was not carried out, to imprisonment, &c. The word "imprisonment" in s. 395 of the Criminal Procedure Code means a substantive sentence of imprisonment, and not imprisonment for default in payment of a fine.—QUEEN-EMPRESS *v.* SHEODIN, I. L. R., 11 All. 308. [Straight, J. Jan. 5, 1889.]

WHEN an accused person is sentenced to whipping under s. 2 of the Whipping Act (VI. of 1864), the punishment of fine or imprisonment, or both, cannot be legally inflicted under the Penal Code in addition to the whipping. The word "punishment" in s. 2 of the Act means the total of punishments awardable under the Penal Code.—QUEEN-EMPRESS *v.* DAGADU, I. L. R., 16 Bom. 357. [Jardine and Parsons, JJ. Aug. 6, 1891.]

THE

# INDIAN PENAL CODE.

BEING

## ACT XLV. OF 1860.

ANNOTATED WITH

## RULINGS OF THE HIGH COURTS IN INDIA

DOWN TO AUGUST 1902.

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## ELEVENTH EDITION.

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BY

D. E. CRANENBURGH.

Calcutta:
PRINTED AND PUBLISHED BY B. BARAL,
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NOS. 3 TO 5, BOW STREET.

1902.

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# PREFACE.

THIS is a Revised Edition of the Penal Code, in which are embodied all amendments made up to date of publication.

The Rulings of the High Courts in India have been taken from the Indian Law Reports, the Weekly Reporter, the Bengal Law Reports, and several other Reports, down to August 1902.

To save reference to the Criminal Procedure Code (Act V. of 1898) outer marginal notes are inserted opposite each penal section, showing (1) by what Court each offence is triable; (2) whether the police may arrest without warrant or not; (3) whether a warrant or a summons shall ordinarily issue in the first instance; (4) whether the offence is bailable or not; (5) whether it is compoundable or not; (6) whether sanction to prosecute is necessary or not.

D. E. CRANENBURGH.

*September 1902.*

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# THE INDIAN PENAL CODE.

## ACT NO. XLV. OF 1860.*

RECEIVED THE G.-G.'S ASSENT ON THE 6TH OCTOBER 1860.

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### CHAPTER I.

### INTRODUCTION.

Preamble.

WHEREAS it is expedient to provide a General Penal Code for British India: It is enacted as follows:—

Title and extent of operation of the Code.

**1.** This Act shall be called "The Indian Penal Code," and shall take effect . . . † throughout the whole of the territories which are or may become vested in Her Majesty by

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* All offences under the Penal Code are to be enquired into and tried according to the provisions of the Criminal Procedure Code (Act V of 1898).—See ss 5 and 28 of Act V. of 1898.

The Penal Code is superseded by the Sindh Frontier Regulation (V. of 1872), s. 11, in so far as that Regulation is inconsistent with it.

As to offences which may be tried summarily, see ss. 260 and 261 of the Code of Criminal Procedure (Act V. of 1898).

The Penal Code has been applied to offences committed before the 1st January 1862—

(1) in the Punjab, by Act IV of 1872, s. 39
(2) in Ajmere-Merwara, by Reg. III. of 1877, s. 29

The Code has been declared in force—

(1) in the Santhal Parganas, by Reg. III. of 1872, s. 3 as amended by Reg. III. of 1886
(2) in the Arakan Hill District, by Reg. IX. of 1874, s. 3
(3) in Upper Burma generally (except the Shan States) by the Burma Laws Act (XIII. of 1898), s 4 (*1*) and Sch. I.
(4) in British Baluchistan, by Reg. I. of 1890, s. 3.
(5) in Angul and the Khondmals, by Reg. I of 1894, s. 3:
(6) in the Kachin Hill-tracts, as regards hill-tribes (with modifications), by Reg. I. of 1895, s. 3.
(7) in Chin Hills as regards hill-tribes (with modifications), by Reg. V. of 1896.

The Code has been declared, by notification under s. 3 (*a*) of the Scheduled Districts Act (XIV. of 1874), to be in force in the following Scheduled Districts, namely:—

(1) the N.-W. P. Tarai Districts (see *Gazette of India*, 1876, Pt. I., p. 505); and
(2) the Districts of Hazaribagh, Lohardaga now called the Ranchi District, see *Calcutta Gazette*, 1899, Pt. I., p. 44], and Manbhum, and Pargana Dhalbhum, and the Kolhan in the District of Singbhum (see *Gazette of India*, 1881, Pt. I., p. 504).

By notification under ss. 3 and 5A of the same Act it has been declared in force in the Pargana of Manpur, in Central India (see *Gazette of India*, 1899, Pt. II., p. 419). It has been extended, under s. 5 of the same Act, to the Lushai Hills (see Notification No. 923-P., *Gazette of India*, 1898, Pt. II., p. 345).

† In s. 1, the words and figures, "on and from the first day of May, 1861," repealed by the Repealing and Amending Act (XII. of 1891), Sch. I., have here been omitted.

the Statute 21 and 22 Victoria, chapter 106,* entitled "An Act for the Better Government of India." . . . .†

**Penal Code extended to Straits Settlements.**—Act V. of 1867 extends the Penal Code to the Straits Settlements.

**Duty of Magistrate where it is doubtful whether an offence has been committed in British or Foreign Territory.**—In a case where it is doubtful whether the offence is committed in British or Foreign Territory, the question of jurisdiction cannot be fully determined, unless the Magistrate proceeds with the investigation, and states what in his opinion is proved by the evidence of the witnesses.—MOTEE CHAND BABOO ON BEHALF OF HORIK CHAND BABOO *v.* MOHENDRONATH HALDAR, 9 W. R. 29 [Kemp and Jackson, JJ. March 7, 1868.]

**Tributary Mehal of Mohurbhunj: British Courts have no jurisdiction to try offences committed in.**—A British subject, residing in Midnapore, in Bengal, was charged before the Maharaja of Mohurbhunj with having committed the offence of defamation in Mohurbhunj in the Tributary Mehals. On an application made by the accused to the Magistrate of Midnapore, objecting to be tried by the Raja of Mohurbhunj, the Commissioner of Cuttack, who was also Superintendent of the Tributary Mehals, directed that the case should be transferred to Midnapore, and tried by the Magistrate of that district, who had the power of an Assistant Superintendent of the Tributary Mehals. The accused, while being tried, moved the High Court to set aside the proceedings at Midnapore, on the ground that, the offence not having been committed within the district, the Magistrate was acting without jurisdiction. *Held* that the proceedings were without jurisdiction. *Per Cunningham*, J.—The Tributary Mehals are now, as they were in 1874, a portion of British India, which the Government of India has been pleased to exempt from the ordinary law and jurisdiction of the Courts, and to govern by means of special officials and enactments. Whatever may be the powers of Government as to Mohurbhunj, those powers do not extend to empowering the legally-constituted tribunals of a British district to follow in that district, and in the case of residents in it, any procedure, and to exercise any other jurisdiction than that created by the law. *Per* Prinsep, J.—The territory of Mohurbhunj is a part of British India, but at present not subject to any laws not specially extended to it. The Tributary Mehals being British India, and being excluded from the operation of all the laws in force in British India, unless expressly extended to them, the orders of Government conferring powers on particular officers over criminal offences committed within those Mehals are *ultra vires*.—HURSEE MAHAPATRO *v.* DINOBUNDO PATRO, I. L. R., 7 Cal. 523. [Cunningham and Prinsep, JJ. July 13, 1881.]

**A conviction in British India for an offence committed without the limits of British India is good.**—The prisoners, residents of the district of Singbhum, a district in British India, were convicted, under s. 331 of the Penal Code, at Singbhum, of an offence committed in Mohurbhunj. *Per Garth*, C.J., *and Pontifex and Morris*, JJ.—The territory of Mohurbhunj is not within the limits of British India; but, under the provisions of s. 9 of Act XXI. of 1879, a conviction in British India for an offence committed without the limits of British India is good. *Per* Mitter, J.—Mohurbhunj is within the limits of British India, but seeing that the Tributary Mehals constitute a 'district' within the meaning of the Criminal Procedure Code, and that the superintendent of these mehals has been vested with the powers of a Sessions Judge under an order of the Government of India, a conviction under the Penal Code (having regard to the provisions of s. 70 of the Criminal Procedure Code) ought not to be set aside. *Per* Prinsep, J.—Mohurbhunj is within the limits of British India; but the Acts which extend to British India do not extend to Mohurbhunj. The territory having been expressly placed beyond the ordinary legislation, the law in force in British India cannot come into operation there until this exemption has been removed.—EMPRESS *v.* KESHUB MOHAJAN, and EMPRESS *v.* UDIT PRASAD, I. L. R., 8 Cal. 985. [Garth, C.J., and Pontifex, Morris, Mitter, and Prinsep, JJ. Mar. 11, 1882.]

**Theft at Rajkot: Sessions Court at Thana has no jurisdiction to try accused for.**—The civil station at Rajkot is not part

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* This Statute may now be cited as the Government of India Act, 1858.—See the Short Titles Act, 1896 (59 & 60 Vict., c. 14).

† In s. 1, the words, "except the Settlement of Prince of Wales's Island, Singapur, and Malacca," repealed by the Repealing and Amending Act (XII. of 1891), Sch. I., have here been omitted.

of British India within the meaning of Stat. 21 and 22 Vict., c. 106. Where the accused, a subject of a Native State, committed theft at Rajkot civil station, and was found in possession of the stolen property at Thana, *held* that, as the offence was not committed in British India, and as the accused was the subject of a Native State, the Sessions Court at Thana had no jurisdiction to try the accused for theft, under s. 381 of the Penal Code. But it was competent to try him for dishonest retention of stolen property under s. 410 of the Penal Code as amended by Act VIII. of 1882.—QUEEN-EMPRESS *v.* ABDUL LATIB *valad* ABDUL RAHIMAN, I. L. R., 10 Bom. 186. [Birdwood and Jardine, JJ. Nov. 24, 1885.]

**Island of Perim: Penal Code and Criminal Procedure Code extend to.**—The island of Perim, having been occupied with a view to its permanent retention by officers of the Government of Bombay, became a part of British India within the definition of Stat 21 and 22 Vict., c. 106, and vested in Her Majesty along with the other Indian territories under that Act, which became law on 2nd September 1858 The Penal Code (Act XLV. of 1860) and the Code of Criminal Procedure (Act X of 1882) extend in their entirety to the whole of British India, and therefore to the island of Perim. S. 7 of the Criminal Procedure Code gives to the Local Government the power to alter the local limits of Sessions Divisions, and continues the Divisions existing when that Code came into force. A notification was issued by the Government of Bombay on the 6th May 1884 under the above section, including the island of Perim within the Sessions Division or District of Aden, and empowering the officer, from time to time, commanding the troops stationed at Perim, in virtue of his office, to exercise the powers of a Magistrate of the second class within the island, and to commit persons for trial to the Court of Session at Aden. *Held*, having regard to the language of the Aden Act (II of 1864), that, for the purposes of s. 7 of the Criminal Procedure Code, the Resident's Court at Aden might be considered as a Court of Session, and that the local area to which the Aden Act (II. of 1864) applied was the Sessions Division which was in existence at the date of the above notification, when the limits thereof were altered by the inclusion of the island of Perim A prisoner charged with having committed murder in the island of Perim was committed by the Magistrate at Perim to be tried before the Political Resident at Aden. Having been found guilty, and sentenced to death, he appealed to the High Court of Bombay. By the Aden Act (II. of 1864), s. 29, it is provided that "no appeal shall lie from an order or sentence passed by the Resident in any criminal case." The High Court, however, admitted the appeal, being doubtful as to whether the above provision applied to cases arising in the island of Perim.—QUEEN-EMPRESS *v.* MANGAL TEKCHAND, I. L. R., 10 Bom. 258. [Birdwood and Jardine, JJ. Dec. 6, 1885.]

**Island of Perim: Court of Political Resident at Aden has no jurisdiction over the.**—Notwithstanding the notification of the Government of Bombay (No. 2336), dated the 6th May 1884, including the island of Perim within the Sessions Division and District of Aden, and empowering the officer in command of the troops stationed at Perim to commit persons for trial to the Court of Session at Aden, the Court of the Political Resident at Aden had no jurisdiction over the island of Perim, and the Political Resident at Aden was not a Judge of a Court of Session for that island. Where, therefore, a person charged with having committed murder at Perim was committed by the Magistrate at Perim for trial in the Court of the Political Resident at Aden, where he was convicted and sentenced to death, the conviction was annulled, and the prisoner was ordered to be retried before a Court of competent jurisdiction The island of Perim, although under the control of the Political Resident at Aden, cannot be regarded as part of Aden, and the provisions of the Aden Act (II. of 1864) are not in force at Perim Act II of 1864 did not create a separate Court of Session at Aden. The Court created was the Court of the Resident, and the powers of that Court and of a Court of Session are not commensurate.—QUEEN-EMPRESS *v.* PRIVATE MANGAL TEKCHAND, I. L. R., 10 Bom. 263 [Birdwood and Jardine, JJ Jan. 25, 1886.]

**Tributary Mehal of Kheonjur: Penal Code and Criminal Procedure Code not applicable to.**—The Penal Code and Criminal Procedure Code have no application to the Tributary Mehal of Kheonjur, which is on precisely the same footing in that respect as Mohurbhunj. Certain persons, officers of the Maharaja of Kheonjur, one of whom was a resident of the Cuttack district, and the others residents of Kheonjur, were charged before the Deputy Magistrate of Tajpur with certain offences under the Penal Code. They were convicted, and on appeal to the Sessions Judge, the conviction was upheld. It was found by the Sessions Judge that the scene of the occurrence which gave rise to the charges was within the Territory of Kheonjur. *Held* that the Deputy Magis-

trate and Sessions Judge had no jurisdiction to try the case, and that the conviction must be set aside. *Held* further that ss. 182 and 531 of the Criminal Procedure Code had no application to the case. The words "local area" used in s. 182 only apply to a "local area" over which the Criminal Procedure Code applies, and not to a local area in a foreign country, or in other portions of the British Empire to which the Code has no application; and similarly s. 531 only refers to *districts, divisions*, sub-divisions, and local areas governed by the Code of Criminal Procedure.—IN THE MATTER OF BICHITRANUND DASS *v.* BHUGBUT PERAI; IN THE MATTER OF BICHITRANUND DASS *v.* DUKHAIJANA, I. L. R., 16 Cal. 667. [Prinsep and Hill, JJ. May 13, 1889.]

**Penal Code and Criminal Procedure Code are in force in the Laccadive Islands: Conviction quashed, as procedure not observed.**—The Scheduled Districts Act having been extended to the Laccadive Islands, but no notifications having been made under that Act with regard to the criminal law to be administered there, the Penal Code and the Criminal Procedure Code are in force. Accordingly, when the Sub-Collector of Malabar, as such, tried and sentenced certain persons on one of the Laccadive Islands, not observing the procedure prescribed by the Criminal Procedure Code, *held* that the proceedings were void, and should be quashed.—I. L. R., 13 Mad. 353. [Muttusami Ayyar and Weir, JJ. Mar. 10, 21, 1890.]

**The Agency Tract of Vizagapatam: High Court has jurisdiction over.**—The High Court set aside a conviction by the Agent to the Governor in Vizagapatam on a charge of culpable homicide not amounting to murder, and directed that the accused be tried in the Sessions Court at Vizagapatam on a charge of murder. The accused was tried accordingly, and was convicted of murder, and he appealed to the High Court. The Agency Tract of Vizagapatam is a scheduled district under Act XIV. of 1874, and the Governor in Council extended the operation of the Criminal Procedure Code of 1861 to it by a notification made under that Act in 1862. In 1863 the Governor in Council, by a notification under Act XXIV. of 1839, constituted the Agent a Sessions Judge under the Criminal Procedure Code. *Held* that the High Court had jurisdiction to direct that the accused be tried by the Sessions Judge under the provisions both of the Letters Patent, and of the Criminal Procedure Code.—QUEEN-EMPRESS *v.* BUDARA JANNI, I. L. R., 14 Mad. 121. [Handley and Weir, JJ. Sep. 15, 23 1890.]

**2.** Every person shall be liable to punishment under this Code, and not otherwise, for every act or omission contrary to the provisions thereof, of which he shall be guilty within the said territories. . . . .*

Punishment of offences committed within the said territories.

**Every person.**—Stat. 3 and 4 Will. IV., c. 85, empowers the Governor-General in Council "to make laws and regulations for repealing, amending, or altering any laws or regulations whatever now in force, or hereafter to be in force, in the territories of India, or any part thereof, and to make laws and regulations for all persons, whether British or native foreigners or otherwise, and for all Courts of Justice, whether established by His Majesty's Charters or otherwise, and the jurisdictions thereof; and for all places and things whatsoever, within and throughout the whole and every part of the said territories; and for all servants of the said Company within the dominions of Princes and States in alliance with the said Company, except that he shall not have the power of making any laws or regulations which shall in any way repeal, vary, suspend, or affect any of the provisions of this Act, or any provisions of the Acts for punishing mutiny and desertion of officers and soldiers, whether in the service of Her Majesty or the said Company; or any provision or Act hereafter to be passed in anywise affecting the said Company or the said territories, or the inhabitants thereof; or any laws which shall in any way affect any prerogative of the Crown or the authority of Parliament, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom or the sovereignty or dominion of the said Crown over any part of the said territories." The question of jurisdiction, however, is dealt with by the

* In s. 2, the words and figures, "on and from the first day of May, 1861," repealed by the Repealing and Amending Act (XII of 1891). Sch. I., have here been omitted. As to offences in territorial waters, see the Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict., c. 73).

Code of Criminal Procedure (Act X. of 1882, now Act V. of 1898).

**And not otherwise.**—By the expression, "and not otherwise," is meant that no person can be punished for any act which amounts to an offence under the Code otherwise than according to the provisions thereof, except when the same act is made punishable by some local or special law.—Commissioners' Second Rep, ss. 537, 538

**Within the said territories.**—Stat. 21 and 22 Vict., c. 106, s. 1, defines the territories throughout which this Act is to take effect to be all territories then in the possession or under the Government of the East India Company, and all territories which may become vested in Her Majesty by virtue of any rights vested in, or which might, but for the passing of that Act, have been exercised by, the said Company in relation to any territories.

**Kidnapping from British territories: Conviction for murder committed in Kuch Behar by British subjects temporarily resident there.**—The subject of an Independent State, though not amenable to the British Courts on a charge of culpable homicide committed out of British territories may be so amenable on a charge of kidnapping from those territories. The Calcutta High Court, under Act I. of 1849, confirmed the conviction of two persons for murder committed in the independent territory of Kuch Behar, they being British subjects, and only temporary residents of that State.—QUEEN *v.* DHURMONARAIN MOITRO, 1 W. R. 39. [Kemp and Glover, JJ. Dec. 9 1864.]

**When a subject of the British Government is liable to be tried by the Courts of this country.**—A person who is admittedly a subject of the British Government is liable to be tried by the Courts of this country for acts done by him, whether wholly within or wholly without, or partly within and partly without, the British territory in India, provided they amount together to an offence under the Penal Code.—QUEEN *v.* MOULVIE AHMUDOOLLAH, 2 W. R. 60 [Trevor and Loch, JJ. April 13, 1865.]

**Offence on high seas beyond three miles of shore: Charge and punishment according to English law; but trial according to procedure of local Court.**—In prosecuting a British subject for an offence committed on board a British ship upon the high seas, *held* (*dubitante*, Phear, J.) that he must be charged with an offence under the English law; 2, that the punishment must be according to English law; 3, that the trial must be according to the procedure of the local Court. Therefore, where a British subject was charged before the High Court with having committed an offence under 7 Will. IV. and 1 Vict., c. 85, s. 2, on board a British ship, upon the high seas, within the admiralty juriadiction of the Court, and found guilty of an offence under 14 and 15 Vict., c. 19, s. 5, *held* that the conviction was good, and that the prisoner would be rightly punished with "rigorous imprisonment," which is defined by s. 53 of the Penal Code to be "imprisonment with hard labour," and that the trial had been rightly proceeded with under Act XIII. of 1865. It ought to appear upon the face of a charge that it had been delivered to the Clerk of the Crown by a Justice of the Peace or a Magistrate, but its not so appearing is a formal defect only, to which objection can only be taken under s. 41 of Act XVIII. of 1862 before the jury has been sworn, and it is not ground for arrest of judgment.—QUEEN *v.* THOMPSON, 1 B. L. R. O. Cr. 1. [Peacock, C.J., and Phear and Macpherson, JJ. Sep. 3, 1867]

**Tindal of vessel convicted of criminal breach of trust committed in Goa: New trial.**—Where a tindal of a small vessel had been convicted of criminal breach of trust which appeared to have been committed in the Portuguese possession of Goa, but no order was recorded by the Sessions Judge of Mangalore, who tried the case under s. 9 of Act I. of 1849, *held* that there ought to be a new trial—PRO., Jan. 10, 1870, 5 Mad. H. C. R. Ap. 13.

**British-born subject destroying British ship on high seas beyond three miles of shore. The substantive law applicable is the English law, but the procedure is the Indian law** —The substantive law applicable to a British-born subject tried in the High Court of Judicature at Bombay for destroying a British ship on the high seas, at a distance of more than three miles from the shores of British India, is the English law, and not the Penal Code, notwithstanding the provisions of Stat. 30 and 31 Vict, c. 124, s. 11. The same substantive law is applicable to prisoners who conspire together in Bombay to destroy such ship on the high seas, and such ship is to be destroyed in consequence. The procedure applicable in such cases is the ordinary criminal procedure of the High Court The question whether the Indian Legislature has power to legislate with reference to offences committed on the high seas considered There is not any Act of the Indian Legislature now in force which provides for the offence of destroying a ship when committed at a greater distance than three miles from the coast, or for the abetment in British India of such an offence so committed.— REG. *v.* ELMSTONE WHITWELL, *et al.*, 7 Bom. H. C.

R. 89. [Westropp, C.J., and Bayley and Green, JJ. July 30, 1870]

**Offence committed on high seas within three miles of shore: Punishment under Penal Code.**—An offence committed on the high seas, but within three miles from the coast of British India, as being committed within the territorial limits of British India, is punishable under the provisions of the Penal Code. The ordinary Criminal Courts of the country have jurisdiction over such offence by virtue of the Stat. 12 and 13 Vict., c. 96, ss. 2 and 3, extended to India by Stat. 23 and 24 Vict., c. 88. *Semble.*—The Governor-General of India in Council has no power to legislate for offences committed on the high seas outside the territorial limits of British India, though he has power to legislate in respect of offences committed on the high seas within three miles of its coasts. Meaning and effect of Stat. 12 and 13 Vict., c. 69, ss. 2 and 3, considered. *Queen* v. *Thompson* (1 B. L. R. O. Cr. 1) commented on. Where certain of the inhabitants of the village of Manori, in the Thana District, sallied out in boats, and pulled up and removed a number of fishing stakes lawfully fixed in the sea within three miles from the shore by the villagers of a neighbouring village, it was held (i) that a Magistrate, F. P., in the Thana District, had jurisdiction over the offenders; (ii) that the Penal Code was the substantive law applicable to the case; and (iii) that the offence amounted to mischief within the meaning of ss 425 and 427 of that Code.—REG. *v.* KASTYA RAMA, 8 Bom. H. C. R 63 [Kemball, J. Sep. 20 1871.]

**Mysore no part of British India: Magistrate of Tellicherry has no jurisdiction to try a resident of Mysore for criminal acts done in Mysore.**—The Madras High Court, having held in *Reg.* v. *Watson* that Mysore was no part of British India, held in a subsequent case that the Joint Magistrate of Tellicherry had no jurisdiction to try a resident of Mysore for criminal acts done in Mysore.—PRO., 1870, 21st November, 6 Mad. H. C. R 3.

**Where special law provides punishment, but not Penal Code.**—Where there is no provision in the Penal Code, and any other law provides punishment for an offence, any person committing such offence may be tried under that law.—MESSRS WATSON & Co. *v.* BAIKANT NATH DASS, 14 W. R. 80. [Bayley and Paul, JJ. Dec. 12, 1870.]

**What led to the passing of the Territorial Waters Jurisdiction Act 1878 (41 and 42 Vict., c. 73).**—In 1876, in the case of *Queen* v. *Keyn* (L. R., 2 Ex. D. 63), the accused, who was a foreigner in command of a foreign ship, ran, while passing within three miles of the shore of England, on a voyage to a foreign port, into a British ship, and sank her, thereby causing a passenger to be drowned. The accused was thereupon charged with manslaughter; but it was held that the English Courts had no jurisdiction to try him. In consequence of this ruling, the Territorial Waters Jurisdiction Act, 1878 (41 and 42 Vict., c. 73) was passed, enacting (s 2) that "an offence committed by a person, whether he is or is not a subject of Her Majesty, on the open sea, within the territorial waters of Her Majesty's dominions, is an offence within the jurisdiction of the Admiral, although it may have been committed on board or by means of a foreign ship, and the person who committed such offence may be arrested, tried, and punished accordingly."

**Conviction for murder committed in 1861 set aside.**—A prisoner was found guilty, and sentenced, under Reg. IV. of 1797, to transportation for life, for a murder committed in 1861, before the Penal Code came into operation, and the case was sent up to the High Court to confirm the sentence. Reg. IV. of 1797 was repealed by Act XVII. of 1862, and that Act was wholly repealed by Acts VIII. of 1868 and X. of 1872. *Held*, on a reference to a Full Bench, that the conviction was illegal, s. 6 of Act I. of 1868, which provides that the repeal of any Act or Regulation shall not affect any offence committed before the repealing Act shall have come into operation, not being applicable.—EMPRESS *v.* DILJOUR MOSER, I L. R., 2 Cal. 225. [Garth C.J., and Kemp, Macpherson, Markby, and Ainslie, JJ. Feb. 20, 1877]

**Person committing murder in 1855 punishable under Regulations.**—Up to the 1st January 1862, a person committing the offence of murder was liable to trial and punishment under the Regulations. By Act XVII. of 1862, the Regulations prescribing punishments for offences were repealed, 'except as to any offence committed before the 1st January 1862" By the same Act it was declared that no person who should claim the same should be deprived of any right of appeal or reference which he would have enjoyed under such Regulations. By s 6 of Act I. of 1868, the repeal of an Act does not affect anything done, or any offence committed, or any fine or penalty incurred before the repealing Act shall have come into operation Under the provisions of this section the repeal of Act VII. of 1862 by Act VIII of 1868 and Act X. of 1872 did not, in respect of offences committed before

the 1st January 1862, affect the penalties prescribed by such Regulations, nor were any of the Regulations prescribing punishments for offences, which were in force before the passing of Act XVII. of 1862, repealed in respect of offences committed before the 1st January 1862, prior to the passing of Act I. of 1868. *Held*, accordingly, where a person committed murder in the year 1855, that such person was punishable under the Regulations. *Held* also that, inasmuch as such right as the right of reference given by s 3 of Reg. IV. of 1797 accrues on conviction, and therefore in the present case had not accrued before Act XVII. of 1862 was repealed, it is doubtful whether a person convicted of murder committed before the 1st January 1862 has such right.—EMPRESS *v.* MULUA, I. L. R., 1 All. 599. [Turner and Spankie, JJ. Feb. 15, 1878.]

**Bills of exchange stolen at Mauritius, where Penal Code not in force Such Bills of exchange cannot therefore be regarded as stolen property: Conviction quashed.**—The prisoner was tried at Bombay, under s. 411 of the Penal Code, on a charge of having dishonestly received and retained stolen property, knowing or having reason to believe the same to be stolen property. He was also charged, under ss. 108 (expl. 3) and 109, with having abetted that offence. It appeared at the trial that the prisoner was a clerk in the employment of a mercantile firm at Port Louis, in the island of Mauritius. On the 29th October and the 1st November 1879, certain letters addressed by the firm to their commission-agent at Bombay were abstracted from the post-office at Port Louis. The letters contained six bills of exchange belonging to the firm for an aggregate amount of Rs. 26 550. On the 1st November 1879, the prisoner sent all six bills of exchange in a letter to the manager of a bank at Bombay, requesting that the several amounts might be collected on the prisoner's own account, and remitted to him by bills on Mauritius. The sums were accordingly realized by the bank, and duly remitted to the prisoner. It was not denied that the prisoner obtained possession of the money, and used it as his own. His defence was that the bills had been given to him in payment of a debt. The prisoner was convicted on all the charges; but the jurisdiction of the Court having been challenged on his behalf, the question was reserved. *Held per* Sargent and Melvill, JJ. (West J., *dissentiente*), "that the bills of exchange, having been stolen at Mauritius, in which island the Penal Code is not in force, could not be regarded as '*stolen property*' within the provisions of s. 410, so as to render the person receiving them at Bombay liable under s. 411; that the High Court of Bombay had, therefore, no jurisdiction; and that the conviction must be quashed." Previously to the trial at the Sessions the prisoner had applied to the Court for commissions to Pondicherry and Mauritius to take evidence on his behalf. The application was refused on the ground that the High Court had no authority to issue a commission in such a case, but the learned Judge (West, J) reserved the question for the Full Court. *Held* that the High Court had no power to issue a commission out of the jurisdiction in a criminal case on an application by the accused.—EMPRESS *v.* S. MOORGA CHETTY, I. L. R., 5 Bom. 338. Overruling *Reg. v. Lakhya Govind*, I. L. R., 1 Bom. 50 (see under s. 4). [Sargent, Melvill, and West, JJ. May 3, 1881.]

**A carrier entrusted with rice at a port in British India to convey it to another port in British India took it to a port in foreign territory, and there sold it: Conviction for criminal breach of trust as carrier set aside** —B, entrusted with rice at M (a port in British India) for conveyance to C (also a port in British India), took the rice to G, a port in foreign territory, and there sold it. He was convicted at M of criminal breach of trust as a carrier under s. 407 of the Penal Code. *Held* that the Sessions Court at M had no jurisdiction to try the offence under the Code of Criminal Procedure. *Held* also that no offence was committed on the high seas so as to give the Court jurisdiction under 12 & 13 Vict., c. 29, extended by 23 & 24 Vict., c. 88.—BAPU DALDI *v.* REG., I L. R., 5 Mad. 23. [Innes and Muttusami Ayyar, JJ. Feb. 26, 1882.]

**Penal Code and Criminal Procedure Code are in force in the Laccadive Islands: Conviction quashed as procedure not observed.**—The Scheduled Districts Act having been extended to the Laccadive Islands, but no notifications having been made under that Act with regard to the criminal law to be administered there, the Penal Code and the Criminal Procedure Code are in force. Accordingly, when the Sub-Collector of Malabar, as such, tried and sentenced certain persons on one of the Laccadive Islands, not observing the procedure prescribed by the Criminal Procedure Code, *held* that the proceedings were void, and should be quashed.—I. L. R., 13 Mad. 353. [Muttusami Ayyar and Weir, JJ. Mar. 10, 21, 1890.]

**Foreigners Act (III. of 1864): Powers of legislation of the Governor-General in**

**Council.**—On the 3rd July 1894, certain foreigners resident in Bombay having been arrested by the police, and sent to jail under warrants issued under ss. 3 and 4 of the Foreigners Act (III. of 1864), they applied to the High Court, and obtained a rule *nisi* under s. 491 of the Criminal Procedure Code (Act X. of 1882), and under Stat. 31 Car. II., c. 2 (Habeas Corpus Act), calling on the Superintendent of the Jail to show cause why they should not be set at liberty. In the affidavits filed in showing cause against the rule, the only reason suggested for their arrest was that they were connected with loose women residing in a certain district of Bombay. It was contended for the prisoners that their arrest and imprisonment were illegal—(1) inasmuch as Act III. of 1864 was *ultra vires* of the Indian Legislature; (2) that the Act, being intended only to secure the "peace and security" of British India, was in this case improperly applied. *Held* (1) that Act III. of 1864 was not *ultra vires* of the Governor General of India in Council; (2) that it was rightly applied in the case of the foreigners in question, although their residing in Bombay may not have been likely to have affected or endangered the peace and security of British India. *Per* Starling, J.—S. 3 of Act III of 1864 gives the fullest power to the Government to order any foreigner to remove himself from British India. The Government is the sole judge of what is necessary for the peace and security of British India, and, if it acted in accordance with the letter of the Act, the Court could not inquire into the sufficiency of its reasons for so acting A separate warrant was issued in the case of each of the foreigners in question; and all were in the same form. The warrant directed the person whose name appeared in it forthwith to "remove himself from British India by sea," and it further contained the following words: "All officers to whom this order may be communicated are required to see that it is duly obeyed, and, in the event of its being infringed, to apprehend and detain the said ( ) in safe custody in the jail of Bombay under s. 4 of the said Act, until he shall be lawfully discharged therefrom." Each warrant was signed by the Secretary to Government, and was directed to the Commissioner of Police, and to the Superintendent of the Jail. *Held* that the warrants were not valid warrants for the following reasons: (1) They were irregular, in that they contained an order to the person named in them to do a certain thing with a further conditional order for his imprisonment in the event of his not doing it. There ought to have been a separate order to each prisoner to remove himself from British India, which order should have been duly served upon him. Then, in case of his refusal or neglect to comply with its terms, there ought to have been a further order by the Governor in Council authorizing his arrest and detention in jail. (2) The persons named in them were not indicated with sufficient certainty and particularity. The warrants contained no description of the persons against whom they purported to be directed, and did not give their place of residence. (3) By reason of the direction contained in them that the persons named in them were to remove themselves from British India by sea to the places mentioned in the warrant The particular route to be specified under s. 3 of Act III. of 1864 is intended to be a route in British India, and not a route beyond the high seas. The Government has no jurisdiction to direct a person's movements at sea beyond the limits of three miles from the shore. (4) *Per* Starling, J.—The warrants were also defective inasmuch as they bore no seal.—ALTER CAUFMAN *v.* THE GOVERNMENT OF BOMBAY, I. L. R., 18 Bom 636 [Bayley, Acting C.J. and Starling, J. Aug. 3, 1894]

**8.*** Any person liable, by any law passed by the Governor-General of India in Council, to be tried for an offence committed beyond the limits of the said territories, shall be dealt with according to the provisions of this Code for any act† committed beyond the said territories in the same manner as if such act had been committed within the said territories.

Punishment of offences committed beyond, but which by law may be tried within, the territories.

**British-born subject destroying British ship on high seas beyond three miles of shore: The substantive law applicable is the English law, but the procedure is the Indian law.**—The substantive law applicable to a British-born subject tried in the High Court of Judicature at Bombay for destroying a British ship on the high seas, at a distance of more than three miles from the shores of British India, is the English law, and not the Penal Code, notwithstanding the provisions of Stat. 30 and 31 Vict.,

* S. 3 relates to the extra-territorial operation of the Code.

† The words "for any act," &c., extend also to illegal omissions. See s. 32, *infra*.

c. 124, s. 11. The same substantive law is applicable to prisoners who conspire together in Bombay to destroy such ship on the high seas, and such ship is to be destroyed in consequence. The procedure applicable in such cases is the ordinary criminal procedure of the High Court. The question whether the Indian Legislature has power to legislate with reference to offences committed on the high seas considered. There is not any Act of the Indian Legislature now in force which provides for the offence of destroying a ship when committed at a greater distance than three miles from the coast, or for the abetment in British India of such an offence so committed.—REG. *v.* ELMSTONE WHITWELL, *et. al.*, 7 Bom. H. C. R. 89. [Westropp, C.J., and Bayley and Green, JJ. July 30, 1870.]

**Trial of British seamen for offences committed on British ship on the high seas.**—A British seaman, who stood charged with the murder of a fellow-sailor on board a British ship on the high seas, was tried by a Judge of the High Court under the Code of Criminal Procedure; the chief evidence against the prisoner being that given in the depositions of the captain and second officer of the ship, taken on commission; this evidence was admitted in evidence, and the prisoner was convicted and sentenced. It was objected that, under s. 267 of the Merchant Shipping Act of 1854 (17 and 18 Vict., c. 104), the prisoner ought to have been tried in every respect as though the trial had been held at the Central Criminal Court in London, and that the law of evidence to be applied was that prevailing in England. *Held*, on a case certified by the Advocate-General under cl. 26 of the Letters Patent, 1865, that the prisoner had been properly tried according to the ordinary practice of the High Court, and that the evidence was admissible against him.—QUEEN-EMPRESS *v.* BARTON, I. L. R., 16 Cal. 238. [Petheram, C.J., Wilson and Norris, JJ. Feb. 7, 1889.]

**Law applicable to offence committed within three miles of Goa.**—The rule laid down in *Regina* v. *Elmstone* (7 Bom. H. C Rep., C. C., 89), to the effect that English and not Indian law is applicable to offences committed on the high seas, is altered by Stat. 37 and 38 Vict., c. 27, which provides that such offences shall be tried and punished according to the local law. The accused, who was captain of a native craft, was charged with having dishonestly sold his cargo, and scuttled his ship in the course of a voyage from Aleppy to Bombay. The accused was arrested in the Ratnagiri District, and committed for trial to the Sessions Judge of Ratnagiri, who convicted him under ss. 407 and 437 of the Penal Code, and sentenced him to five years' rigorous imprisonment. In appeal the accused contended that the Sessions Judge of Ratnagiri had no jurisdiction to try the case, 1st, because the first offence, if it took place at all, was committed within the territorial waters of Goa, and, 2ndly, because the offence, if committed on the high seas, could only be tried according to the law of England, and not according to the Indian Penal Code. *Held* (1) that the Court at Ratnagiri had jurisdiction. If the offence were committed within three miles of Goa, the Treaty Act (IV. of 1880) between England and Portugal as regards the Goa territory conferred the right to try such cases in British India. (2) If the offence were committed beyond the three mile limit and on the high seas, the Court had jurisdiction, and the Indian Penal Code applied under the provisions of Stat. 30 and 31 Vict., c. 124, s. 11, and Stat. 37 and 38 Vict., c. 27.—QUEEN-EMPRESS *v.* SHEIK ABDOOL RAHIN, I. L. R., 14 Bom. 227. [Scott and Jardine, JJ. Aug 31, 1889.]

**Offence committed on high seas beyond three miles of shore: Charge and punishment under English law: Procedure under Indian law.**—The following is a true copy of a judgment delivered by the High Court on a reference. "This is a reference made by the Chief Presidency Magistrate for the town of Calcutta under s. 432, Code of Criminal Procedure. In it he states that Henry Thomson, steward of the British ship *Lord Brassey*, charged Captain Gunning, master of the said ship, with offences committed on the high seas under ss. 323 and 504, Indian Penal Code, and he asks whether the accused must be tried under the English law, or whether he can be tried under the Indian Penal Code. It would appear from the case of *Queen* v. *Anderson* (L. R., 1 Crown Cases Reserved, p. 161) that if Captain Gunning is guilty of any offences, it is because of the General Admiralty jurisdiction, or under 17 and 18 Vict., c. 104, s. 267, or 18 and 19 Vict., c. 91, s. 21. In each case the offence of which he must be tried is an offence under the English law. In the case of *Queen* v. *Mount* (L. R., C. P C., p. 283) a question arose, not as to the nature of the offence, but as to the amount of punishment that should be inflicted. All doubts on that point are now settled by 37 and 38 Vict., c. 27. The answer, therefore, is that the trial must be conducted under the Code of Criminal Procedure, though the offence charged must be an offence under the English law.—EMPRESS *v.* GUNNING, I. L. R., 21 Cal. 782. [O'Kinealy and Hill, JJ. April 24, 1894.]

Extension of Code to extra-territorial offences.

**4.*** The provisions of this Code apply also to any offence committed by—

(*1*) any Native Indian subject of Her Majesty in any place without and beyond British India; †

(*2*) any other British subject within the territories of any Native Prince or Chief in India; †

(*3*) any servant of the Queen, whether a British subject or not, within the territories of any Native Prince or Chief in India.†

*Explanation.*—In this section the word 'offence' includes every act committed outside British India † which, if committed in British India,† would be punishable under this Code.

*Illustrations.*

(*a.*) A, a coolie, who is a Native Indian subject, commits a murder in Uganda. He can be tried and convicted of murder in any place in British India in which he may be found.

(*b.*) B, a European British subject, commits a murder in Kashmir. He can be tried and convicted of murder in any place in British India in which he may be found.

(*c.*) C, a foreigner who is in the service of the Punjab Government, commits a murder in Jhind. He can be tried and convicted of murder at any place in British India in which he may be found.

(*d.*) D, a British subject living in Indore, instigates E to commit a murder in Bombay. D is guilty of abetting murder.

**Sections 188 and 189, Criminal Procedure Code (Act V. of 1898), bear on s 4, Penal Code.**—The following sections of the Criminal Procedure Code (Act V of 1898) bear on s. 4 of the Penal Code:—

"188. When a Native Indian subject of Her Majesty commits an offence at any place *without and* beyond the limits of British India, or

"(*a*) when any British subject commits an offence in the *territories* of *any Native* Prince or *Chief* in India, or

"(*b*) *when a servant of the Queen (whether a British subject or not) commits an offence in the territories of any Native Prince or Chief in India,*

"he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found:

"Provided that no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there is one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India; *and where there is no Political Agent, the sanction of the Local Government shall be required:*

"Provided, also, that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence, if such offence had been committed in British India, shall be a bar to further proceedings against him under the Foreign Jurisdiction and Extradition Act, 1879,‡ in respect of the same offence in any territory beyond the limits of British India.

"189. Whenever any such offence as is referred to in s 188 is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed, shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate."

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* S. 4 has been substituted for the original by the Indian Penal Code Amendment Act (IV. of 1898), s 2.

† For definitions of "British India and" "India," see the General Clauses Act (X of 1897), s. 3 (7), (27).

‡ Act XXI. of 1879.

**High Court can try offences committed in Mysore.**—The defendant, a European British subject, was charged with having committed three offences at Bangalore, punishable under the Penal Code. *Held* that the High Court has the same criminal jurisdiction which the late Supreme Court had, and that Bangalore being within the territories of the Maharaja of Mysore, a native prince in alliance with the Government of Madras, the defendant was subject to the jurisdiction of the High Court in respect of criminal offences committed in the territory of Mysore.—REG. *v* WATKINS, 2 Mad. H. C. R. 444. [Scotland, C.J. Nov. 4. 1865.]

**Sessions Court of Bellary: Native subjects of the Jaghirdar or Raja of Sundoor: Offence committed in the plateau of Ramandroog.**—The Sessions Court of Bellary has no jurisdiction under the Penal Code to try native subjects of the Jaghirdar or Raja of Sundoor for offences committed in the plateau of Ramandroog upon native inhabitants of the village of Ramandroog. Ramandroog is a portion of the territory of Sundoor, and the Raja is in the position of a native chief or ruler. A treaty entered into by the late Raja of Sundoor with the Government of Madras contained the following stipulation: "It being probable that, as European officers take up their residence on the said hill, many servants, tradesmen, private persons, and others, will reside there, I have relinquished to the Company's Government the police and magisterial functions of maintaining peace, and trying and punishing offences committed by such people such as violence, petty crimes, thefts, murder, &c. The Collector is to have jurisdiction in such matters." *Held* that this treaty did not give the Sessions Court of Bellary jurisdiction, but it surrendered exclusive criminal jurisdiction over a limited class of persons, namely, Europeans and their servants, and all other resident persons, not native subjects of the Raja, and left the Government unfettered to provide, in the way they deemed right, for the trial and punishment of offences committed by such persons.—REG. *v.* VENCANNA, 3 Mad. H. C. R. 354. [Scotland, C.J., Holloway and Collet, JJ. 1867.]

**Foreign subject receiving stolen property outside British territories: Magistrate cannot try such subject.**—S. 31 of the Criminal Procedure Code does not confer jurisdiction upon a Magistrate to try the subject of a Foreign State for "receiving stolen property," when the offence of receiving such property has been committed outside the British territories.—REG. *v.* BECHAR MAVA, 4 Bom. H. C. R. 38. [Couch, C.J., and Newton, J. Dec. 5. 1867.]

**European British subject committing offence under Penal Code in the territories of a Native Prince in alliance with Government: High Court can try him.**—The above section applies to servants of the Queen who commit offences against this Code within the dominions of any Prince or State in alliance with the Queen. The High Court has jurisdiction to try a European British subject for an offence against this Code committed in the territories of a Native Prince in alliance with Government on charges framed under this Code—REG. *v.* CHILL, 8 Bom. H. C. R. 92. [Sargent, J. July 3, 1871.]

**Foreign subject residing in foreign territory instigated commission of offence, which was committed in British territory: British Courts no jurisdiction.**—Where a foreign subject, resident in foreign territory, instigated the commission of an offence which, in consequence, was committed in British territory, *held* that the instigation not having taken place in any district created by the Code of Criminal Procedure, the instigator was not amenable to the jurisdiction of a British Court established under that Code, s. 66.—REG. *v.* PIRTAI, 10 Bom. H. C. R. 356. [Melvill and West, JJ. July 19, 1873.]

**Dacoity at Velanpor, foreign territory: Retention of stolen property in British territory.**—Where dacoity was committed at Velanpor, a village in the territory of H. H. the Gayakwad, and a part of the stolen property found, where it had been concealed by the accused in British territory, it was *held* that a conviction of dacoity could not be sustained, that being a substantive offence completed as soon as perpetrated at Velanpor; although, had Velanpor been in British territory, the subsequent acts in the process of taking away the property might, in the legal sense, have coalesced with the first and principal one so as to give jurisdiction under s. 67 of the Code of Criminal Procedure in each district into which the property was conveyed. But, on a conviction of retaining stolen property, the sentences awarded could, it was held, be sustained, the retaining having taken place in British territory.—REG. *v.* LAKHYA GOVIND, I. L. R., 1 Bom. 50. [West and Nanabhai Haridas, JJ. Oct. 18, 1875.] But see *Empress* v. *Moorga Chetty*, I. L. R., 5 Bom. 338, which overrules *Reg.* v. *Lakhya Govind*, I. L. R., 1 Bom. 50, under s. 2, at p. 7.

**Theft in foreign territory: Arrest of thief in British territory: No jurisdiction to try for theft.**—The accused stole property in foreign territory, and was apprehended with it in his possession in a district in Bri-

tish territory. *Held* that s. 67 of Act X. of 1872 did not give the Courts of such district jurisdiction to try the prisoner for the theft.—REG. v. ADIVIGADU, I. L. R., 1 Mad. 171. [Holloway, Innes, and Kindersley, JJ. Oct. 31, 1876.]

**High Court can try criminal cases sent from Zanzibar.**—The High Court at Bombay has jurisdiction to try a prisoner accused of having committed murder at Zanzibar, and sent by the British Consul at Zanzibar for trial to Bombay. A prisoner accused of having committed murder at Zanzibar was sent by the British Consul there for trial before the High Court at Bombay. The Consul could not enforce the attendance of witnesses at Bombay, but he transmitted to the High Court the depositions which he had taken in the course of the inquiry he had held with regard to the commission of the alleged offence. In the absence of the witnesses, these depositions were tendered in evidence at the trial in Bombay. *Held* that the British Consul at Zanzibar was authorized to take the depositions, and that they were admissible in evidence at the trial under s. 33 of the Evidence Act (I. of 1872). —EMPRESS v. DOSSAJI GULAM HUSEIN, I. L. R., 3 Bom. 334. [Sargent, J. Dec. 3, 1878.]

**Illegal commitment and conviction of European British subject in Mysore.**—A European British subject, committed by a Justice of the Peace in Mysore for trial by the Judicial Commissioner of Mysore on a charge under s. 348 of the Penal Code, was convicted on 10th March 1880. *Held* that the commitment and conviction were illegal. *Quære.*—Whether, when a European British subject in Mysore, being a Christian, is accused of an offence not punishable with death or transportation for life, a commitment to the High Court at Madras would be legal?—WARD v. REG., I. L. R., 5 Mad. 33. [Turner, C.J., and Muttusami Ayyar, J. May 6, 1880.]

**Offence committed in foreign territory by Native Indian subject.**—A Native Indian subject of Her Majesty committed an offence (viz., theft in a dwelling-house) in the territory of a Native State in alliance with Her Majesty, and was discovered in the territory of another Native State in alliance with Her Majesty, and from there brought down, or came of his own accord, to Ahmedabad. A certificate was granted by the Political Agent that the offence ought, in his opinion, to be inquired into in British India. At Ahmedabad a preliminary inquiry was held by a Magistrate, who committed the accused for trial by the Court of Session. *Held* that the Sessions Court at Ahmedabad was competent to try the offence committed in foreign territory as if it had been committed in the Ahmedabad District under s. 9 of the Foreign Jurisdiction and Extradition Act (XXI. of 1879), for when the accused was brought from foreign territory to Ahmedabad, he was "found" at a place in British India within the meaning of the section. *The expression "was found," used in* this section, must be taken to mean, not where a person is discovered, but where he is actually present.—EMPRESS v. MAGANLAL, I. L. R., 6 Bom. 622. [Kemball and Pinhey, JJ. June 29, 1882.]

**Dacoity committed in British territory: Dishonest receipt of stolen property in foreign territory.**—Certain persons, who were not proved to be British subjects, were found in possession, in a Native State, of property the subject of a dacoity committed in British India. They were not proved to have taken part in the dacoity, and there was no evidence that they had received or retained any stolen property in British India. They were convicted of offences punishable under s. 412 of the Penal Code. *Held* that no offence was proved to have been committed within the jurisdiction of a British Court.—QUEEN-EMPRESS v. KIRPAL SINGH, I. L. R., 9 All. 523. [Edge, C.J. and Brodhurst, J. April 25, 1887.]

**Jurisdiction of High Court over European British subjects in Bangalore.**—The Civil and Military Station of Bangalore is not British territory, but a part of the Mysore State; and the Code of Criminal Procedure is in force therein by reason of declarations made by the Governor-General in Council, in exercise of powers conferred by the Foreign Jurisdiction and Extradition Act, 1879. Justices of the Peace for the State of Mysore are also Justices of the Peace for Bangalore, and both the Civil and Sessions Judge and the District Magistrate of Bangalore, being such Justices of the Peace, are, by virtue of s. 6 of the said Act, subordinate to the High Court at Madras. —*In re* HAYES, I. L. R., 12 Mad. 39. [Muttusami Ayyar and Parker, JJ. July 27, Aug. 1, 1888.]

**Liability of native Indian subjects for offences committed out of British India.**—The accused were charged under s. 407 of the Penal Code with committing criminal breach of trust in respect of certain property entrusted to them as carriers. They were all native Indian subjects of Her Majesty. The offence was alleged to have been committed in Portuguese territory, and they were found in a place in British territory. *Held* that, under s. 188 of the Criminal Procedure Code (Act X. of 1882), the accused could be tried in the place where they were

found.—QUEEN-EMPRESS v. DAYA BHIMA, I. L. R., 13 Bom. 147. [Birdwood and Parsons, JJ July 5, 1888.]

**Offence committed in foreign territory: Trial without certificate of Political Agent.**—A District Magistrate instituted criminal proceedings in British India against a native Indian subject of the Queen in respect of offences under ss. 419, 467, and 114 of the Penal Code, said to have been committed by him in French territory, without a certificate under s. 188 of the Criminal Procedure Code (Act X of 1882). The accused was committed to the Sessions Court. *Held*, although the District Magistrate was the Political Agent who might have certified under the Criminal Procedure Code, s. 188, that the proceedings were void for want of the certificate, and the commitment should be quashed.—QUEEN-EMPRESS v. KATHAPERUMAL, I. L. R., 13 Mad. 423. [Muttusami Ayyar and Shephard, JJ. Oct 11, 15, 1889.]

**Jurisdiction of British Consular Court at Zanzibar over foreign subjects enjoying British protection.**—The Greek residents at Zanzibar having been, by international action, placed under British protection, are liable to the British criminal law in force at Zanzibar. The accused, who was a Greek under British protection at Zanzibar, was convicted by the British Consular Court at Zanzibar of culpable homicide not amounting to murder, and sentenced to ten years' rigorous imprisonment under s 304 of the Penal Code. He appealed to the High Court of Bombay, contending (*inter alia*) that he was a Greek subject, and, as such, not liable to be tried by the Consular Court. *Held* that it was competent to Her Majesty to exercise jurisdiction in one foreign State over the subjects of another foreign State, that under s. 6, cl. *b*, of Her Majesty's Order in Council, dated 29th November 1884, the provisions referring to British subjects were applicable to foreigners enjoying British protection, in so far as by treaty, capitulation, grant, usage, sufferance, or other lawful means, Her Majesty had jurisdiction at Zanzibar in relation to such persons; and that the prisoner, being a British protected person within the meaning of s. 4, cl. *b*, of the Order, was amenable to the jurisdiction of the Consular Court.—QUEEN-EMPRESS v. REGO MONTOPOULO, I. L. R., 19 Bom. 741. [Jardine and Ranade, JJ. Jan. 21, 1895.]

**Kidnapping from lawful guardianship: Offence committed outside British territory: Absence of certificate of Political Agent.**—The absence of the certificate of the Political Agent required by s. 188 of the Code of Criminal Procedure is an absolute bar to the trial of a case to which the provisions of that section apply. *Semble*—that the offence of kidnapping from lawful guardianship punishable under s 363 of the Penal Code is not a continuing offence.—QUEEN-EMPRESS v. RAM SUNDAR, I. L. R., 19 All. 109. [Edge, C.J., and Blennerhassett, J. July 30, 1896.]

**Uganda: Jurisdiction of Consular Court over persons not resident within a British Protectorate · Aiding the waging of war against a friendly power.**—Two natives of a German Protectorate were convicted by the English Consular Court of Uganda of aiding and abetting the King of Unyoro in waging war against the King of Uganda and the Queen-Empress under ss. 48 and 50 of the Africa Order in Council of 1889 as supplemented by the Order of Council of 1892 and 1893. One of them was also convicted of slave-dealing. *Held* that the English Consular Court had no jurisdiction, inasmuch as the accused, even if subjects of a Signatory Power, were not resident, and their offences were not committed, within a British Protectorate. *Held* also that the alleged fact that the '*locus in quo*' was in British military occupation gave no jurisdiction to the Consular Court.—IMPERATRIX v. JUMA, I. L. R., 22 Bom. 54 [Jardine and Ranade, JJ. March 17, 1896.]

**Sentence imposed in British India postponed till expiry of a sentence imposed in Mysore.**—It is competent to a Magistrate in British India to pass a sentence which should take effect after the expiration of a sentence in Mysore.—QUEEN-EMPRESS v. VENKATARAM JETTI, I. L. R., 20 Mad. 444. [Collins, C.J., and Shephard, J. Jan. 14, 1897.]

**Criminal jurisdiction along the railway through Indian Independent State.**—The authority for the exercise of criminal jurisdiction by the Government of India upon lands within the limits of the Hyderabad State Railway is derived from a grant to that Government in 1887 by His Highness the Nizam as ruler of the territory. The railway lands remain part of his dominions. The grant of civil and criminal jurisdiction contained in the correspondence of that year between the Nizam's Minister and the Resident at Hyderabad is expressed to be "along the line of railway as is the case on other lines running through Independent States" This jurisdiction, notwithstanding any words in the Notification of the Government of India of the 22nd March 1888 (which could not of itself give any authority, or add to that granted by the Nizam), does not justify the arrest on the lands of the Hyderabad State Railway of a subject of the Nizam under the warrant of the Magistrate of a District in British India, on a charge of

**a criminal offence committed in British India, and unconnected with the Hyderabad Railway Administration. The mere presence of the accused on the railway lands, over which criminal jurisdiction had been granted as above, was no legal ground for his arrest under the warrant of the Court in British India, his offence, if committed at all, not having been committed on those lands, and not having been connected with the railway.** —MUHAMMAD YUSF-UD-DIN *v.* THE QUEEN-EMPRESS, I. L. R., 25 Cal. 20. [Chancellor, Watson, Hobhouse, Macnaghten, James, Couch, and Way, JJ. July 7, 1897.]

**5.** Nothing in this Act is intended to repeal, vary, suspend, or affect any of the provisions of the Statute 3 and 4 William IV., chapter 85,* or of any Act of Parliament passed after that Statute, in anywise affecting the East India Company, or the said territories or the inhabitants thereof; or any of the provisions of any Act† for punishing mutiny and desertion of officers and soldiers in the service of Her Majesty, . . . . ‡ or of any special or local law.§

Certain laws not to be affected by this Act.

**Special and local law.**—For definition of "special" and "local law," see ss 41, 42, Ch. II, *infra*.

**Conviction under special law (Police Act) held good, though the facts would cover an offence under Penal Code.**—A conviction under a special law (*e.g.*, s. 29, Act V. of 1861) should not be quashed merely because the facts would cover an offence punishable under the Penal Code.—QUEEN *v.* KASSIMUDDIN, 8 W. R. 55; 4 Wyman's Rev., Civ., and Crim Rep. 17. [Jackson and Hobhouse, JJ. July 30, 1867.]

**Conviction for making a false declaration under s. 465, Penal Code, though the offence also came under a special law, the Ship Registry Act.**—When a prisoner was convicted of making a false declaration under s. 465 of the Penal Code, the High Court upheld the conviction, though the offence also came under a special law, the Ship Registry Act (X. of 1841), s. 5.—MAD. H. C. RULINGS of 1865 on s. 5.

**Illegality of conviction under both the Penal Code and a special law in respect of one and the same offence.**— A conviction under the Penal Code, and also under a special law, in respect of one and the same offence, is illegal.—QUEEN *v.* HUSSUN ALI, 5 N.-W. P. 49 [Turner, J. Feb. 22, 1873.]

**Disobedience to summons of village-munsif: Charge laid and punished under s. 174, Penal Code, though it might have been dealt with under the Regulation** — The provisions of s. 174 of the Penal Code are not in conflict with the special provisions of ss 15 and 16 of Reg. IV. of 1816 (Mad.). In ordinary cases disobedience to the summons of a village-munsif should be dealt with under the Regulation. But if a charge is laid under the Penal Code, the Criminal Court must deal with it.—QUEEN *v.* RAMACHANDRAPPA, I. L. R., 6 Mad. 249. [Turner, C.J., and Muttusami Ayyar, J. Jan. 25, 1883.]

## CHAPTER II.

### GENERAL EXPLANATIONS.

**6.** Throughout this Code, every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the chapter‖ entitled "General

Definitions in the Code to be understood subject to exceptions.

* This Statute may now be cited as the Government of India Act, 1833 —See the Short Titles Act, 1896 (59 & 60 Vict., c. 14).

† See now the Army Act (44 & 45 Vict., c. 58) as continued and amended by subsequent annual Army Acts.

‡ In s. 5, the words, "or of the East India Company, or of any Act for the Government of the East India Company," repealed by the Repealing Act (XIV. of 1870), have here been omitted.

§ A similar saving as to special and local laws was enacted in the Indian Penal Code Amendment Act (XXVII. of 1870). The amendments made by that Act have been embodied in this edition of the Penal Code.

‖ See Ch. IV., *infra*.

Exceptions," though those exceptions are not repeated in such definition, penal provision, or illustration.

*Illustrations.*

(*a.*) The sections in this Code which contain definitions of offences do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception* which provides that nothing shall be an offence which is done by a child under seven years of age.

(*b.*) A, a police-officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within the general exception† which provides that "nothing is an offence which is done by a person who is bound by law to do it."

Sense of expression once explained.

**7.** Every expression which is explained in any part of this Code is used in every part of this Code in conformity with the explanation.

**Judge to follow ruling of High Court of his own Presidency.**—The lower Courts are bound to follow the concurrent decisions of the Court to which they are subordinate, and are not at liberty to adopt a contrary opinion expressed by another High Court. —KORBAN ALLY MIRDHA *v.* SHARODA PROSHAD AICH, I. L. R., 10 Cal. 82. [Prinsep and O'Kineally, JJ. July 26, 1883.]

(2) A Judge should follow the ruling of the High Court of his own Presidency.— BALAJI GANESH *v.* SAKHARAM PARASHRAM ANGAL, I. L. R., 17 Bom. 555. [Bayley, C.J., and Candy, J. Aug. 18, 1892.]

**Proceedings of Legislature.**—Proceedings of the Legislature in passing a Statute are excluded from consideration on the judicial construction of Indian, as well as of British, Statutes. —ADMINISTRATOR-GENERAL OF BENGAL *v.* PREMLAL MULLICK, I. L. R., 22 Cal. 788. [Watson, Hobhouse, Macnaghten, Shand, and Couch, JJ. Feb. 20. Mar. 30, 1895.]

**Object of codifying a particular branch of law.**—The object of codifying a particular branch of the law is that on any point specifically dealt with, the law should thenceforth be ascertained by interpreting the language used in that enactment, instead of, as before, searching in the authorities to discover what may be the law, as laid down in prior decisions. The language of such an enactment must receive its natural meaning, without any assumption as to its having probably been the intention to leave unaltered the law as it existed before. *Bank of Bengal* v. *Vagliano* (1891, A. C., 107) referred to.—NORENDRA NATH SIRCAR *v.* KAMALBASINI DASI, I. L. R., 23 Cal. 563. [Macnaghten, Morris, and Couch, JJ. Feb. 22, 1896.]

**Proceedings of Legislature.**—The proceedings of the Legislative Council which result in the passing of an Act cannot be referred to as aids to the construction of that Act. *Administrator-General of Bengal* v. *Premlal Mullick* (I. L. R., 22 Cal. 788; S.C., L. R., 22 I. A. 107) followed. Strachey, J., adds: But in India the law is now clear. It is true that there have been decisions in the Courts in India in favour of allowing the proceedings in the Legislative Council to be referred to for the purpose of construing an Act, but the Privy Council in a case decided so recently as 1895 (*The Administrator-General of Bengal* v. *Premlal*, I. L. R., 22 Cal. 788; S.C., L. R., 22 I. A. 107) held that this ought not to be done. If there has been a practice to the contrary in the Courts in India, that practice is wrong, and cannot be permitted any longer. I am bound by this decision of the Privy Council, and I must hold that it is inadmissible to take as an aid in the construing of an Act the proceedings in the Legislative Council which resulted in the passing of an Act. But if I were free to consider the question apart from authority, I may say that I agree entirely with the judgment of Edge, C.J., in *Kadir Buksh* v. *Bhawani* (I. L. R., 14 All. 145 at p. 150), in which he condemned the practice of referring to the proceedings in the Legislature in order to ascertain the meaning of an Act. I think with him that "if Judges were to allow their minds to be influenced in the construing of a statute by debates in Parliament or reports of Select Committees or

* In s. 82, *infra*.

† In s. 76, *infra*.

other bodies on the bill, statute law would be reduced to confusion, and instead of there being one principle of construction of statutes well understood by lawyers, the construction of statutes would be reduced to no principle at all." Mr. Pugh can, of course, read any passages from Sir James Stephen's speech as a part of his address, and as stating his own argument in words which he adopts as his own, but he cannot cite them as Sir James Stephen's opinion and as authority showing the construction to put upon the section.—QUEEN-EMPRESS v. BAL GANGADHAR TILAK, I. L. R., 22 Bom. 112, at p. 128. [Strachey, J. Sep. 8 to 11, 13, and 14, 1897].

**Marginal notes to sections of Act.**—Marginal notes to sections of an Act do not form part of the Act. *Sutton* v. *Sutton* (L. R., 22 Ch. D. 511), and *Dukhi Mollah* v. *Halway* (I. L. R., 23 Cal. 55), followed.—PUNARDEO NARAIN SINGH v. RAM SARUP ROY, I. L. R., 25 Cal. 858. [Maclean, C.J., and Banerjee, J., June 17, 1898.]

Gender.

**8.** The pronoun "he" and its derivatives are used of any person, whether male or female.

Number.

**9.** Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

"Man."
"Woman."

**10.** The word "man" denotes a male human being of any age: the word "woman" denotes a female human being of any age.

"Person."

**11.** The word "person" includes any company or association, or body of persons, whether incorporated or not.

"Public."

**12.** The word "public" includes any class of the public or any community.

"Queen."

**13.** The word "Queen" denotes the Sovereign for the time being of the United Kingdom of Great Britain and Ireland.

"Servants of the Queen."

**14.** The words "servants of the Queen" denote all officers or servants continued, appointed, or employed in India by or under the authority of the said Statute 21 and 22 Victoria, chapter 106,* entitled "An Act for the Better Government of India," or by or under the authority of the Government of India or any Government.

"British India."

**15.** The words "British India" denote the territories which are or may become vested in Her Majesty by the said Statute 21 and 22 Victoria, chapter 106,* entitled "An Act for the Better Government of India." . . . .†

"Government of India."

**16.** The words "Government of India" denote the Governor-General of India in Council, or, during the absence of the Governor-General of India from his Council, the President in Council, or the Governor-General of India alone, as regards the powers which may be lawfully exercised by them or him respectively.

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* This Statute may now be cited as the Government of India Act, 1858.—See the Short Titles Act, 1896 (59 & 60 Vict., c. 14).

† In s 15, the words, "except the Settlement of the Prince of Wales's Island, Singapore, and Malacca," repealed by the Repealing and Amending Act (XII. of 1891), have here been omitted.

**17.** The word "Government"* denotes the person or persons authorized by law to administer executive government in any part of British India.

"Government."

**Surveyor employed by Collector is a public servant**—The Collector, acting in the management of a *khas mehal*, the property of the Government, is as much "the Government" within the meaning of s. 17 of the Penal Code as when he is exercising any other of the duties of his official position. A surveyor employed by the Collector in the *khas mehal* department to make a survey of a certain portion of a water-course is a "public servant" within the meaning of s. 21 of the Penal Code *Reg.* v. *Ramajira* (12 Bom. H. C. R. 1) and *Chatter Lal* v. *Thacoor Pershad* (I. L. R., 18 Cal. 518) referred to.—BAJOO SINGH *v.* QUEEN-EMPRESS, I. L. R., 26 Cal 158. [Stevens and Pratt, JJ. Nov. 2, 1898.]

"Presidency."

**18.** The word "Presidency" denotes the territories subject to the Government of a Presidency.

"Judge."

**19.** The word "Judge" denotes, not only every person who is officially designated as a Judge, but also every person—

who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or

who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

*Illustrations.*

(*a*.) A Collector exercising jurisdiction in a suit under Act X. of 1859† is a Judge.

(*b*.) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.

(*c*.) A member of a panchayat which has power, under Regulation VII., 1816,‡ of the Madras Code, to try and determine suits, is a Judge.

(*d*.) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court is not a Judge.

**Collector's authority to commit.**—A Collector, trying a suit under Act X. of 1859, has authority to commit to the Sessions Judge.—QUEEN *v.* BUNSEE SING, 1 W. R. 47. [Kemp and Glover, JJ. Dec. 21, 1864.]

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* But see s. 263A (*4*), *infra*.

† Act X. of 1859 (an Act to amend the Law relating to the Recovery of Rent in the Presidency of Fort William in Bengal) has been repealed in the Chutia Nagpur Division of Bengal (except as to the District of Manbhum and the Tributary Mahals) by the Chutia Nagpur Landlord and Tenant Procedure Act (Ben. Act I of 1879), and in the rest of Bengal (except as to Calcutta, Orissa, and the Scheduled Districts) by the Bengal Tenancy Act (VIII. of 1885). It is now in force in the District of Manbhum, in the Darjeeling District, and in parts of the Jalpaiguri District in Bengal; and such parts of it as are not inconsistent with the portions of Act VIII. of 1885, which have been extended to the Orissa Division, are in force in that division.

Act X. of 1859 has also been repealed in the North-Western Provinces (except as to certain Scheduled Districts) by the N.-W. P. Rent Act (XVIII. of 1873), and in the Central Provinces by the Central Provinces Tenancy Act (IX. of 1883), which has been superseded by the Central Provinces Tenancy Act (XI. of 1898)

In the North-Western Provinces, for "Act X. of 1859," the words and figures "the North-Western Provinces Rent Act, 1881," have been substituted.—See the N.-W. P. Rent Act (XII. of 1881), s. 2.

‡ *Mad. Reg. VII. of 1816 has been repealed by the Madras Civil Courts Act (III. of 1873).*

"Court of Justice."

**20.** The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

*Illustration.*

A panchayat acting under Regulation VII., 1816,* of the Madras Code, having power to try and determine suits, is a Court of Justice.

**Sub-Registrar a Court.**—A Sub-Registrar acting under s. 41 of the Registration Act, 1877, is a "Court" within the meaning of s. 195 of the Code of Criminal Procedure.—*In re* VENKATACHALA PILLAI, I. L. R., 10 Mad. 154. [Brandt and Parker, JJ. Jan. 19, 1887.]

"Public servant."

**21.** The words "public servant" † denote a person falling under any of the descriptions hereinafter following, namely :—

*First.*—Every covenanted servant of the Queen ;

*Second.*—Every commissioned officer in the military or naval force of the Queen while serving under the Government of India or any Government ;

*Third.*—Every Judge ;

*Fourth.*—Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties ;

*Fifth.*—Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant ;

*Sixth.*—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority ;

*Seventh.*—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement ;

*Eighth.*—Every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety, or convenience ;

*Ninth.*—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or to execute any revenue-process, or to investigate, or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty ;

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* Mad. Reg. VII. of 1816 has been repealed by the Madras Civil Courts Act (III. of 1873).

† Later Acts and Regulations declare various other functionaries to be public servants for the purposes of the Penal Code, *e.g.*, Examiner of the University of Allahabad by s. 18 (*i*) of the Allahabad University Act (XVIII. of 1887).

*Tenth.*—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town, or district, or to make, authenticate, or keep any document for the ascertaining of the rights of the people of any village, town, or district.

*Illustration.*

A Municipal Commissioner is a public servant.

*Explanation 1.*—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

*Explanation 2.*—Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

**What constituted offering a bribe to a juryman.**—Although what passed between the prisoner and the juryman might not have amounted to an offer of a bribe to the latter, yet it was held to be so when taken in connection with what passed between the prisoner and the juryman's brother.—QUEEN *v.* BAWOOL CHUNDER BISWAS, 1 W. R 36. [Steer and Jackson, JJ. Aug. 26, 1864.]

**Convict-warders are public servants.**—Convict-warders are "public servants" within the meaning of s. 223 of the Penal Code. —QUEEN *v* KALLA CHAND MOITREE, 7 W. R. 63. [Seton-Karr and Macpherson, JJ. May 6, 1867 ]

**Officer of Court is a public servant.**—Every officer of a Court of Justice, whose duty it is to execute any judicial process, is a public officer. The resistance of process of a Civil Court is punishable, under the Code of Criminal Procedure, by a Court of Criminal Jurisdiction. *Chunder Kant Chuckerbutty* (9 W. R. 63) overruled —QUEEN *v.* BHAGAI DAFADAR, 2 B. L R. F. B. 21, 10 W. R. 43. [Peacock, C J., and Bayley, Jackson, Macpherson, and Glover, JJ. Sep. 2, 1868.]

**Engineer is a public servant.**—An engineer who receives and pays to others municipal moneys is a public servant within the meaning of s 21, cl. 10. of the Penal Code, although he may not have the power of sanctioning the expenditure of such moneys — REG. *v.* NANTAMRAM UTTAMRAM, 6 Bom. H C. R. 64. [Gibbs and Lloyd, JJ. Sep. 29, 1869.]

**Naib-nazir is a public servant.**—The naib-nazir is a public servant within the meaning of s. 409 of the Penal Code, and not the mere private servant of the nazir.—QUEEN *v.* MAHMOOD HOSSEIN, 2 N.-W. P. 298. [Spankie, J. July 18, 1870.]

**Supernumerary peon is a public servant.**—An occasional or supernumerary peon appointed under the order of the Board of Revenue in accordance with s 6, Act V. of 1863 (B.C.), and paid under that section by fees whenever employed to serve process, is a public servant under cl. 9, s. 21, of the Penal Code, and, as such, may be tried for receiving an illegal gratification under s. 161 of that Code.—QUEEN *v* RAMKISTO DOSS, 16 W. R. 27; 7 B. L. R. 446. [Ainslie and Paul, JJ. July 24. 1871.]

**Police-officer under suspension.** — A police-officer under suspension cannot be convicted under s. 29, Act V. of 1861, of withdrawing from the duties of his office without permission.—QUEEN *v.* DINONATH GANGOOLY, 17 W. R. 12; 8 B. L. R. Ap. 58. [Kemp and Jackson, JJ. Feb 10, 1872.]

**Village-kavalgars** —S. 44 of Act XXIV. of 1859 applies only to police-officers enrolled and appointed in the manner prescribed in ss. 8, 10, and 11 of the Act. Village-kavalgars, not being so appointed, are not punishable under s. 44 —PRO., Mar. 11, 1872, 7 Mad. H C. R Ap. 4

**Izaphatdar not a public servant.**—The word "officer" in s. 21, cl. 9, of the Penal Code, means a person employed to exercise to some extent a delegated function of Government. He must be either himself armed with some authority or representative character, or his duties must be immediately auxiliary to those of some one who is so armed. Hence, an izaphatdar, *i.e.*, a lessee of a village who has undertaken to keep an account of its forest-revenues, and pay a certain proportion to the Government, keeping the remainder for himself, is not an officer, and therefore not a public servant within the meaning of s. 21.—REG. *v.* RAMAJIRAV, JIVBAJIRAV, 12 Bom. H C. R. 1. [West and Nanabhai Haridas, JJ. Feb. 10, 1875.]

**Prosecutor in Police Court a public servant.**—A person appointed by the Government Solicitor with the approval of Government and under an arrangement by the Governor-General in Council to act as Pro-

**secutor in the Calcutta Police Courts is a public servant within the meaning of s. 21 of the Penal Code.**—EMPRESS *v.* BUTTO KRISTO DASS, I. L. R., 3 Cal. 497. [Jackson and Cunningham, JJ Mar. 4, 1878.]

**Municipal Corporation not a public servant.**—A Municipal Corporation is not a public servant within the meaning of s. 39 of Act IV. of 1877, and may, therefore, be prosecuted under the Penal Code without the preliminary sanction of the Government required by that section.—EMPRESS *v.* MUNICIPAL CORPORATION OF THE TOWN OF CALCUTTA, I. L. R., 3 Cal. 758. [Ainslie and White, JJ. June 5. 1878.]

**Poddar in bank not a public servant.**—The manager of a Court of Wards' estate paid into a bank, carrying on the treasury business of the Government, a sum of money on behalf of Government. B, a poddar in the bank, demanded and took a reward for his trouble in receiving the money. On B being prosecuted and charged under s. 161 of the Penal Code, *held* that although the money might have been paid on account of Government, it was on behalf of the bank, and not on behalf of the Government, that the money was received by the accused; and that the poddar was a servant of the bank only, and not a public servant within the meaning of cl. 9, s 21 of the Penal Code —IN THE MATTER OF THE PETITION OF MODUN MOHUN, I. L. R., 4 Cal 376. [Ainslie and Broughton, JJ. Dec. 10, 1878.]

**Peon when not a public servant**—A peon employed by the manager of an estate under the charge of the Court of Wards is not a public servant within the meaning of s. 21 of the Penal Code.—QUEEN *v.* ARAVI, I. L. R., 7 Mad. 17 [Turner, C.J] May 10, 1883.]

**Carter not a public servant**—A carter employed by Government is not a public servant within the meaning of s 21 of the Penal Code.—QUEEN *v* NACHIMUTTU, I. L. R., 7 Mad. 18. [Turner, C J. June 31, 1883.]

**Person performing duties of public servant must be held to be public servant.**—Any person, whether receiving pay or not who chooses to take upon himself duties and responsibilities belonging to the position of a public servant, and performs those duties and accepts those responsibilities, and is recognized as filling the position of a public servant, must be regarded as one, and it does not lie in his mouth to say subsequently that, notwithstanding his performance of public duties, and the recognition by others of such performance, he is not a "public servant" within the definition contained in s. 21 of the Penal Code.—QUEEN-EMPRESS *v.* PARMESHAR DAT, I. L. R., 8 All. 201. [Straight, J. Feb. 5, 1886.]

**Obstruction of a public servant.**—In a suit filed in a Mamlatdar's Court under Bom. Act III. of 1876, the plaintiff obtained a decree against the accused for possession of a certain piece of land. When the Mamlatdar proceeded to execute the decree, he found that there was no land corresponding to the boundaries set forth in the plaint, and that the parties were joint-owners and in joint-occupation of the land in dispute. Finding himself unable to execute the decree, the Mamlatdar referred the matter to the Collector for advice. The Collector, on looking into the papers of the case, ordered a surveyor to execute the decree by dividing the land in dispute, and putting the decree-holder in possession of his share. The surveyor, in attempting to execute the decree, was obstructed by the accused, who was thereupon tried and convicted of the offence of voluntarily obstructing a public servant in the discharge of his public functions under s. 186 of the Penal Code. *Held*, reversing the conviction, that, as the Collector had no legal authority to issue the order to the surveyor in execution of the Mamlatdar's decree, the surveyor acting under that order was not discharging a public function, and the act of the accused was not an offence against s 186 of the Penal Code. *Held*, further, that the Collector's order was so entirely *ultra vires* as to leave no room for the operation of either the first or the second clause of s. 99 of the Penal Code —QUEEN-EMPRESS *v.* TULSIRAM I. L. R., 13 Bom 168. [Birdwood and Parson, JJ. May 3, 1888.]

**Municipal inspector is a public servant.**—A municipal inspector is a public servant within the meaning of s. 41 of the Madras District Municipalities Act —QUEEN-EMPRESS *v.* RAMASAMI I. L. R. 13 Mad. 131. [Collins and Parker, JJ. Aug 21, 1889.]

**Ameen appointed under Bengal Tenancy Act (VIII. of 1885), s. 69, not a public servant.**—A person nominated by the Collector under s. 69 of the Bengal Tenancy Act (VIII of 1885) for the purpose of making a division of crops between the landlord and the tenant is not a public servant within the meaning of s 186 of the Penal Code. —CHATTER LAL *v* THACOOR PERSHAD, I. L. R., 18 Cal. 518. [Petheram, C.J., and Beverley, J June 11, 1891.]

**Patwari preparing a "teis-khana" not a public servant**—A "teis-khana" register prepared by a patwari under rules framed by the Board of Revenue under s. 16 of Reg. XII. of 1817 is not a public document, nor is the patwari preparing the same a public servant.—BAIJ NATH SING *v.* SUKHU MAHTON, I. L. R., 18 Cal 534. [Petheram, C.J., and Beverley, J. June 26, 1891.]

**Zamindari karnam is a public servant.**—A zamindari karnam is a public servant, and is bound by law to produce accounts to the proprietor or farmer of a zamindari.—SUBRAMANYA *v.* SOMASUNDARA, I. L. R., 15 Mad. 127. [Collins and Handley, JJ. Oct. 23, 1891.]

**Peon when a public servant.**—A Nazir has authority to delegate the execution of warrants of arrest. *Dharam Chand Pal* v. *Queen-Empress* (I. L. R., 22 Cal. 596) followed. A peon acting under such delegation is a public servant within the meaning of the definition in s. 21, cl. 4, of the Penal Code. *Quære.*—Whether the escape of a prisoner from arrest is an obstruction of a public servant within the meaning of s. 186 of the Penal Code.—SHEO PROGASH TEWARI *v.* BHOOP NARAIN PROSAD PATHAK, I. L. R., 22 Cal. 759 [Pethcram, C.J., and Beverley, J. Mar. 14, 1895.]

**Sanitary Inspector is a public servant.**—A Sanitary Inspector appointed by the Local Board is a public servant within the meaning of the Local Boards Act (Mad. Act V. of 1884), s. 43.—QUEEN-EMPRESS *v.* TIRUVENGADA MUDALI, I. L. R., 21 Mad. 428. [Davies and Moore, JJ. July 15, 1898.]

**Collector managing a khas mehal: Surveyor employed by Collector Both public servants.**—The Collector acting in the management of a *khas mehal*, the property of the Government, is as much the Government, within the meaning of s. 17 of the Penal Code, as when he is exercising any other of the duties of his official position. A surveyor employed by the Collector in the *khas mehal* department to make a survey of a certain portion of a water-course is a "public servant" within the meaning of s. 21 of the Penal Code. *Reg* v. *Ramajirav* (12 Bom. H. C. R. 1) and *Chatter Lal* v. *Thacoor Pershad* (I. L. R., 18 Cal. 518) referred to.—BAJOO SINGH *v.* QUEEN-EMPRESS, I. L. R., 26 Cal. 158 [Stevens and Pratt, JJ. Nov. 2, 1898.]

**Manager employed under the Court of Wards is a public servant.**—*Held* that the manager of an estate employed under the Court of Wards is a "public servant" within the meaning of s. 21 of the Penal Code. *Queen-Empress* v. *Arayi* (I. L. R., 7 Mad. 17) referred to.—QUEEN-EMPRESS *v.* MATHURA PRASAD, I. L. R., 21 All. 127. [Aikman, J. Nov. 19, 1898.]

**Peon in the service of Government is a public servant, but not manager of an estate under Court of Wards.**—An officer in the service or pay of Government within the terms of s. 21, cl. 9, of the Penal Code, is one who is appointed to some office for the performance of some public duty. *Held* that a peon in the service and pay of Government and attached to the office of a Superintendent of the Salt Department, is a public servant. *Held*, further that a manager of an estate under the Court of Wards is not a public servant. *Reg* v. *Ramajirav Jibajirav* (12 Bom. H. C. R. 1) and *Queen* v. *Arayi* (I. L. R., 7 Mad. 17) referred to. *Queen-Empress* v. *Mathura Prasad* (I. L. R., 21 All. 127) dissented from.—NAZAMUDDIN *v.* QUEEN-EMPRESS, I. L. R., 28 Cal. 344. [Prinsep and Handley, JJ. July 9, 1900.]

"Moveable property."

**22.** The words "moveable property" are intended to include corporeal property of every description, except land and things attached to the earth, or permanently fastened to anything which is attached to the earth.

**Hut not moveable property.**—A hut is not moveable property within the meaning of s. 19 of Act XI of 1865. A Small Cause Court has no jurisdiction to sell a hut. A purchaser of a hut sold by a Small Cause Court in execution of a decree acquires no title to it.—NATTU MIAH *v.* NAND RAM, 8 B. L. R. 508; 7 W. R. 309. [Couch, C.J., and Bayley, Jackson, Macpherson, Glover, and Mitter, JJ. Jan. 29, 1872.]

**Carrying away cart-loads of earth.**—A dug up, and immediately carried away, without any authority or right, several cart-loads of earth, part of unassessed lands of a village. *Held* that A was not guilty of theft.—QUEEN-EMPRESS *v.* KOTAYYA, I. L. R., 10 Mad. 255. [Collins, C.J., and Kernan and Brandt, JJ. Mar. 18, 1887.] But see the following ruling —

**Dishonestly carrying away cart-loads of earth.**—Earth, that is, soil, and all the component parts of the soil, inclusive of stones and minerals, when severed from the earth or land to which it was attached, is moveable property capable of being the subject of theft. Whoever dishonestly severs such earth from the earth commits theft. Where a person dishonestly carried away 100 cart-loads of earth from the complainant's land, *held* that he was guilty of theft. *Queen-Empress* v. *Kotayya* (I. L. R., 10 Mad. 255) dissented from.—QUEEN-EMPRESS *v.* SHIVRAM, I. L. R., 15 Bom. 702. [Birdwood and Parsons, JJ. Mar. 24, 1890.]

"Wrongful gain."

**23.** "Wrongful gain" is gain by unlawful means of property to which the person gaining it is not legally entitled.

"Wrongful loss."

"Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

Gaining wrongfully; losing wrongfully.

A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

**Taking moveable property to coerce payment of debt.**—A creditor, by taking any moveable property of his debtor from the debtor's possession without his consent, with the intention of coercing him to pay his debt, commits the offence of theft as defined in *s.* 378 of the Penal Code. Ss. 23 and 24 of the Penal Code discussed and explained. *Prosonno Kumar Patra* v. *Uday Sant* (I. L. R., 22 Cal. 669) overruled.—QUEEN-EMPRESS *v.* SRI CHURN CHUNGO, I. L R, 22 Cal. 1017. [Petheram, C.J., and Prinsep, Pigot, Macpherson, and Banerjee, JJ. Dec. 20, 1895.]

**24.** Whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing "dishonestly."

"Dishonestly."

**What constitutes theft.**—For a discussion as to what constitutes theft, see the case of—*QUEEN v.* MADAREE CHOWKEEDAR, 3 W. R. 2. [Peacock, C J., and Kemp and Glover, JJ. *Feb. 17, 1865.*]

**Dishonest intention in a case of theft.**—Meaning of dishonest intention in a case of theft as defined in the Penal Code.—QUEEN *v.* PREONATH BANERJEE, 5 W. R. 65.—[Jackson, ]. April 16, 1866.]

**Dishonest intention.**—Meaning of dishonest intention in a case of theft as defined in the Penal Code.—QUEEN *v.* PREONATH BANERJEE, 5 W. R. 68. [Jackson, J. April 16, 1866.]

**Pledgee of a turban does not commit criminal breach of trust if he uses it.**—In this case, the prisoner, the pledgee of a turban, has been convicted of criminal breach of trust for using that turban. The offence consists of dishonestly using or disposing of property in violation of any direction of law as to the mode in which any trust affecting such property is to be discharged. The word "dishonestly" in the Penal Code means the doing of an act with the intention of causing wrongful loss or wrongful gain, and wrongful gain is gain by unlawful means of property to which the person gaining is not legally entitled. For either wrongful loss or gain, the property must be lost to the owner, or the owner must be kept out of it. The High Court are of opinion that the deterioration of the article by use is not such a loss of property to the owner, and the wrongful use of property by the prisoner is not such a gain to him. The High Court, are, therefore, of opinion that the facts found do not amount to criminal breach of trust, and they accordingly resolve to quash the sentence, and direct the release of the prisoner.—PRO., Sep. 18, 1866, 3 Mad. H. C R. Ap. vi.

**When a person takes charge of fishing nets, and retains possession pending orders of his employers, does not commit theft.**—The prisoner, acting *bonâ fide* in the interest of his employers, and finding a party of fishermen poaching on his masters' fisheries, took charge of the nets, and retained possession of them, pending the orders of his employers. *Held* that the prisoner was not guilty of theft, as there was no dishonest intention in taking the property.—QUEEN *v* NOBIN CHUNDER HOLDAR, 6 W. R. 79 [Kemp and Markby, JJ. Sep. 28, 1866.]

**Person acting under a claim of right when not guilty of theft.**—A person acting under a claim of right (however ill-founded such claim may be) is not guilty of theft by asserting it.—QUEEN *v.* RAM CHURN SINGH, 7 W. R. 57. [Seton-Karr and Markby, JJ. April 15, 1867.]

**Fraudulent intention in respect of a forged document.**—In a case in which the accused was charged with dishonestly using as genuine a patta which he knew to be forged, and in which there was a fraudulent insertion, it was *held* that it was not necessary to prove that he personally inserted the word, but it was sufficient if it was inserted with his knowledge.—QUEEN *v.* HEMORUDDI MUNDUL, 9 W. R. 22. [Kemp and Jackson, JJ. Mar. 2, 1868.]

**Abetment of theft.**—The carrying off of certain buffaloes belonging to the complain-

ant by order of the accused, and the retention of them in the custody of the latter's servant, were held to amount to an abetment of theft as defined in the Penal Code. —TARINEE PROSAUD BANERJEE, 18 W. R. 8. [*Kemp and Glover, JJ. June 14, 1872.*]

**Illegal impounding of cattle not theft** — The illegal seizure and impounding of cattle is not theft within the meaning of the Penal Code, even if effected with the malicious intent of subjecting the owners to additional expense, inconvenience, and annoyance. A Sessions Judge has no power to release on bail persons convicted by the Magistrate, pending a reference to the High Court under Act X. of of 1872, s. 296 —AKADHUN MUNDUL *v.* MYAN KHAN TAKADGEER, 24 W. R. 7. [Glover and Mitter, JJ. June 4, 1875.]

**Snatching away a document produced before arbitrator, and running away with it, constitutes "secreting," not theft** — Where the plaintiff in a suit referred to arbitration by consent, with a view to prevent a witness from referring to an endorsement on a bond (which tended to show that defendant had paid more than it was alleged had been paid by him) snatched up the bond which was lying beside the arbitrator, ran away, and refused to produce it, *held* that the offence committed was not theft, but secreting a document under s. 204 of the Penal Code.—SUBRAMANIA GHANAPATI *v.* QUEEN, I. L. R., 3 Mad. 261. [Turner, C.J., and Muttusami Ayyar, J. Sep. 2, 1881.]

**Using as genuine a forged document with intent to defraud. Doing a thing dishonestly.** —The accused, in order to obtain a recognition from a settlement officer that they were entitled to the title of "Loskur," filed a sanad before that officer, purporting to grant that title. This document was found not to be genuine. The Sessions Judge convicted the accused under ss 471, 464 of the Penal Code. *Held*, on appeal, that, even supposing the accused had used the document knowing it not to be genuine, they could not be found guilty, as the intention of the accused was not to cause wrongful gain or wrongful loss to any one; their intention being to produce a false belief in the mind of the settlement-officer that they were entitled to the dignity of "Loskur," and that this could not be said to constitute "an intention to defraud" A sanad, conferring a title of dignity on a person, is not a valuable security within the meaning of the Penal Code.—JAN MAHOMED AND JABAR MAHOMED *v.* EMPRESS; WARI MRAH *v.* EMPRESS, I. L. R., 10 Cal. 584. [Mitter and Norris, JJ. April 17, 1884.]

**Speculation as to intention.**—The creditors of a police-constable applied to the District Superintendent of Police that Rs. 2 might be deducted monthly from the debtor's pay until the debt was satisfied. Upon an order being passed directing that the deduction asked for should be made, the debtor produced a receipt purporting to be a receipt for Rs. 18, the whole amount due. It subsequently appeared that the receipt was one for Rs. 8, which the debtor had altered by adding the figure "1" so as to make it appear that the receipt was for Rs. 18. *Held* that the real intent in the prisoner's mind being to induce his superior officer to refrain from the illegal act of stopping a portion of his salary, the Court in a criminal case ought not to speculate as to some other intent over and above this that might have presented itself to him: that it did not necessarily follow that he contemplated setting up the altered receipt to defeat his creditor's claim; and that therefore he ought not to have been convicted of an offence under s. 471 of the Penal Code.—QUEEN-EMPRESS *v.* SYED HUSAIN, I. L. R., 7 All. 403. [Petheram, C.J., and Straight, J. Feb. 27, 1885.]

**Dishonestly and fraudulently.**—In a trial upon a charge, under s. 471 of the Penal Code, of fraudulently or dishonestly using as genuine documents known to be forged, it was found that four forged receipts for the payment of rent, used by the prisoner, had been fabricated in lieu of genuine receipts which had been lost. *Held* that, with reference to the definitions of the terms 'dishonestly' and "fraudulently" in ss 24 and 25 of the Penal Code, the prisoner, upon the facts as found, had not committed the offence punishable under s. 471.—QUEEN-EMPRESS *v.* SHEO DAYAL, I. L. R., 7 All. 459. [Brodhurst, J. Mar. 6, 1885.]

**It is not theft to take a boat in order to escape, and then abandon it.**— When an accused, charged with murder, was alleged to have taken a boat from a place where it had been secured by its owner, and after proceeding some distance in it had abandoned it, and when he was charged with the theft of the boat, *held* that the charge was unsustainable, inasmuch as it was evidently not his intention to convert it to his own use, and make it permanently his own property, but merely to make use of it for the purpose of aiding him in escaping — ADU SHIKDAR *v.* EMPRESS, I. L. R., 11 Cal. 635. [Mitter and Norris, JJ. May 29, 1885.] See *contra*, p. 24, *infra*, col. 2.

**Making false report to stave off discovery of previous fraud.**—A treasury accountant was convicted of offences under ss. 218 and 465 of the Penal Code under the

following circumstances. A sum of Rs. 500, which was in the treasury, and was payable to a particular person through a Civil Court, was drawn out and paid away to other persons by means of forged cheques. After the withdrawal of the Rs. 500, but before such withdrawal had been discovered, the representative of the payee applied for payment. The prisoner then, upon two occasions, wrote reports to the effect that the Rs. 500 in question then stood at the payee's credit as a revenue-deposit, and that it was about to be transferred to the Civil Court. Upon the first of these reports, an order was signed by the treasury-officer for the transfer of the money to the Civil Court concerned, and to effect such transfer a cheque was prepared by the sale-muharrir, which, as originally drawn up, related to the sum of Rs. 500 already mentioned. The signature of the cheque by the treasury-officer was delayed for some time, and meanwhile the cheque was altered by the prisoner in such a manner as to make it relate to another deposit of Rs. 500 which had been made subsequently to the above and to the credit of another person. The result of this was the transfer of the second payee's Rs. 500 to the Civil Court, as if it had been the first Rs. 500, and to the credit of the first payee's representative. The prisoner was convicted under s. 465 of the Penal Code in respect of the cheque, and under s. 218 in respect of the two reports above referred to. *Held*, with respect to the charge under s. 465, that the prisoner's immediate and more probable intention—which alone, and not his remoter and less probable intention, should be attributed to him—was not to cause wrongful loss to the second payee by delaying payment of the Rs. 500 due to her, though the act might have caused her loss, but to conceal the previous fraudulent withdrawal of the first payee's Rs. 500; that, under these circumstances, he could not be said to have acted "dishonestly" or "fraudulently" within the meaning of s. 24 or s. 25 of the Penal Code; and that, therefore, his guilt under s. 465 had not been made out, and the conviction under that section must be set aside. *Held* also that prisoner's intention in making the false reports was to stave off the discovery of the previous fraud, and save himself or the actual perpetrator of that fraud from legal punishment, and that, having prepared the reports in a manner which he knew to be incorrect, he was rightly convicted under s. 218 of the Penal Code. *Held* further that as the prisoner, who was a public servant, made these reports, and assumed to make them in due course and as a part of his duty, and held them out as reports which were made by the proper officer, and as no question was put in the examination of the witnesses from the office which suggested that it was not his business to make such reports, it must be inferred that he made them, because it was his business to do so, and as a public servant within the meaning of s. 218 of the Penal Code.—QUEEN EMPRESS *v.* GRIDHARI LAL, I. L. R., 8 All. 653. [Edge, C.J. Aug. 24, 1886.]

**Joint property, Theft of.**—Theft of joint property may be committed by a co-parcener if he takes it from joint possession, and converts such possession into separate possession.—QUEEN-EMPRESS *v.* PONNURANGAM, I. L. R., 10 Mad. 186. [Kernan and Muttusami Ayyar, JJ. Mar. 1, 1887.]

**Person held guilty of theft of boat, though it was not his intention to convert it to his own use, or to deprive complainant permanently of its possession.**—A charge of theft will lie under s. 378 of the Penal Code (Act XLV. of 1860), even where there is no intention to assume entire dominion over the property taken, or to retain it permanently. When a person takes another man's property, believing, under a mistake of fact and in ignorance of law, that he has a right to take it, he is not guilty of theft, because there is no dishonest intention, even though he may cause wrongful loss within the meaning of the Penal Code. The accused was the brother of a farmer or contractor of a public ferry on the Tadri river. He seized a boat belonging to the complainant while conveying passengers across the creek which flows into the river at a point within three miles from the public ferry. His intention was apparently to compel persons who had to cross the creek to use the ferry in the absence of the complainant's boat, and thereby increase his brother's income derived from fees to be paid by passengers crossing the creek. The accused had no reason to believe that he was justified in seizing the boat. *Held* that the accused was guilty of theft, though it was not his intention to convert the boat to his own use, or deprive the complainant permanently of its possession.—QUEEN-EMPRESS *v.* NAGAPPA, I. L. R., 15 Bom. 344. [Birdwood and Jardine, JJ. Jan. 27, 1890.]

**Primary intention.**—In construing ss. 24 and 25 the primary and not the remote intention of the accused must be looked at. *Queen-Empress v. Girdhari* (I. L. R., 8 All. 653) cited.—QUEEN-EMPRESS *v.* HARADHAN *alias* RAKHAL DASS GHOSH, I. L. R., 19 Cal., 380. [Norris and Beverley, JJ. April 20 1892.]

**Carrying off cattle to prevent them being killed.**—Where several Hindus acting in concert forcibly removed an ox and two

cows from the possession of a Mahomedan, not for the purpose of causing "wrongful gain" to themselves or "wrongful loss" to the owner of the cattle, but for the purpose of preventing the killing of the cows, *held* that they could not properly be convicted of dacoity, but only of riot.—QUEEN-EMPRESS *v.* RAGHUNATH RAI, I. L. R., 15 All. 22. [Tyrrell, J. Aug. 6, 1892.]

**Illegal seizure of cattle, and taking them to a pound, constitutes theft.**—An accused was found to have loosed the complainant's cattle at night from a cattle-pen, and to have driven them to the pound with the object of sharing with the pound-keeper the fees to be paid for their release. He was proceeded against under Act I. of 1871 (Cattle Trespass Act), and under the provisions of s 22 ordered to pay compensation to the complainant, and in default to undergo one month's rigorous imprisonment. *Held* that s. 22 was inapplicable to the facts of the case, and that the order must be set aside. On the facts it was not a case of "illegal seizure and detention" of cattle, but rather one of theft, as all the elements of that offence were present, and the accused should have been charged with and tried for, that offence *Held*, further, that the sentence of imprisonment in default of payment of the compensation was not warranted by law. Compensation may be levied as a fine, and the ordinary mode of levying fines is laid down in s 386 of the Code of Criminal Procedure. The law nowhere provides that fines may be levied by means of imprisonment.—PARYAG RAI *v.* ARJU MIAN, I. L. R., 22 Cal. 139 [Petheram C.J., and Beverley, J. Aug. 18, 1894.]

**When removal of debtor's property by creditor does not amount to theft.**—With a view to coerce the complainant to pay a sum of Rs. 14, which he owed to the accused, three head of cattle worth Rs. 60 were removed from the complainant's homestead under the order of the accused *Held* the offence of theft was not committed by the accused. The illustrations to s. 378 of the Penal Code indicate that it was the intention of the Legislature that, in order to have committed theft within the meaning of the section, the taker must have taken the thing with the intention of keeping it himself, or disposing of it for his own benefit or in some way which would compel the owner to pay him money which he did not owe him in order to regain his property. The words "intending to take dishonestly any moveable property" in the above section, read with s. 23 and s 24 of the Penal Code, mean "with the intention of gaining by unlawful means property to which he is not legally entitled." "To gain property by unlawful means" means "to gain the thing moved for the use of the gainer," and not "the gaining possession of it for a time for a temporary purpose." S. 363 of the Penal Code, as drafted in 1837, discussed.—PROSONNO KUMAR PATRA *v.* UDOY SANT, I. L. R., 22 Cal. 669. [Petheram, C.J., and Beverley, J. April 30, 1895.]

**Removal by creditor of his debtor's property with a view to obtaining payment of his debt constitutes theft.**—*Held* that the removal by a creditor, against the will of his debtor, of property belonging to such debtor, with the view of compelling such debtor to discharge his debt, amounts to theft within the meaning of s. 379 of the Penal Code. *Queen-Empress* v *Sumeshar Rai* (Weekly Notes, 1888, p. 97) referred to. *Prosonno Kumar v. Udoy Sant* (I. L. R., 22 Cal. 669) dissented from.—QUEEN-EMPRESS *v.* AGHA MUHAMMAD YUSUF, I. L. R., 18 All. 88. [Edge, C.J., and Burkitt, J. Nov. 16, 1895.]

**When removal of debtor's property by creditor amounts to theft.**—A creditor by taking any moveable property of his debtor from the possession without his consent, with the intention of coercing him to pay his debt, commits the offence of theft as defined in s 378 of the Penal Code. Ss. 23, 24 of the Penal Code discussed and explained. *Prosonno Kumar Patra* v. *Udoy Sant* (I. L. R., 22 Cal 669) overruled. *Per* Pigot, J.—Proceedings of the Legislature cannot be referred to as legitimate aids to the construction of an Act. *Administrator-General of Bengal* v. *Prem Lall Mullick* (I. L. R., 22 Cal. 788) followed.—QUEEN-EMPRESS *v.* SRI CHURN CHUNGO, I. L. R., 22 Cal. 1017. [Petheram, C.J., and Prinsep, Pigot, Macpherson, and Banerjee, JJ. Dec. 20, 1895.]

**Removing a thing with the object of causing trouble to the owner does not constitute theft.**—The accused, who was charged by his master with having committed theft of a box, stated that he had removed the box, and left it concealed in the cow-shed to give a lesson to his master. The Sessions Judge, in his charge to the jury, said "If the jury find that the accused removed the box to put the owner to trouble, that is causing wrongful loss to the owner, and the act is theft;" and the jury returned a verdict of guilty, finding "that the taking was with the intention of putting the owner to trouble." *Held* the above charge and verdict were based on an erroneous view of the law. It cannot be said that removing a thing to put the owner to trouble is necessarily and in every case causing "wrongful loss."—NABI BAKSH *v.* QUEEN-EMPRESS, I.

L. R., 25 Cal. 416. [Banerjee and Wilkins, JJ. Sep. 15, 1897.]

**Cutting and removal of paddy not theft, unless done dishonestly.**—The accused cut and removed paddy from certain land, alleging that the land and the paddy belonged to his uncle. He cited witnesses in support of his story, and also produced a deed of compromise in support of title. The Magistrate disbelieved the defence-witnesses, and found that the land and paddy belonged to the complainant, and that the deed related to other land, but there was nothing in his judgment to show that the petitioner did not *bonâ fide* believe that the paddy belonged to his uncle. *Held* that the findings did not support the conviction of theft. To constitute the offence it was necessary that the taking away of the paddy should have been done dishonestly, *i.e.*, with the knowledge that it belonged to the complainant and not to his uncle. Where a rule was issued to show cause why the conviction should not be set aside and a retrial ordered, and it appeared that the accused had already suffered the whole imprisonment, less one day, the Court in setting aside the conviction did not direct a retrial.—ABDOOL BISWAS *v.* KHATER MONDAL, 3 C. W. N. 332. [Prinsep and Stanley, JJ. March 10, 1899.]

**Cutting and carrying away crops sown by another: Bona-fide belief as to title: Facts constituting theft. Dishonest intention.**—An accused person alleged and claimed that certain paddy was grown upon his *jote*, and that he cut and removed it as a matter of right and in an assertion of a *bonâ-fide* claim to the land. It was admitted by the complainant, who also claimed the paddy and the land, that there had been a boundary dispute between his landlord and the landlord of the accused. The accused was convicted in a summary trial of the paddy. *Held per* Prinsep, J.: That, if the complainant's *bargadars* had grown the crops as found, and nevertheless the accused cut and carried them off, there could be no *bonâ-fide* belief that he was entitled to do so to justify his action in regard to the complainant. With the fact found that possession was with the complainant by the growing by him of the crops cut by the accused, the accused was without justification in thus taking the law into his hands, even if he was entitled to hold the lands, because he was not in actual possession of them. His Lordship refused to interfere. *Per* Stevens, J.: The findings of the lower Court taken as a whole amounted to a finding that the accused acted *mali fide*, and the mere fact that he brought some witnesses to speak to his long possession of the land, and the cultivation of the crops by him, could not be taken as showing that a *bonâ-fide* dispute as to title existed between the complainant and himself. To constitute theft it is sufficient if property is removed against his wish from the custody of a person who has an apparent title or even a colour of right to such property. In the present case the complainant had an apparent title as tenant of the land, together with long possession; and he had, on the strength of that apparent title and long possession, raised the crops which the accused removed. The application should be dismissed. *Queen-Empress* v. *Gangaram Santram* (I. L. R., 9 Bom 135) referred to. *Per* Stanley, J., *contra*.—That the evidence, as well for the prosecution as for the defence, conclusively established that there was a *bonâ fide* dispute as to the title to the land upon which the paddy was sown. Once this was shown the criminal charge failed. The fact, if it be the fact, that the paddy was sown by the complainant, would not give him the property in the crop, if it were sown on the land of the accused. If the land was the land of the accused, it was an act of trespass on the part of the complainant to sow it with paddy, and the complainant had no right to complain if the accused resented his act of aggression by cutting and removing the crop. A dishonest intent is a necessary ingredient in the offence of theft. No such intention has been found on the part of the accused. That the conviction and sentence should be set aside. [PANDITA *alias* RAHMATULLA PRAMANIK *v.* RAHIMULLA AKUNDO, I. L. R., 27 Cal. 501. [Prinsep, Stevens, and Stanley, JJ. Jan. 15, 1900.]

"Fraudulently."

**25.** A person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise.

**Using a forged document to support a title is fraudulent.**—Where a person in the course of an action brought against him to gain possession of a property uses a forged document for the purpose of supporting his title, though there may be no necessity for the use of it, such a user is clearly fraudulent. A general intention to defraud, without the intention of causing wrongful gain to one person or wrongful loss to another, would, if proved, be sufficient to support a conviction; and such intention is a necessary inference

which the jury should be directed to draw if they are satisfied that the accused has uttered a forged document as a true one, meaning it to be taken as such, and knowing it to be forged.—EMPRESS *v.* DHUMUM KAZEE, I. L. R., 9 Cal. 53. [Maclean and Norris, JJ. July 13, 1882.]

**Making false entries in account-book with the intention of concealing criminal breach of trust.**—Where a clerk, who had committed criminal breach of trust, subsequently made false entries in an account-book with the intention of concealing such offence, *held* that the making of such entries did not constitute the offence of forgery, and he had, therefore, been improperly convicted under s. 465 of the Penal Code. *Queen v. Jageshur Pershad* (N.-W. P. H. C. R., 1874, p. 56) and *Queen v. Lal Gumul* (N.-W. P. H. C. R., 1870, p. 11) followed.—EMPRESS *v.* JIWANAND, I. L. R., 5 All. 221. [Mahmood, J. Oct. 5, 1882.]

**Fraudulently using as genuine a forged document: "Dishonestly;" "Fraudulently."**—The creditors of a police-constable applied to the District Superintendent of Police that Rs 2 might be deducted monthly from the debtor's pay until the debt was satisfied. Upon an order being passed directing that the deduction asked for should be made, the debtor produced a receipt purporting to be a receipt for Rs. 18, the whole amount due. It subsequently appeared that the receipt was one for Rs. 8, which the debtor had altered by adding the figure "1," so as to make it appear that the receipt was for Rs. 18. *Held* that the real intent in the prisoner's mind being to induce his superior officer to refrain from the illegal act of stopping a portion of his salary, the Court, in a criminal case, ought not to speculate as to some other intent over and above this that might have presented itself to him; that it did not necessarily follow that he contemplated setting up the altered receipt to defeat his creditor's claim; and that, therefore, he ought not to have been convicted of an offence under s. 471 of the Penal Code.—EMPRESS *v.* SYUD HUSSAIN, I. L. R., 7 All. 403. [Petheram, C.J., and Straight, J. Feb. 27, 1885.]

**Fraudulently using as genuine a forged document: "Dishonestly:" "Fraudulently."**—In a trial upon a charge under s 471 of the Penal Code, of fraudulently or dishonestly using as genuine documents known to be forged, it was found that four forged receipts for the payment of rent, used by the prisoner, had been fabricated in lieu of genuine receipts which had been lost. *Held* that, with reference to the definitions of the terms "dishonestly" and "fraudulently" in ss. 24 and 25 of the Penal Code, the prisoner, upon the facts as found, had not committed the offence punishable under s. 471.—EMPRESS *v.* SHEO DAYAL, I. L. R., 7 All. 450. [Brodhurst, J. Mar. 6, 1885.]

**Making false report to stave off discovery of previous fraud.**—A treasury-accountant was convicted of offences under ss. 218 and 465 of the Penal Code under the following circumstances: A sum of Rs. 500, which was in the treasury, and was payable to a particular person through a Civil Court, was drawn out, and paid away to other persons by means of forged cheques. After the withdrawal of the Rs. 500, but before such withdrawal had been discovered, the representative of the payee applied for payment. The prisoner then, upon two occasions, wrote reports to the effect that the Rs. 500 in question then stood at the payee's credit as a revenue-deposit, and that it was about to be transferred to the Civil Court. Upon the first of these reports, an order was signed by the treasury-officer for the transfer of the money to the Civil Court concerned, and to effect such transfer a cheque was prepared by the sale-muharrir, which, as originally drawn up, related to the sum of Rs. 500 already mentioned. The signature of the cheque by the treasury-officer was delayed for some time, and meanwhile the cheque was altered by the prisoner in such a manner as to make it relate to another deposit of Rs. 500 which had been made subsequently to the above, and to the credit of another person. The result of this was the transfer of the second payee's Rs. 500 to the Civil Court, as if it had been the first Rs. 500, and to the credit of the first payee's representative. The prisoner was convicted under s. 465 of the Penal Code in respect of the cheque, and under s. 218 in respect of the two reports above referred to. *Held*, with respect to the charge under s. 465, that the prisoner's immediate and more probable intention—which alone, and not his remoter and less probable intention, should be attributed to him—was not to cause wrongful loss to the second payee by delaying payment of the Rs. 500 due to her, though the act might have caused her loss, but to conceal the previous fraudulent withdrawal of the first payee's Rs. 500; that, under these circumstances, he could not be said to have acted "dishonestly" or "fraudulently" within the meaning of s. 24 or s. 25 of the Penal Code; and that, therefore, his guilt under s. 465 had not been made out, and the conviction under that section must be set aside. *Held* also that prisoner's intention in making the

false reports was to stave off the discovery of the previous fraud, and save himself or the actual perpetrator of that fraud from legal punishment, and that, having prepared the reports in a manner which he knew to be incorrect, he was rightly convicted under s. 218 of the Penal Code. *Held* further that as the prisoner, who was a public servant, made these reports, and assumed to make them in due course and as a part of his duty, and held them out as reports which were made by the proper officer, and as no question was put in the examination of the witnesses from the office which suggested that it was not his business to make such reports, it must be inferred that he made them because it was his business to do so, and as a public servant within the meaning of s. 218 of the Penal Code.—QUEEN-EMPRESS *v.* GRIDHARI LAL, I. L. R., 8 All. 653 [Edge, C.J. Aug. 24, 1886.]

**Intention in fabricating documents: Fraudulent and dishonest fabrication.**—The accused, who was a copyist in the Sub-Divisional Office at B, applied for a clerkship then vacant in that office An endorsement on his application, recommending him for the post, and purporting to have been made by the Sub-Divisional Officer of B, was found to have been falsely made by the accused. The application was accompanied by a letter, also fabricated by the accused, purporting to be from the Collector to the Sub-Divisional Officer at B, informing the latter officer that he, the Collector, had selected the accused for the vacant post. The Sub-Divisional Officer, having some suspicion as to the genuineness of this letter, wrote a demi-official letter to the Collector to ascertain whether he had really written it; and this being posted in the local post-office, the accused fabricated a third document, purporting to be a letter from the Sub-Divisional Officer to the post-master, asking him to stop the despatch of the demi-official letter. The accused was charged with, and convicted in the Sessions Court of, the offence of forgery, under s. 464 of the Penal Code, in respect of the three documents. *Held* the conviction was right with regard to the first two documents, but with regard to the third document it could not be said that he falsely made it either dishonestly or fraudulently within the meaning of that section.—ABDUL HAMID *v.* EMPRESS, I. L. R., 13 Cal. 349. [Mitter and Grant, JJ. Sep. 7, 1886.]

**Fabrication of a receipt as a voucher to cover a contemporaneous embezzlement**—A post-master misappropriated a certain sum of money, and at the same time made a false document purporting to be a receipt signed by the person to whom the money was payable. He was convicted of using a forged document under s. 471 of the Indian Penal Code. It was contended that no forgery had been committed, because the receipt was made merely to cover the embezzlement: *Empress of India* v. *Jiwanand* (I L. R., 5 All. 222) *Held* that the conviction was right. A debtor, who fabricates a release to screen himself from liability to pay the debt, cannot be said not to be guilty of forgery, because he intended, by the fabrication, to cover a dishonest purpose.—QUEEN-EMPRESS *v.* SABAPATI, I. L. R., 11 Mad. 411, [Muttusami Ayyar and Wilkinson, JJ. July 5, 1888.]

**Criminal breach of trust by a servant: Forgery: "Dishonestly:" "Fraudulently": Fabrication of a document to conceal a contemporaneous or past embezzlement.**—An accused person who was in the service of zemindars, and whose duty it was to pay into the Collectorate Government revenue due in respect of their estates, immediately before the due date of a kist, received from them a certain sum of money with no specific instruction as to its application. On receipt of that money he paid a portion only of it into the Collectorate on account of the revenue, and having done so he then altered the challan given back to him showing the amount actually paid, and made it appear that a much larger amount had been paid in than was the fact. This challan he sent to his employer for the purpose of showing the application of the money. He was charged (1) with criminal breach of trust as a servant (s. 408 of the Penal Code) in respect of the difference between the amount actually paid into the treasury and the amount shown to have been paid in by the altered challan, (2) with forgery (s. 467) in respect of the challan; and (3) with using a forged document (s. 471) in respect of the same document The accused was convicted on all these charges. It was contended (*a*) that the charge under s. 408 was not sustainable, inasmuch as the money was not alleged to have been sent to the accused for the specific purpose of paying the Government revenue, and that the accounts between him and his employers had not been adjusted, and that it was not shown whether at the date of the alleged breach of trust the accused was indebted to his employer or the reverse; (*b*) that the charge under ss. 467 and 471 were bad, as there was no evidence to support them, and even admitting the alteration of the challan, such alteration did not come within the term "forgery" as used in the Penal Code, not having been made

with the intention of causing any wrongful gain or wrongful loss, but with the intention of screening the offence of criminal breach of trust which had been previously committed. *Held* that, as the money was sent to the accused immediately before the kist day, and the challan was sent to the employers showing in its altered state the amount really payable as revenue which nearly covered the whole amount remitted, it was reasonable to infer that the accused was aware of the implied purpose for which the money was remitted; and as he deposited a very much smaller amount than that remitted, and tried to pass off the altered challan as genuine, there was a dishonest misappropriation of the difference sufficient to constitute the offence under s. 408. *Held*, further, that it is not necessary for the purpose of constituting the offence of forgery that the false document should be made with the intention of committing a fraud or dishonesty in the future, and that, if the intention with which a false document is made be to conceal a fraudulent act which has been previously committed, the intention cannot be other than to commit fraud, and the offence of forgery as defined in s 463 is committed. The word 'fraudulently' as used in s. 464 must not be taken as being the same as "dishonestly," and implying wrongful gain or wrongful loss, but must be taken to mean as "with intent to defraud." *Empress of India* v. *Jiwanand* (I. L. R., 5 All. 221) and *Queen-Empress* v. *Girdhari Lal* (I. L. R., 8 All. 653) dissented from. *Queen-Empress* v. *Vithal Narain Joshi* (I. L. R., 13 Bom. 515, note) and *Queen-Empress* v. *Sabapati* (I. L. R., 11 Mad. 411) followed. *Held*, therefore, that upon the facts of the case there was ample evidence to show that the accused had abetted the forgery of the challan, and had used the sum, and that he had been properly convicted of all the offences charged against him except that of the actual forgery, and that he should have been convicted of abetment of that offence.—LOLIT MOHAN SARKAR *v.* QUEEN-EMPRESS, I. L. R., 22 Cal. 313. [Banerjee and Sale, JJ. Nov. 2, 1894.]

**Meaning of the term "fraud" discussed.**—A police head constable's character and service-roll in his custody was found to have been tampered with in this way—that a page, apparently containing remarks unfavourable to the head constable, had been taken out, and a new page with favourable remarks, purporting to have been written and signed by various superior officers of police, had been inserted in its place, the intent being to favour the chances of the promotion of the said head-constable. *Held* that this interpolation amounted to forgery within the meaning of s. 463 of the Penal Code; but that, inasmuch as it was not proved that the head-constable himself prepared and inserted the false page in his character-roll, he was rightly convicted of abetment only. *Queen-Empress* v. *Shoshi Bhushan* (I. L. R., 15 All. 210), *Queen-Empress* v. *Vithal Narain* (I. L. R., 13 Bom. 515), and *Lolit Mohan Sarkar* v. *The Queen-Empress* (I. L. R., 22 Cal. 313), referred to.—QUEEN-EMPRESS *v.* MUHAMMAD SAEED KHAN, I. L. R., 21 All. 113. [Banerji, J. Sep. 7, 1898.]

"Reason to believe."

**26.** A person is said to have "reason to believe" a thing if he has sufficient cause to believe that thing, but not otherwise.

**Voluntarily assisting in the disposal of stolen property: "Believe": "Suspect."**—The word "believe" in s. 414 of the Penal Code is much stronger than the word "suspect," and involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing was stolen property. It is not sufficient in such a case to show that the accused person was careless, or that he had reason to suspect that the property was stolen, or that he did not make sufficient enquiry to ascertain whether it had been honestly acquired.—EMPRESS *v.* RANGO TIMAJI, I. L. R., 6 Bom. 402. [Melvill and Nanabhai Haridas, JJ. Mar. 2, 1881].

"Property in possession of wife, clerk, or servant."

**27.** When property is in the possession of a person's wife, clerk, or servant, on account of that person, it is in that person's possession within the meaning of this Code.

*Explanation.*—A person employed temporarily or on a particular occasion, in the capacity of a clerk or servant, is a clerk or servant within the meaning of this section.

**28.** A person is said to "counterfeit" who causes one thing to resemble another thing, intending, by means of that resemblance, to practise deception, or knowing it to be likely that deception will thereby be practised.

"Counterfeit."

*Explanation 1.**—It is not essential to counterfeiting that the imitation should be exact.

*Explanation 2.**—When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended, by means of that resemblance, to practise deception, or knew it to be likely that deception would thereby be practised.

**29.** The word "document" denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

"Document."

*Explanation 1.*—It is immaterial by what means, or upon what substance, the letters, figures, or marks, are formed, or whether the evidence is intended for, or may be used in, a Court of Justice or not.

*Illustrations.*

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A power-of-attorney is a document.

A map or plan which is intended to be used, or which may be used, as evidence, is a document.

A writing containing directions or instructions is a document

*Explanation 2.*—Whatever is expressed by means of letters, figures, or marks, as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures, or marks within the meaning of this section, although the same may not be actually expressed.

*Illustration.*

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement as explained by mercantile usage is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder," or words to that effect, had been written over the signature.

**Preparing a draft petition containing false statements calculated to injure.**—Where a draft petition was prepared with the intention of being used as evidence of a matter, it was *held* that it fell within the terms of s. 29 of the Penal Code; and as it contained false statements calculated to injure the reputation of a person, the offence was held to fall within s. 469 of the Penal Code.—IN THE MATTER OF SHEEFAIT ALLY, 10 W. R. 61; 2 B. L. R. A. Cr. 12. [Loch and Glover, JJ. Dec. 14, 1868.]

* These two explanations have been substituted for the original by the Metal Tokens Act (I. of 1889), s. 9.

"Valuable security."

**30.** The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished, or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

*Illustration.*

A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security."

**Endorsement on back of bill of exchange.**—A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security."

**Unsigned settlement of accounts in writing.**—A settlement of accounts in writing, though not signed by any person, is a "valuable security" within the definition of s. 30 of the Penal Code.—*Ex-parte* KAPALAVAYA SARAYA, 2 Mad. H. C. R. 247. [Phillips and Holloway, JJ. Nov. 26, 1864.]

**Copy of lease.**—A copy of a lease is not a "valuable security" within the meaning of s. 30 of the Penal Code.—REG. *v* KHUSAL HIRAMAN AND INDRAGIR, 4 Bom. H. C. R. 28. [Couch, C.J., and Newton, J. July 17, 1867.]

**Forgery of a copy of document.**—The forging of a document which purports, on the face of it, to be a copy only, and which, even if a genuine copy, would not authorize the delivery of moveable property, is not punishable under s. 467 of the Penal Code. The High Court will not alter a conviction by a Sessions Court aided by a jury, on a charge only triable by a jury, to one of a nature not triable by such a tribunal, but will annul the proceedings, and leave the prosecution to take fresh proceedings against the prisoner on any other charge it may be advised.—REG *v.* NARO GOPAL, 5 Bom. H. C. R. 56. [Warden and Gibbs, JJ. July 22, 1868.]

**Forged deed of divorce presented for registration.**—A deed of divorce is a "valuable security" within the meaning of s. 30 of the Penal Code. The presenting of a forged document of such a nature for registration, and obtaining registration, would be "using" within s. 471 of that Code.—QUEEN *v.* AZIMOODDEEN, 11 W R. 15. [Jackson and Glover, JJ. Mar. 3, 1869.]

**An unstamped document may be a valuable security.**—The fact that a document has not been stamped, and is not, therefore, receivable in evidence, does not prevent its being a "valuable security" within the meaning of s. 477 of the Penal Code.—PRO., Aug. 5, 1873, 7 Mad H. C. R. Ap. xxvi.]

**Sanad conferring title of dignity.**—A sanad conferring a title of dignity on a person is not a "valuable security" within the meaning of the Penal Code.—JAN MAHOMED AND JABAR MAHOMED *v.* QUEEN-EMPRESS; WARI MEAH *v.* QUEEN-EMPRESS, I. L. R, 10 Cal 584. [Mitter and Norris, JJ. April 17, 1884.]

**Destruction of an unstamped document purporting to be a valuable security: Act causing slight harm.**—A, having had certain transactions with B, wrote out a rough account showing his indebtedness to B, and signed the total. The paper was not stamped. B afterwards presented it to A, and demanded payment of the total amount. A paid part only, and after an altercation tore up the paper. *Held* that the act of tearing up the paper constituted the offence of destroying a valuable security, and the harm caused was such that a person of ordinary sense and temper would complain of it.—QUEEN-EMPRESS *v.* RAMASAMI, I. L. R., 12 Mad. 148. [Collins, C.J., and Wilkinson, J. Nov. 15, 20, 1888.]

"A will."

**31.** The words "a will" denote any testamentary document.

Words referring to acts include illegal omissions.

**32.** In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

**Illegal omissions.**—In recommending that illegal omissions should be treated as acts, the Indian Law Commissioners state as follows: "We cannot defend this rule better than by giving a few illustrations of the way in which it will operate. A omits to give Z food, and by that omission voluntarily causes Z's death. Is this murder? Under our rule it is murder if A was Z's jailor directed by law to furnish Z with food. It is murder if Z was the infant child of A, and had, therefore, a legal right to sustenance, which right a Civil Court would enforce against A. It is murder if Z was a bedridden invalid, and A, a nurse, hired to feed Z. It is not murder if Z is a beggar who has no other claim on A than that of humanity. A omits to tell Z that a river is swollen so high that Z cannot safely attempt to ford it, and by this omission voluntarily causes Z's death. It is murder if A is a peon stationed by authority to warn travellers from attempting to ford the river. It is murder if A is a guide who has contracted to guide Z. It is not murder if A is a person on whom Z has no other claim than that of humanity. A savage dog fastens on Z. A omits to call off the dog, knowing that, if the dog be not called off, it is likely to kill Z. Z is killed. This is murder in A if the dog belonged to A, inasmuch as the omission to take proper order with the dog is illegal (s. 289). But if A be a mere passer-by, it is not murder."—P. C. Note M. 55.

**Speaking may be considered an act.**—Take the following instance: Suppose it to be proved to the entire conviction of a Criminal Court that Z, the deceased, was in a very critical state of health; that A, heir to Z's property, had been informed by Z's physicians that Z's recovery absolutely depended on his being kept quiet in mind, and that the smallest mental excitement would endanger his life; that A immediately broke into Z's sick-room, and told him a dreadful piece of intelligence which was a pure invention; that Z went into fits, and died on the spot; that A had afterwards boasted of having cleared the way for himself to a good property by this artifice. These things being fully proved, no Judge could doubt that A had voluntarily caused the death of Z; nor do we perceive any reason for not punishing A in the same manner in which he would have been punished if he had mixed arsenic in Z's medicine."—Commissioners' First Report, s. 243, P. C. Note M. 59.

**33.** The word "act" denotes as well a series of acts as a single act; the word "omission" denotes as well a series of omissions as a single omission.

"Act."
"Omission."

**34.*** When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

Acts done by several persons in furtherance of common intention.

**Rule as to one's responsibility for an act done.**—An American jurist (Bishop, §439) thus explains the law upon the subject: "The true view is doubtless as follows: Every man is responsible criminally for what of wrong flows directly from his corrupt intention, but no man intending wrong is responsible for an independent act of wrong committed by another. If one person sets in motion the physical power of another person, the former is criminally guilty for its results. If he contemplated the result, he is answerable, though it is produced in a manner he did not contemplate. If he did not contemplate the result in kind, yet if it was the ordinary effect of the cause, he is responsible. If he awoke into action an indiscriminate power, he is responsible. If he gave directions vaguely and incautiously, and the person receiving them acted according to what might be presumed to have been his understanding of them, he is responsible. But if the wrong done was a fresh and independent wrong springing wholly from the mind of the doer, the other is not criminal therein, merely because, when it was done, he was intending to be a partaker with the doer in a different wrong. These propositions may not always be applied readily to cases arising, yet they seem to furnish the true rule."

**Rule as to one's responsibility when present during commission of an act amounting to an offence.**—The following remarks of Sir Barnes Peacock illustrate the meaning of the above section: "If the object and design of those who seized Amoordee was

* S. 34 has been substituted for the original by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 1.

merely to take him to the thanna on a charge of theft, and it was not part of the common design to beat him, they would not all be liable for the consequence of the beating, merely because they were present. It is laid down that, when several persons are in company together, engaged in one common purpose, lawful or unlawful, and one of them, without the knowledge or consent of the others, commits any offence, the others will not be involved in the guilt, unless the act done was in some manner in furtherance of the common intention. It is also said that although a man is present when a felony is committed, if he take no part in it, and do not act in concert with those who committed it, he will not be a felon, merely because he did not attempt to prevent it, or to apprehend the felon. But if several persons go out together for the purpose of apprehending a man, and taking him to the thanna on a charge of theft, and some of the party, in the presence of the others, beat and ill-treat the man in a cruel and violent manner, and the others stand by and look on, without endeavouring to dissuade them from their cruel and violent conduct, it appears to me that those who have to deal with the facts might very properly infer that they were all assenting parties, and acting in concert, and that the beating was in furtherance of a common design. I do not know what the evidence was. All I wish to point out is, that all who are present do not necessarily assist by their presence every act that is done in their presence, nor are consequently liable to be punished as principals."—QUEEN *v.* GORA CHAND GOPE, 5 W. R. 45; B. L. R. Sup. Vol. 443; 1 Ind Jur. N. S. 177; 1 Wyman's Rev. Civ. and Crim. Rep. 43. [Peacock, C.J., and Trevor and Norman, JJ. Mar. 3, 1866.]

**Act committed in pursuance of common object.**—*Held* (Ainslie, J., dissenting) that s. 149 of the Penal Code is not intended to subject a member of an unlawful assembly to punishment for every offence which is committed by one of its members during the time they are engaged in the prosecution of the common object. In order to bring a case within s. 49, the act must be done with a view to accomplish the common object of the unlawful assembly, or it must be proved that the offence, though committed in prosecution of the common object of the unlawful assembly, is one which the accused knew would be likely to be committed in prosecution of the common object. *Per* Jackson, J.—Any offence done by a member of an unlawful assembly, in prosecution of the particular one or more of the five objects mentioned in s. 141, which is or are brought home to the unlawful assembly to which a prisoner belongs, is an offence within the meaning of the first part of s. 149. Where a certain number of persons, members of an unlawful assembly (party A), attacked another party (B), who were in occupation of land, with the view to drive them off the land by force, and one of the members in party A fired a gun at and killed one of the persons in party B, in consequence of a sudden and unexpected resistance which was offered by party B, it was held (Ainslie, J., dissenting), on a consideration of the evidence, that the persons composing party A, other than the person who fired the gun, could not be convicted of murder under s. 149, Penal Code. The conviction was altered under the circumstances to one of rioting armed with a deadly weapon under s. 148 of the Penal Code.—QUEEN *v.* SABID ALI, 20 W. R. 5; 11 B. L. R. 347. [Couch, C.J., and Jackson, Phear, Ainslie, and Pontifex, JJ. April 21, 1873.]

**When two persons may be principals in the same transaction.**—Where a blow is struck by A in the presence of, and by the order of, B, both are principals in the transaction; and where two persons join in beating a man, and he dies, it is not necessary to ascertain exactly what the effect of such blow was.—QUEEN *v.* MAHOMED ASGER, 23 W. R. 11. [Markby and McDonell, JJ. Dec. 12, 1874.]

**When each of several persons engaged in a beating was held to be a principal, and convicted of murder.**—Where each of several persons took part in beating a person so as to break eighteen ribs, and cause his death, each of them was held to be guilty, as a principal, of the murder of the deceased.—QUEEN *v.* GOUR CHUNDER DASS, 24 W. R. 5. [Markby and Morris, JJ. May 31, 1875.]

**Constructively guilty of murder.**—Where a prisoner is constructively guilty of murder under s. 34 of the Penal Code, it is doubtful if he can be said to have committed the offence of murder within the meaning of s. 149, so as to make other prisoners, by a double construction, guilty of murder.—IN THE MATTER OF THE PETITION OF JHUBBOO MAHTON; EMPRESS *v.* JHUBBOO MAHTON, I. L. R., 8. Cal 739, 12 C. L. R. 233. [McDonell and Field, JJ. April 28, 1882.]

**Mere presence of a person on a lawful occasion does not raise a presumption of his complicity in an offence.**—The accused, who were classers employed in the Revenue Survey Department, were charged under s. 161 of the Indian Penal Code with taking bribes from the raiyats of certain villages. The only evidence against the accused was that of persons who had either subscribed to the bribes, or collected subscription, or paid

the money to the accused. They stated that they had offered the bribes, because the classers had threatened to raise the assessment, cut down the hedges, and erect new boundary-marks. As regards this evidence, the trying Magistrate remarked that, even if all the witnesses for the prosecution were treated as accomplices, it was open to him to convict on their uncorroborated testimony, as "there was inherent truth in their statements, and circumstances existed which negatived the presumption of a conspiracy, and evidenced signs of truthfulness." The Magistrate was also of opinion that there was a distinction between accomplices who volunteered to assist in the receipt of illegal gratifications and those who assisted under compulsion. In the opinion of the Magistrate, the witnesses in the present case belonged to the latter class, and there was no reason to disbelieve their evidence. He, therefore, convicted the accused under s. 161 of the Indian Penal Code, and sentenced them to rigorous imprisonment and fine. *Held* (Scott, J., dissenting) that the convictions were illegal, there being no evidence to corroborate the witnesses for the prosecution, all of whom were accomplices. *Held* also (Scott, J., dissenting), that there was such error in the consideration by the Magistrate of the evidence as to prejudice the accused, and such a failure of justice as to justify the Court in revision in setting aside the convictions. *Per Curiam.*—The limits of the application of the doctrine of necessity, as an excuse for an act otherwise criminal, are those prescribed in s 194 of the Indian Penal Code. Therefore, witnesses, who, in order to avoid pecuniary injury or personal molestation, had offered or given bribes to a public servant, were abettors of the offence of taking an illegal gratification, and their evidence should be treated as that of accomplices. By the law both of India and England, the evidence of an accomplice is admissible, and a conviction is not illegal, because it proceeds upon the uncorroborated testimony of an accomplice (s. 133 of the Evidence Act, I. of 1872). But the presumption that an accomplice is unworthy of credit, unless corroborated in material particulars, has become a rule of practice of almost universal application. *Per* Scott, J.—There may be, however, cases of an exceptional character in which the accomplice's evidence alone convinces a Judge, and, if he acts on that conviction, with the character of the witnesses clearly present in his mind, a Revisional Court ought not to interfere in the absence of other circumstances showing a want of judicial discretion. *Per* Jardine, J.—The mere circumstance of a person being present on a lawful occasion does not raise a presumption of that person's complicity in an offence then committed so as to make s. 34 of the Indian Penal Code applicable: *Reg.* v. *Farler*, 8 C. and P. 106. Where the Magistrate on that ground did make that presumption against an accused person, and applied the provisions of s. 34, he committed an error in law, and the High Court, as a Court of Revision, might acquit the accused.—QUEEN-EMPRESS *v.* MAGANLAL AND MOTILAL, I. L. R., 14 Bom. 115. [Bayley, Scott, and Jardine, JJ. Sep. 24, 1889.]

**Sentence of penal servitude for murder.**—Where three prisoners assaulted the deceased, and gave him a beating, in the course of which one of the prisoners struck the deceased a blow on the head which resulted in death, *held* that, in the absence of proof that the prisoners had the common intention to inflict injury likely to cause death, they could not be convicted of murder. The punishment of penal servitude is only applicable to Europeans and Americans.—QUEEN-EMPRESS *v.* DUMA BAIDYA, I. L. R., 19 Mad. 483 [Subramania Ayyar and Davies, JJ. Sep 4, 1896.]

**Commission of grievous hurt in the course of dacoity: Person liable under s. 34, liable also under s. 397.**—*Held* that the words, "such offender," in s. 397 of the Indian Penal Code, include any person taking part in the dacoity who, though he may not himself have struck the blow causing the grievous hurt, is nevertheless liable for the act by reason of s. 34 of the Code.—QUEEN-EMPRESS *v.* MAHABIR TIWARI, I. L. R., 21 All. 263. [Strachey, C.J. Mar. 23, 1899.]

**35.** Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

When such an act is criminal by reason of its being done with a criminal knowledge or intention.

**36.** Whenever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect, partly by an act, and partly by an omission, is the same offence.

Effect caused partly by act and partly by omission.

*Illustration.*

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

Co-operation by doing one of several acts constituting an offence.

**37.** When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly, or jointly with any other person, commits that offence.

*Illustrations.*

(*a*.) A and B agree to murder Z by severally, and at different times, giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder, and, as each of them does an act by which the death is caused, they are both guilty of the offence, though their acts are separate.

(*b*.) A and B are joint jailors, and, as such, have the charge of Z, a prisoner, alternately for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

(*c*.) A, a jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food, in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder; but, as A did not co-operate with B, A is guilty only of an attempt to commit murder.

Persons concerned in criminal act may be guilty of different offences.

**38.** Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

*Illustration.*

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B, having ill-will towards Z, and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

"Voluntarily."

**39.** A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

*Illustration.*

A sets fire, by night, to an inhabited house in a large town for the purpose of facilitating a robbery, and thus causes the death of a person. Here A may not have intended to cause death, and may even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

"Offence."

**40.*** Except in the chapter and sections mentioned in clauses two and three of this section, the word "offence" denotes a thing made punishable by this Code.

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* S. 40 has been substituted for the original by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 2. The figures, 64, 65, 66, and 71, in the second clause of s. 40, have been inserted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 1; and the figures 67 by the Indian Criminal Law Amendment Act (X. of 1886), s. 21 (*f*).

In Chapter IV., and in the following sections, namely, sections 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389, and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter* defined:

And in sections 141, 176, 177, 201, 202, 212, 216, and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.

**Escape from custody when being taken before Magistrate to be bound over to be of good behaviour.** — An escape from custody when being taken before a Magistrate for the purpose of being bound over to be of good behaviour is not punishable under either s. 224 or s. 225 of the Penal Code.—EMPRESS *v.* SHASTI CHURN NAPIT, I. L. R., 8 Cal. 331; 10 C. L. R. 290. [Mitter and Maclean, JJ. Feb. 22, 1882.]

**Person resisting apprehension and escaping when directed to be arrested as a person of bad livelihood.**—An order was issued to a police-officer, directing him to arrest K, under s. 55 of the Criminal Procedure Code as a person of bad livelihood. K, with the assistance of three others, resisted apprehension, and escaped. *Held* that K was not charged with an "offence" within the meaning of that term as defined in s. 40 of the Penal Code, and that consequently no offence made punishable by s. 224 or s. 225 of the Penal Code had been committed in connection with his evasion of arrest. *Empress v. Shasti Churn Napit* (I. L. R., 8 Cal. 331, 10 C. L. R., 290) followed.—QUEEN-EMPRESS *v.* KANDHAIA, I. L. R., 7 All. 67. [Mahmood and Duthoit, JJ. Aug. 7, 1884.]

**It is not an offence to neglect to maintain a wife.**—Neglect to maintain a wife is not an offence. And an order for payment of maintenance is not a conviction for an offence.—*In re*, PONNAMMAL, I. L. R., 16 Mad. 234. [Handley and Best, JJ. Oct. 14, 1892.]

**Infliction of fine, and imprisonment in default.**—Where a conviction has taken place under the Towns Nuisances Act (Madras), 1889, s. 3, a Magistrate has jurisdiction to impose a fine, and also to pronounce a sentence of imprisonment in default of payment of the fine.—QUEEN-EMPRESS *v.* RAPPEL, I. L. R., 18 Mad. 490. [Collins, C.J. and Parker, J. Aug. 9, 1895.]

**Travelling on a railway without a proper ticket: Punishment.** — A passenger, who travels in a train without having a proper pass or ticket with him, has not committed an "offence." He cannot therefore be legally sentenced to imprisonment in default of payment of the excess charge and fare which may be recovered under the provisions of s. 113, cl. (*d*), of Act IX. of 1890.—QUEEN-EMPRESS *v.* RAM PAL, I. L. R., 20 All. 95 [Knox, J. Aug. 2, 1897.]

**Defrauding Government of stamp revenue by a contrivance or device not otherwise specially provided for: Receipt of unstamped document: Abetment of an offence under s. 61 of Stamp Act, 1879.**—Two letters were written to petitioner, in which the writer recommended him to advance sums of money to the bearers of the letters, and bound himself to repay those sums, if lent, in case of default on the part of the borrowers. The loans were made by petitioner, who kept the letters. A prosecution having been subsequently commenced against petitioner under s. 67 of the Stamp Act, 1879, for defrauding Government of stamp-revenue by an illegal device, and he having been convicted on the ground that, when the loans were granted, the documents became letters of guarantee, and, as such, liable to stamp duty. *Held* that the execution of a document which, on its face, required to be and was not stamped, could not be said to be "an act, contrivance, or device not specially provided for by this Act or any other law for the time being in force;" and that punishment for the act of the executant of such a document, if it were punishable at all, was provided for under s. 61 of the Stamp Act, 1879, and it could not therefore be dealt with under s. 67. Also that the act of a person receiving an unstamped document might amount to abetment of an offence, having regard to s. 61 of the Stamp Act, 1879, and to the definition of an "offence" in s. 40 of the Penal Code, and, if so, would be an act provided for by "any other law for the time being in force," and so not within the terms of s. 67 of the

* In ss. 41 and 42.

Stamp Act, 1879.—QUEEN-EMPRESS *v.* SOMASUNDARAM CHETTI, I. L. R., 23 Mad. 155. [Subramania Ayyar, C.J., and O'Farrell, J. Aug. 24, Sep. 14, 19, 1899.]

"Special law." **41.** A "special law" is a law applicable to a particular subject.

**Vakil soliciting legal work: Incitement to commit an offence.**—A vakil of the High Court signed and sent a letter to another vakil of that Court, who practised in the District Courts subordinate thereto. The purport of this, which was one of several printed forms prepared for circulation to vakils practising in districts, was to the effect that the vakil, to whom it was addressed, could easily send his client's cases, both civil and criminal, to the writer, who would conduct them in that Court. And "as a remuneration" the fees paid by the clients would be shared by the writer and the vakil who had sent the cases. The judicia committee concurred substantially in the conclusions of the High Court, that this was an incitement within s. 116 (abetment) of the Indian Penal Code to commit an offence made penal by s. 36 (which was a special law within s. 41 of that Code) of Act XVIII. of 1879, the Legal Practitioners Act.—*In re* PARBATI CHARAN CHATTERJEE, I. L. R., 17 All. 498. [Watson, Morris, and Couch, JJ. June 20, 1895.]

"Local law." **42.** A "local law" is a law applicable only to a particular part of British India.

"Illegal." "Legally bound to do." **43.** The word "illegal" is applicable to everything which is an offence, or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

"Injury." **44.** The word "injury" denotes any harm whatever illegally caused to any person in body, mind, reputation, or property.

**Negligence causing injury.**—To sustain an action for negligence, there must be an obligation on the part of the defendant to use care, and a breach of that obligation to the plaintiff's injury. "Injury" is an act contrary to law. To sustain an action for malicious prosecution, the prosecution must have been malicious and without reasonable or probable cause.—SVAMI NAYUDU *v.* SUBRAMANIA MUDALI, 2 Mad. H. C. R. 158. [Phillips and Holloway, JJ. July 14, 1864.]

**Causing death by a rash and negligent act: Injury.**—A Magistrate imposed a fine in addition to a sentence of imprisonment, on a conviction for the offence of causing death by a rash and negligent act, and gave compensation to the widow of the deceased out of the fine imposed. *Held* that compensation could not be given to the widow under the Criminal Procedure Code, s. 545. Davies, J., adds: "The loss is one quite independent of the injury to the deceased, although it arises out of it, and cannot, therefore, in my opinion, be included in the term "injury" as used in a limited sense in s. 545, for it is not "caused by the offence committed," except indirectly.—YALLA GANGULU *v.* MAMIDI DALI, I. L. R., 21 Mad. 74. [Shephard, Subramania Ayyar, Davies, and Boddam, JJ. June 12, Nov. 5, 18, 30, 1897.]

See also *In re* LUTCHMAKA, I. L. R, 12 Mad. 352. [Muttusami Ayyar and Parker, JJ. Mar. 29, 1889.]

"Life." **45.** The word "life" denotes the life of a human being, unless the contrary appears from the context.

"Death." **46.** The word "death" denotes the death of a human being, unless the contrary appears from the context.

"Animal." **47.** The word "animal" denotes any living creature other than a human being.

**Is a crab an animal?**—The provisions of Act XI. of 1890 (Prevention of Cruelty to Animals) apply to cruelty exercised towards any animal which is either "domestic," or which, being *feræ naturæ*, has been "captured," and is in captivity. Crabs are "animals" within the definition of s. 2 of Act XI. of 1890. If a person exposes them for sale at a public place with their legs broken, and with their shells crushed in, so as necessarily to cause them pain, he incurs the penalty prescribed by s. 3 of the Act.—TULSI BEWAH *v.* SWEENEY, I. L. R., 24 Cal. 881. [Ghose and Wilkins, JJ. July 20, 1897.]

"Vessel."

**48.** The word "vessel" denotes anything made for the conveyance by water of human beings or of property.

"Year:" "Month."

**49.** Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.

"Section."

**50.** The word "section" denotes one of those portions of a chapter of this Code which are distinguished by prefixed numeral figures.

"Oath."

**51.** The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant, or to be used for the purpose of proof, whether in a Court of Justice or not.

"Good faith."

**52.** Nothing is said to be done or believed in good faith which is done or believed without due care and attention.

**When a Magistrate is not protected.**—Neither Act XVIII. of 1850, nor ss. 68 212 of the Criminal Procedure Code, protect a Magistrate who has failed to act reasonably, carefully, and circumspectly in the discharge of his duties.—VINAYAK DIVAKAR *v.* BAI ITCHA, 3 Bom. H. C. R. A. C. 36. [Westropp, Tucker, and Warden, JJ. Sep. 18, 1865.]

**Police-officer not acting in good faith.**—The general exception provided by s. 79 of the Penal Code, and the power conferred by cl. 5, s. 100 of the Code of Criminal Procedure, was held not to protect a police-officer who did not act in good faith, *i.e.*, with due care and attention. Cl. 5, s. 100 of the Criminal Procedure, refers to property which is proved to have been stolen, and not to anything which a police-officer may choose to imagine has been stolen. Where a police-officer refused to let a person go home until he had given bail, he was held to have been guilty of wrongful restraint under s. 339 of the Penal Code.—SHEO SARUN SAHAI *v.* MAHOMED FAZIL KHAN, 10 W. R. 20. [Loch and Glover, JJ. July 17, 1868.]

**Meaning of bona fide.**—The legal meaning of *bonâ fide* is with due care and after due inquiry.—RADHA PERSHAD SINGH *v.* RAM JEEWUN SINGH, 11 W. R. 389. [Kemp and Glover, JJ. April 26, 1869.]

**Magistrate not acting with due care and attention: Suit for damages against him**—The plaintiff sued a Magistrate for damage occasioned to him by the cutting of his *band* at the Magistrate's order. The Magistrate raised the defence that he was protected by Act XVIII. of 1850 for all acts done by him *bonâ fide* in his magisterial capacity. *Held*, on the facts, that the Magistrate was liable. Act XVIII. of 1850 does not protect a Magistrate who has not acted with due care and attention. The mere absence of *mala fides* is no defence. A Magistrate cannot be said to have "in good faith" believed himself to have jurisdiction to do or order the act complained of, unless he, in arriving at that belief, acted reasonably, circumspectly, and carefully. A Magistrate would not be personally liable for an act done by him under a misconstruction or misinterpretation of the law, if his proceedings were in other respects regular, and if the misconstruction or misrepresentation were one which might have been put upon the law by a reasonable man with ordinary care and attention. But a Magistrate is not protected by saying he misconstrued the law, unless

his proceedings have been in other respects regular, and the view of the law taken by him is such as a reasonable and careful man might take. Neither s. 62, nor Chapter XX. of the Criminal Procedure Code, authorizes a Magistrate to dispose of the property of others at his mere will and pleasure, or without his having distinct and legal grounds for the course he takes. When a Magistrate violates the plain language of the law, and the very first principles of judicial enquiry, his proceedings presumably are characterised by want of care.—TARAKNATH MOOKHOPADHYA *v.* THE COLLECTOR OF HOOGHLY, 4 B L. R. A. C. 37; S. C. 13 W. R. 13. [Jackson and Macpherson, JJ. Jan. 5, 1870.]

**Cutting out piles with an ordinary knife.**—A kobiraj operated on a man for internal piles by cutting them out with an ordinary knife The man died from hæmorrhage. The kobiraj was charged, under s. 304A of the Penal Code, with causing death by doing a rash and negligent act. It was contended that, inasmuch as the prisoner had performed similar operations on previous occasions, it was not a rash act within the meaning of that section, and that, at all events, he was entitled to the benefit of s. 88 of the Penal Code, as he did the act in good faith, without any intention to cause death, and for the benefit of the patient who had accepted the risk *Held* that, as the prisoner was admittedly uneducated in matters of surgery, and having regard to the meaning of "good faith" as defined in s. 52 of the Penal Code, he was not entitled to the benefit of s. 88. *Held* further that s. 88 did not apply to the case, as it was not shown by the accused, on whom the burden of proving that fact lay, that the deceased knew the risk he was running in consenting to the operation, and he could not therefore be said to have accepted the risk. *Held* also that, under the circumstances, the conviction under s. 304A was a proper one.—SUKAROO KOBIRAJ *v.* THE EMPRESS, I. L. R., 14 Cal. 566. [Tottenham and Ghose, JJ. April 30, 1887.]

*See Bhawoo Jivaji v. Mulji Dayal*, I. L. R., 12 Bom. 377, under s. 342.

**Order to shoot illegal: Good faith wanting: Murder.**—A caused crops to be sown on land, as to the enjoyment of which there was a dispute between her and B. Persons having proceeded to reap the crops on behalf of B, the servants of A went to the place with the station-house-officer and some constables, who were armed. The station-house-officer ordered the reapers to leave off reaping, and to disperse; but they did not do so. He then told one of the constables to fire, and he fired into the air. Some of the reapers remained, and assumed a defiant attitude. The station-house-officer, without attempting to make any arrests, and without warning the reapers that, if they did not desist from reaping, they would be fired at, gave orders to shoot, and one of the constables fired, and mortally wounded one of the reapers. It was found that neither the station-house-officer nor the last-mentioned constable believed that it was necessary for the public security to disperse the reapers by firing on them. *Held* that the station-house-officer and the constable were not acting in good faith, and that the order to shoot was illegal, and did not justify the constable, and that both he and the station-house-officer were guilty of murder.—QUEEN-EMPRESS *v.* SUBBA NAIK, I. L. R., 21 Mad. 249. [Collins, C.J. and Shephard, J. Mar. 11, 23, 1898.]

## CHAPTER III.

### OF PUNISHMENTS.

"Punishment."

**53.** The punishments to which offenders are liable under the provisions of this Code are—

*First*—Death;

*Secondly*—Transportation;

*Thirdly*—Penal servitude;

*Fourthly*—Imprisonment,* which is of two descriptions, namely:—

* This definition of "imprisonment" applies in the case of all Acts of the Governor-General in Council made after the 3rd January 1868, and of all Regulations made under the Government of India Act, 1870 (33 Vict., c. 3) after the 14th January 1887.—See the General Clauses Act (X. of 1897), ss. 3 (*26*) and 4 (*1*) and (*2*).

(1) Rigorous, that is, with hard labour;

(2) Simple;

*Fifthly*—Forfeiture of property;

*Sixthly*—Fine.*

**Some term of imprisonment, however small, must be awarded, where the offence is punishable with imprisonment, to which fine may be added.**—Offences which are punishable with imprisonment, and for which the offender is also liable to fine, cannot be punishable with fine only, but some term of imprisonment must be awarded, even if it be only momentary.—REG. *v.* CHANVIOVA KOM SHIDRAM SHETTI, 1 Bom. H. C. R. 4; REG. *v.* RAMA BIN RABHAJI, 1 Bom. H. C. R. 34; REG. *v.* BAHIRJI BIN KRISHNAJI, 1 Bom. H. C. R. 39; 4 Mad. H. C R, Ap 18.

**Juvenile offenders.**—Act XXIV. of 1858 provides for penal servitude as a substitute for transportation in case of Europeans and Americans. Act VI. of 1864 makes provision for whipping. Under this Act offenders are liable to whipping either as an alternative or as an additional punishment. Juvenile offenders committing any offence not punishable with death under the Penal Code may, under s. 5 of the Whipping Act, be punished, whether for a first or any other offence, with whipping in lieu of any other punishment to which they may be liable for such offence, under the Code. According to Act X. of 1882, s. 392, and *Empress v. Din Ali* (I. L. R., 6 All. 482), a juvenile offender is a person under 16 years of age.

**Fine on each prisoner.**—A sentence must impose a specific fine on each prisoner,—PRO., Nov. 11, 1869, 5 Mad. H. C. R. Ap. 5

Commutation of sentence of death.

**54.** In every case in which sentence of death shall have been passed, the Government of India, or the Government of the place within which the offender shall have been sentenced, may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

Commutation of sentence of transportation for life.

**55.** In every case in which sentence of transportation for life shall have been passed, the Government of India, or the Government of the place within which the offender shall have been sentenced, may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

**Suspension or remission of sentence.**—When any person has been sentenced to punishment for an offence, the Governor-General in Council or the Local Government may, at any time, without conditions, or upon any conditions which the person sentenced accepts, suspend the execution of his sentence, or remit the whole or any part of the punishment to which he has been sentenced. Whenever an application is made to the Governor-General in Council or the Local Government for the suspension or remission of a sentence, the Governor-General in Council or the Local Government, as the case may be, may require the presiding Judge of the Court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion. If the person in whose favour a sentence has been suspended or remitted fails to fulfil the conditions prescribed by the Governor General in Council or the Local Government, the Governor-General in Council or the Local Government, as the case may be, may cancel such suspension or remission, whereupon such person may, if at large, be arrested by any police-officer without warrant, and remanded to undergo the unexpired por-

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* For power to pass sentence of fine in a case referred to a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

As to punishment of whipping generally, see the Whipping Act (VI. of 1864); in Upper Burma see the Burma Laws Act (XIII. of 1898), s. 3 (*b*) and Sch. III.; and in the Punjab Frontier Districts and Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 8, 14 (*2*).

tion of the sentence. Nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons, reprieves, respites, or remissions of punishment.—*(6) The Governor-General in Council and the Local Government may, by general rules or special orders, give directions as to the suspension of sentences and conditions on which petitions should be presented and dealt with.* —Criminal Procedure Code (Act V. of 1898), s. 401.

**Commutation of sentence.**—The Governor-General in Council or the Local Government may, without the consent of the person sentenced commute any one of the following sentences for any other mentioned after it; death, transportation, penal servitude rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.—Criminal Procedure Code (Act V. of 1898), s. 402.

**56.** Whenever any person, being a European or American, is convicted of an offence punishable under this Code with transportation, the Court shall sentence the offender to penal servitude, instead of transportation, according to the provisions of Act XXIV. of 1855:

Sentence of Europeans and Americans to penal servitude.

Provided that, where a European or American offender would, but for such Act, be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life, he shall be liable to be sentenced or ordered to be kept in penal servitude for such term exceeding six years as to the Court seems fit, but not for life.*

Proviso as to sentence for term exceeding ten years, but not for life.

**Europeans and Americans amenable to penal servitude.** — The punishment of penal servitude is only applicable to Europeans and Americans.—QUEEN-EMPRESS *v.* DUMA BAIDYA, I. L. R., 19 Mad. 483. [Subramania Ayyar and Davies, JJ. Sep. 4, 1896.]

**57.** In calculating fractions of terms of punishment, transportation for life shall be reckoned as equivalent to transportation for twenty years.

Fractions of terms of punishment.

**Sentence for attempt at rape.**—Under ss. 57, 376, and 511 of the Penal Code, a sentence of 10 years' transportation, or of five years' rigorous imprisonment, may be passed for the offence of attempt to commit rape; but a sentence of seven years' rigorous imprisonment, commutable under s. 59 of the Penal Code to seven years' transportation, is illegal.—QUEEN *v.* JOSEPH MERIAM, 10 W. R. 10; 1 B. L. R. A. Cr. 5. [Loch and Glover, JJ. July 6, 1868.]

**58.** In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment.

Offenders sentenced to transportation how dealt with until transported.

**A prisoner sentenced to transportation to be imprisoned till transported.**—The sentence of imprisonment for life in transportation is to commence after time for appeal is not warranted, s 58 of the Indian Penal Code provides that they are to be imprisoned till transported.—*In re* TOPASHEERAM KOPALEE, 8 W. R. Cr. L. 5, No. 716, 1867.

**59.** In every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court which sentences such offender,

Transportation instead of imprisonment.

* This proviso has been added by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 3.

**instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which by this Code such offender is liable to imprisonment.**

**Illegality of a sentence of 14 years' transportation.**—If a person concerned in a dacoity unintentionally commits murder, he is liable to punishment under s. 306 of the Penal Code, but he cannot be separately convicted of murder under s. 302 and of committing dacoity under s. 395. Where the law gives the alternative punishments of death, transportation for life, and rigorous imprisonment extending to ten years, a sentence of 14 years' transportation is illegal. If the Judge thinks it proper to pass a sentence of transportation short of life, he should pass a sentence of imprisonment for the term fixed by law, and then, under s 59, change it to transportation for the period.—QUEEN *v.* RUGHOO, W. R. Sp. 30. [Loch and Jackson JJ. May 3, 1864.]

**Transportation can be inflicted where offence punishable with imprisonment for seven years or upwards.**—Under s. 59 of the Penal Code, a Court can sentence to transportation only in a case in which the offence is punishable with imprisonment for seven years or upwards. It may, in passing sentence for the offence, commute the imprisonment to transportation, but it cannot commute the sentence after the sentence of imprisonment has been passed.—QUEEN *v.* PREM CHUND OUSAWAL, W. R. Sp. 35. [Jackson and Glover, JJ. June 6, 1864.]

**To bring s. 59 into operation, the punishment awarded on one offence alone must be seven years: The seven years cannot be made up by adding two sentences together.**—It has been frequently ruled that, to bring s 59 of the Penal Code into operation, the punishment awarded on one offence alone must be seven years' imprisonment. Those seven years cannot be made up by adding two sentences together, and then commuting the amalgamated period of imprisonment to one of transportation.—1 W. R. Cr. L. 1, No. 867, 1864.

**Two sentences cannot be added together, and then commuted to transportation.**—To bring s. 59 of the Penal Code into operation, the punishment awarded on one offence alone must be seven years' imprisonment, and cannot be made up by adding two sentences together, and then commuting the amalgamated period to transportation. The two offences of robbery and of voluntarily causing hurt, when combined, are punishable under s. 294 alone, and not under ss. 392 and 394.—QUEEN *v.* MOOTKER KORA, 2 W. R. 1. [Kemp and Glover, JJ. Jan. 2, 1865.]

**Imprisonment can be converted into transportation only where the offender has been sentenced in one case to at least seven years' imprisonment.**—Under the terms of s. 59 of the Penal Code, imprisonment can be converted into transportation only in a case in which the offender has been sentenced to at least seven years' transportation. It is not sufficient that three sentences amount in the aggregate to more than seven years, for the Court have more than once held that s. 59 of the Penal Code will not apply to any sentence unless that particular sentence be one of imprisonment for more than seven years.—3 W. R. Cr. L. 15, No. 667, 1865.

**Dacoity: Sentence of transportation for 10 years not regular: No sentence of transportation can be passed except for life: Proper course was to award imprisonment, and then commute it to transportation.**—The sentence of transportation for ten years, passed on the prisoner, is not altogether regular, since for dacoity, under s 395 of the Penal Code, no sentence of transportation can be passed except for life. The proper course was to have sentenced him to rigorous imprisonment, and then, under the provision of s. 59 of the Penal Code, to have commuted it to transportation.—3 W. R. Cr L. 16, No. 684, 1865.

**When transportation can be substituted for imprisonment.**—Transportation can only be substituted for imprisonment when the offender is sentenced to at least seven years' imprisonment in one case.—QUEEN *v.* TONOORAM MALEE, 3 W. R. 44. [Kemp and Seton Karr, JJ. July 11, 1865.]

**Transportation under ss 412 and 59 cannot exceed 10 years.**—A sentence of transportation under ss. 412 and 59 of the Penal Code cannot exceed ten years.—QUEEN *v.* MAHANUNDO BHUNDARY, 5 W. R. 16. [Seton-Karr and Macpherson, JJ. Jan. 20, 1866.]

**Transportation cannot be less than seven years.**—A sentence of transportation cannot be less than seven years. To bring s. 59 of the Penal Code into operation, the punishment awarded in each offence alone must not be less than seven years' imprisonment. A general sentence of transportation for two or more offences, when only one of the punishments awarded is seven

years' imprisonment, is illegal.—QUEEN *v.* SHONAULLAH, 5 W. R. 44. [Macpherson and Glover, JJ. Mar. 3, 1866.]

**Mode of passing sentence of transportation: Court should mention that such transportation is awarded in lieu of imprisonment.**—With reference to the form in which many Sessions Judges pass sentences of transportation in cases in which imprisonment is awardable for seven years or upwards, the Court request the attention of the Sessions Courts to the terms of s. 59 of Act XLV. of 1860, from which it will be seen that the correct mode of proceeding is to sentence the offender to transportation, mentioning at the same time that, under s. 59 of the Penal Code, such transportation is awarded instead of imprisonment, simple or rigorous, as the case may be.—6 W. R Cr. Cir. 7, No. 9, 1866. [Trevor, Loch, Norman and Jackson, JJ. Aug. 3, 1866.] See also 6 W. R. Cr. L. 2, No. 555, 1866.

**Transportation cannot be less than seven years.**—Under s. 59 of the Penal Code, no sentence of transportation for a shorter period than seven years can be passed on any charge. Therefore, where a prisoner was convicted on separate charges of giving false evidence in a judicial proceeding under s. 193, and of forgery under s. 467, and sentenced to seven years' transportation for the first offence, and a further period of transportation for three years for the second offence, the second sentence was quashed as illegal. — QUEEN *v.* GOUR CHUNDER ROY, 8 W. R. 2. [Norman and Seton-Karr, JJ. June 3, 1867.]

**When transportation for seven years can be awarded instead of imprisonment.**—An officer exercising the powers described in s. 1, Act XV. of 1862, is competent, under the provisions of s. 59 of the Penal Code, to pass a sentence of transportation for seven years instead of awarding sentence of imprisonment.—IN THE MATTER OF BHODHOOA, 9 W. R. 6; B. L. R. Sup. Vol. 869; 5 Wyman's Rev., Civ., and Crim Reporter 20. [Peacock, C.J., and Seton-Karr, Jackson, Macpherson, and Hobhouse, JJ. Jan. 14, 1868.]

**Illegal commutation of imprisonment to transportation for attempt at rape.**—A was convicted of an attempt to commit rape, and was sentenced by the Judge to rigorous imprisonment for seven years, which he commuted, under this section, to transportation for the same term. *Held* that, under s. 376 and 511, Penal Code, a sentence to imprisonment for the offence committed could not be for a longer term than five years, and such sentence could not be commuted, under s. 59, to transportation for a longer term, although, if the sentence of transportation had been passed in the first instance, it might have been for 10 years.—QUEEN *v.* JOSEPH MERIAM, 1 B L. R A. Cr. 5; 10 W. R. 10. [Loch and Glover, JJ. July 6, 1868.]

**When transportation cannot exceed the term of imprisonment.**—When an offence is punishable either with transportation for life or imprisonment for a term of years, if a sentence of transportation for a term less than life is awarded, such term cannot exceed the term of imprisonment.—REG. *v.* NAIADA, I. L. R., 1 All. 43 [Turner, Offg. C.J., and Pearson, Spankie, and Oldfield, JJ. Aug. 23, 1875.]

**When transportation cannot be substituted for imprisonment.**—S. 59 of the Penal Code does not authorize the substitution of transportation for the imprisonment to which a Court can sentence an offender in default of payment of fine.—KUNHUSSA *v.* REG., I. L. R., 5 Mad. 28. [Innes and Muttusami Ayyar, JJ. Feb. 28, 1882.]

**60.*** In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court, which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.

**Sentence on youthful offender.**

Whenever any youthful offender is sentenced to transportation or imprisonment, and is, in the judgment of the Court by which he is sentenced, a proper person to be an inmate of a Reformatory School, the Court may, subject to any rules made by the Local Government, direct that, instead of undergoing his sentence, he shall be sent to such

* As to the application of s. 60 and ss. 63 to 74 to sentences passed in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 15 (2), 52.

**Sentence on youthful offender—(*contd.*)**

a school, and be there detained for a period which shall be not less than three or more than seven years. (*2*) The powers so conferred on the Court by this section shall be exercised only by (*a*) the High Court, (*b*) a Court of Session, (*c*) a District Magistrate, and (*d*) any Magistrate specially empowered by the Local Government in this behalf, and may be exercised by such Courts whether the case comes before them originally or on appeal. (*3*) The Local Government may make rules for—(*a*) defining what youthful offenders should be sent to Reformatory Schools, having regard to the nature of their offences or other considerations, and (*b*) regulating the periods for which youthful offenders may be sent to such schools according to their ages or other considerations.—Reformatory Schools Act, section 8.

When any Magistrate, not empowered to pass an order under the last foregoing section, is of opinion that a youthful offender convicted by him is a proper person to be an inmate of a Reformatory School he may, without passing sentence, record such opinion, and submit his proceedings and forward the youthful offender to the District Magistrate to whom he is subordinate. (*2*) The Magistrate to whom the proceedings are so submitted may make such further inquiry (if any) as he may think fit, and pass such sentence and order for the detention in a Reformatory School of the youthful offender, or otherwise, as he might have passed if such youthful offender had been originally tried by him.—Reformatory Schools Act, section 9

The officer in charge of a prison in which a youthful offender is confined, in execution of a sentence of imprisonment, may bring him, if he has not then attained the age of fifteen years, before the District Magistrate within whose jurisdiction such prison is situate; and such Magistrate may, if such youthful offender appears to be a proper person to be an inmate of a Reformatory School, direct that, instead of undergoing the residue of his sentence, he shall be sent to a Reformatory School, and there detained for a period which shall be subject to the same limitations as are prescribed by or under section 8, with reference to the period of detention thereby authorised.—Reformatory Schools Act, section 10.

Before directing any youthful offender to be sent to a Reformatory School under section 8, section 9, or section 10, the Court or Magistrate shall inquire into the question of his age, and, after taking such evidence (if any) as may be deemed necessary, shall record a finding thereon, stating his age as nearly as may be. (*2*) A similar inquiry shall be made and finding recorded by every Magistrate not empowered to pass an order under section 8 before submitting his proceedings and forwarding the youthful offender to the District Magistrate as required by section 9, sub section (*1*).—Reformatory Schools Act, section 11.

Every youthful offender directed by a Court or Magistrate to be sent to a Reformatory School shall be sent to such Reformatory School as the Local Government may by general or special order appoint for the reception of youthful offenders so dealt with by such Court or Magistrate: Provided that, if accommodation in a Reformatory School is not immediately available for such youthful offender, he may be detained in the juvenile ward or such other suitable part of a prison as the Local Government may direct—(*a*) until he can be sent to a Reformatory School, or (*b*) until the term of his original sentence expires, whichever event may first happen. Should the term of his original sentence first expire, he shall thereupon be released, but, should he be sent to a Reformatory School, then the period of detention previously undergone shall be treated as detention in a Reformatory School.—Reformatory Schools Act, section 12.

If at any time after a youthful offender has been sent to a Reformatory School, it appears to the Committee of Visitors or Board of Management, as the case may be, that the age of such youthful offender has been understated in the order for detention, and that he will attain the age of eighteen years before the expiration of the period for which he has been ordered to be detained, they shall report the case for the orders of the Local Government — 2) No person shall be detained in a Reformatory School after he has been found by the Local Government to have attained the age of eighteen years.—Reformatory Schools Act, section 13.

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**When a sentence of imprisonment should commence.**—A sentence of imprisonment ought to commence from the time that the sentence is passed, unless there is some lawful reason for ordering it to commence at some future period. Except as in the cases provided for by ss. 46, 47, and 48 of the Criminal Procedure Code (Act XXV. of 1861), a Magistrate cannot authorize a sentence passed by him to take place from

some future date, nor (except as provided for by s. 421 of the Code of Criminal Procedure) can a sentence, which is to take place immediately, be suspended.—IN THE MATTER OF KRISHNANAND BHATTACHARJEE, 3 B. L. R. A. Cr., 50 ; S. C., 12 W. R. 47 (where the name is given as KISHEN SOONDER BHUTTACHARJEE).

### Forfeiture of property.

S. 62 of the Penal Code, which provides for forfeitures, limits them to cases where the parties shall have been transported, or sentenced to imprisonment for at least seven years.—QUEEN *v.* KRIPAMOYEE CHASSANEE, 8 W. R. 35. [Kemp and Glover, JJ. July 8, 1867 ]

WHERE a zemindar was convicted of wrongfully keeping in confinement a kidnapped person, and was sentenced to transportation by the Sessions Judge, who added a sentence of forfeiture of the rents and profits of the prisoner's estates under s. 62 of the Penal Code, the High Court set aside the sentence under s. 62 as too severe. That sentence should be inflicted for offences of the most atrocious kind, or for offences committed under the most aggravated circumstances.—QUEEN *v.* MAHOMED AKHIR *alias* TOTAH MEKAH, 12 W. R. 17. [Jackson and Markby, JJ. June 29, 1869 ]

**61.** In every case in which a person is convicted of an offence for which he is liable to forfeiture of all his property, the offender shall be incapable of acquiring any property, except for the benefit of Government, until he shall have undergone the punishment awarded or the punishment to which it shall have been commuted, or until he shall have been pardoned.

Sentence of forfeiture of property.

*Illustration.*

A, being convicted of waging war against the Government of India, is liable to forfeiture of all his property. After the sentence, and whilst the same is in force, A's father dies, leaving an estate which, but for the forfeiture, would become the property of A. The estate becomes the property of Government.

**62.** Whenever any person is convicted of an offence punishable with death, the Court may adjudge that all his property, moveable and immoveable, shall be forfeited to Government; and whenever any person shall be convicted of any offence for which he shall be transported or sentenced to imprisonment for a term of seven years or upwards, the Court may adjudge that the rents and profits of all his moveable and immoveable estate, during the period of his transportation or imprisonment, shall be forfeited to Government, subject to such provision for his family and dependants as the Government may think fit to allow during such period.

Forfeiture of property in respect of offenders punishable with death, transportation, or imprisonment.

**63.*** Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive †

Amount of fine.

**Compensation : Court should state in its order a specific sum for each individual.**—The specific sums to be paid to each individual should always be distinctly stated in the body of the order when directing that compensations be granted, otherwise mistakes may occur, which should be carefully avoided.—3 W. R. Cr. L. 20, No. 777, 1865

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* The provisions of ss. 63 to 70 apply to all fines imposed under the authority of any Act, Regulation, rule, or bye-law, unless the Act, Regulation, rule, or bye-law, contains an express provision to the contrary.—See the General Clauses Act (X. of 1897), s. 25.

† As to the application of ss. 63 to 74 to sentences passed in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 15 (2), 52.

**Portion of fine directed to be paid to amin : Illegality of order.**—A Joint-Magistrate was held not competent to direct, under s. 44 of the Code of Criminal Procedure (Act XXV. of 1861), that a portion of a fine inflicted under s. 434 of the Penal Code be paid to an amin for the purpose of paying the expense of his deputation to restore the landmarks which had been destroyed by the opposite party.—QUEEN *v.* MOORUT LOLL, 6 W. R. 93. [Kemp and Markby, JJ. Dec. 21, 1866.]

**Excessive fine.**—The following important remarks were made by the High Court (Jackson, J.) in a case in which the accused moved the Court on the ground that the fine (Rs. 500) imposed on him by a Magistrate was excessive: "It is not shown in any way what the income of the petitioner was, or why the fine is excessive. An application on such a ground should be supported by proof of what the income of the petitioner was, and that the fine was altogether disproportioned to that income, and oppressive. The description of fine which it was the object of this section to prohibit, was a fine which it would be impossible or very difficult for the accused person to pay, or wholly disproportioned to the character of the offence. And to this it may be added that it is doubtful whether the section cited has any application to fines inflicted by a Magistrate. By its terms it applies to cases where the amount of fine is unlimited by law. Now, the power of the Magistrate to fine is, in all cases, under the Penal and Criminal Procedure Codes, limited to Rs. 1,000; and it is only the Court of Session or the High Court that can inflict fines to an unlimited amount."—QUEEN *v.* ABDUR RUHMAN, 7 W. R. 37. [Jackson, J. Mar. 1, 1867.]

**How fine may be directed to be applied**—Whenever, under any law in force for the time being, a Criminal Court imposes a fine, or confirms, in appeal, revision, or otherwise, a sentence of fine, or a sentence of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied (*a*) in defraying expenses properly incurred in the prosecution; (*b*) in compensation for the injury caused by the offence committed, where substantial compensation is, in the opinion of the Court, recoverable by civil suit. If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.—Crim. Pro Code (Act V. of 1898), s. 545

**Amount of compensation to be taken into account in subsequent suit.**—At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under s. 545.—Crim. Pro. Code (Act V. of 1898), s. 546.

Sentence of imprisonment for non-payment of fine.

**64.*** "In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment;

"and in every case of an offence punishable *with imprisonment or fine, or* with fine only, in which the offender is sentenced to a fine;"

it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced, or to which he may be liable under a commutation of a sentence.†

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* The provisions of ss. 64 and 65 apply to all fines imposed under the authority of any Act, Regulation, rule, or bye law, unless the Act, Regulation, rule, or bye-law contains an express provision to the contrary.—See the General Clauses Act (X. of 1897), s. 25.

As to the application of s. 64 to offences under special or local laws, see s. 40, *supra*.

In s. 64, the first two clauses quoted (except the words italicized) have been substituted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 2, for the words, "In every case in which an offender is sentenced to fine." They do not apply in the case of hill-tribes to which the Kachin Hill-tribes Regulation (I. of 1895) is applied.—See ss. 1 (*3*) and 3 of that Regulation.

In s. 64 the words italicized have been inserted by the Indian Criminal Law Amendment Act (X. of 1886), s. 21 (*2*).

† As to the application of ss. 64 and 65 to sentences passed in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 15 (*2*), 52.

**Imprisonment in default of payment of fine.**

**Imprisonment for default of payment of fine should not exceed one fourth of the maximum period fixed for the substantive offence.**—*In re* GANESH SINGH, 4 W. R. Cr. L. 11, No. 1155, Dec. 18, 1865.

**Imprisonment for default of payment of fine should not exceed one-fourth of the maximum sentence fixed for the offence.**—*In re* LOCHUN MISSER, 5 W. R. Cr. L. 2, No. 166. [Trevor and Bayley, JJ. Feb. 21, 1866.]

Prisoners were sentenced to fines under ss. 21 and 22 of Mad. Act III of 1864, and in default of payment of fine to rigorous imprisonment. *Held* that, as fine in these cases was the only assignable punishment, and by ss 30, 31, and 32, a specified procedure is laid down for the levy of the penalty, s. 64 of the Penal Code had no application. —PRO., Nov. 20, 1871, 6 Mad. H. C. R. Ap. 40.

S. 33 of the Code of Criminal Procedure, 1882, does not authorize a Magistrate to pass a sentence in default of payment of fine in excess of the term prescribed by s. 65 of the Indian Penal Code. *Reg.* v. *Muhammad Saib* (I. L. R., 1 Mad. 277) was overruled in 1881.—QUEEN-EMPRESS *v.* VENKATESA-GADU, I. L. R., 10 Mad. 165. [Collins, C.J. and Kernan, Muttusami Ayyar, Brandt, and Parker, JJ. Jan. 18, 1887.]

Where a conviction has taken place under the Towns Nuisances Act (Madras), 1889, s 3, a Magistrate has jurisdiction to impose a fine, and also to pronounce a sentence of imprisonment in default of payment of the fine.—QUEEN EMPRESS *v.* RAPPEL, I. L. R., 18 Mad. 490 [Collins, C J., and Parker, J. Aug. 9, 1895]

**In an order imposing fine, the term of imprisonment in default should be mentioned.**—The order imposing a fine should have been supported by a clause commuting the fine, in default of payment, to imprisonment for an additional period.—1 W. R. Cr. L. 1, No. 867, 1864.

**Convicted persons not liable to both fine and imprisonment in default, under Mad Police Act.** — Persons convicted under s. 48 of the Police Act (XXIV. of 1859) are not liable to both fine and imprisonment in default of payment. The procedure to be followed in enforcing the fine is that laid down in Mad. Act (V. of 1865).—PRO., Dec 7, 1866. 3 Mad H. C. R. Ap 9.

**Imprisonment can be awarded under the Bombay District Municipal Act in lieu of fine.**—There is no distinction between the word "penalty" as used in the Bombay District Municipal Act (VI. of 1873) and the word "*fine*" as used in s. 64 of the Indian Penal Code (Act XLV. of 1860). Imprisonment can, therefore, be awarded in default of any penalty inflicted under s. 84 of the Municipal Act.—*In re* LAKMIA, I. L. R., 18 Bom 400. [Candy and Fulton, JJ. July 13, 1893]

**Under the Railway Act, where a passenger, on demand, fails to pay excess charge and fare, a Magistrate can realize the amount as a fine, but he cannot impose imprisonment in default** —Section 113, sub-section (*q*) (*i*) of the Indian Railway Act (IX. of 1890), which directs that on failure to pay on demand excess charge and fare when due, the amount shall, on application, be recovered by a Magistrate as if it were a fine, does not authorize the Magistrate to impose imprisonment in default. The excess charge and fare referred to in the section is not a fine, though it may be recovered as such.—QUEEN-EMPRESS *v.* KUTRAPA, I. L. R, 18 Bom. 440. [Candy and Fulton, JJ Aug. 14, 1893]

See also *Queen-Empress* v. *Subramania Ayyar*, I. L. R., 20 Mad. 385 [Collins, C.J., and Shephard, J. Jan. 14, 1897.]

**Carter arrested under Police Act discharged: Arresting police-constable directed to pay compensation: Imprisonment, in default· Before sentencing to imprisonment, Magistrate should have made some attempt to levy fine** —A police-constable arrested a carter and charged him before a Magistrate with an offence under s. 34 of Act V. of 1861. The Magistrate acquitted the accused, and directed, under s. 560 of the Criminal Procedure Code, that the police-constable should pay him Rs. 20 as compensation or undergo simple imprisonment for a fortnight. *Held* that, as the section had no application to the case, the order was illegal, being made without jurisdiction *Held*, further, that even if the Magistrate had power under the Code to pass an order for imprisonment in default of payment of compensation awarded under s 560, it was illegal to pass such an order until some attempt had been made to levy the amount in the manner provided by s. 386 for levying of a fine. — RAMJEEVAN KOORMI *v.* DURGA CHARAN SADHU KHAN,

I. L. R., 21 Cal. 979. [Beverley and Banerjee, JJ. July 4, 1894.]

**Imprisonment in default of payment of maintenance is not imprisonment for contempt: Husband entitled to release on payment.**—The imprisonment which can be awarded under s 488, Criminal Procedure Code, is not a punishment for contempt of the Court's order, but merely a means of enforcing payment of the amount due, and that upon payment of that amount being made, the husband was entitled to be released. *Biyacha* v. *Moidin Kutti* (I. L. R., 8 Mad. 70), dissented from.—SIDHESWAR THOR *v.* GYANADA DASI, I. L. R., 22 Cal. 291. [Banerjee and Sale, JJ. Nov. 14, 1894.]

**Magistrate should not grant compensation where he gives sanction to prosecute under ss. 211 and 193.**—The complainant was directed to pay Rs. 50 as compensation to the accused, or, in default, to suffer simple imprisonment for one month, under s. 560 of the Code of Criminal Procedure, and sanction was also granted to prosecute him for offences under ss. 211 and 193 of the Penal Code. *Held* that, if the Magistrate thought that this was a case in which prosecution under ss. 211 and 193 of the Penal Code should be sanctioned, he ought not to have taken action under the provisions of s. 560 of the Code of Criminal Procedure. *Held* also, that the order for imprisonment, in default of payment of the compensation awarded, was illegal. *Ramjeevan Koormi* v. *Durga Charan Sadhu Khan* (I. L. R., 21 Cal. 979), followed.—SHIB NATH CHONG *v.* SARAT CHUNDER SARKAR, I. L. R., 22 Cal. 586. [Petheram, C J., and Beverley, J. April 1, 1895.]

**A Magistrate should not, immediately on ordering complainant to pay compensation, direct that he should, in default, suffer imprisonment.**—Although compensation awarded under s. 560 of the Code of Criminal Procedure is recoverable as if it were a fine, it is not competent to a Magistrate immediately upon ordering a complainant to pay compensation to direct that he should, in default, be sentenced to imprisonment.—QUEEN-EMPRESS *v.* PUNNA, I L. R., 18 All. 96. [Aikman, J. Nov. 26, 1895.]

**A Magistrate should not, immediately on ordering complainant to pay compensation, direct that he should, in default, suffer imprisonment.**—It is not competent to a Court, in awarding compensation under s. 560 of the Criminal Procedure against a complainant for making a frivolous and vexatious complaint, to order at the same time that, in default of payment of the compensation, the person against whom the order is made suffer imprisonment. *Queen-Empress* v. *Punna* (I L. R., 18 All. 96), approved.—MANJHLI *v.* MANIK CHAND, I. L. R. 19 All. 73. [Edge, C.J., and Aikman, J. Aug. 26, 1896.]

**Imprisonment in default of payment of maintenance is not limited to one month.**—The imprisonment provided by s. 488, Criminal Procedure Code, in default of payment of maintenance awarded is not limited to one month. The maximum imprisonment that can be imposed is one month for each month's arrear, and if there is a balance representing the arrears for a portion of a month, a further term of a month's imprisonment may be imposed for such arrear.—ALLAPICHAI RAVUTHAR *v* MOHIDIN BIBI, I. L. R., 20 Mad. 3. [Subramania Ayyar and Davies, JJ. Sep. 17, 21, 1896.]

See also *Bhiku Khan* v. *Zahuran*, I. L. R., 25 Cal. 291. [Hill and Stevens, JJ. Dec 7, 1897.]

Limit to imprisonment for non payment of fine when imprisonment and fine awardable.

**65.*** The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.†

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* The provisions of s. 65 apply to all fines imposed under the authority of any Act, Regulation, rule, or bye-law, unless the Act, Regulation, rule, or bye-law contains an express provision to the contrary.—See the General Clauses Act (X. of 1897), s. 25.

As to the application of s. 65 to offences under special or local laws, see s. 40, *supra*.

† As to the Application of s. 65 to sentences passed in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 15 (*2*), 52.

**Limit to imprisonment for non-payment of fine when imprisonment and fine awardable.**

Held by the majority of the Court that an offender, who has undergone the full term of imprisonment to which he was sentenced in default of the payment of a fine, is still liable to have the amount levied by distress and sale of any moveable property belonging to him, which may be found within the jurisdiction of the Magistrate of the district, whether the officer who inflicted the fine issued any special directions on the subject or not. (Seton-Karr, J., dissenting).—QUEEN *v.* MODOOSOODUN DAY, 3 W. R. 61. [Kemp and Seton-Karr, JJ. Aug. 15, 1863.]

A Subordinate Magistrate of the first class has no power under s. 45 of the Code of Criminal Procedure to award any greater sentence of imprisonment in default of a payment of fine than six weeks in the case of persons convicted of being members of an unlawful assembly.—PHOOLMAN TEWARY *v.* SATRAM OJHA, 6 W. R. 51. [Norman and Seton-Karr, JJ. July 30, 1866.]

In every case in which an offender is sentenced to fine, the Court which sentences the offender may issue a warrant for the levy of the amount by distress and sale. The successor in office of a Judge or Magistrate may levy a fine imposed by his predecessor. But the Court which levies the fine must be the same as the Court which imposed it.—CHUNDER COOMAR MITTER *v.* MOIDHOOSOODUN DEY, 9 W. R. 50. [Peacock, C.J., and Jackson, Phear, Macpherson, and Mitter, JJ. Mar. 20, 1868.]

Imprisonment in default of payment of a fine inflicted under Bom Act VII. of 1867, s. 31, ought to be simple, not rigorous.—REG. *v.* BECHAR KHUSHAL, 5 Bom H. C. R. 43. [Newton, Offg. C.J., and Tucker, J June 11, 1868.]

Where a Magistrate sentenced a person, who had neglected to take out a license under Act XXI. of 1867, s. 15, and Act XXIX. of 1867, s. 3, to pay a fine of ten rupees, and in default of payment to suffer seven days' simple imprisonment, the High Court reversed so much of the sentence as awarded imprisonment, as the trying Magistrate had, under the Act, no power to make such an order.—REG. *v.* CHENAPPAVALAD NAGAPPA, 5 Bom. H. C. R. 44. [Newton and Tucker, JJ. June 17, 1868.]

The sentence of imprisonment passed in default of the payment of a fine inflicted under s. 290 of the Penal Code (for committing a public nuisance) should be one of simple (not rigorous) imprisonment.—REG. *v.* SANTU BIN LAKHAPPA KORE, 5 Bom. H. C. R. 45. [Couch, C.J., and Newton, J. June 17, 1868.]

S. 45 of the Criminal Procedure Code makes applicable the provisions of s. 65 of the Penal Code, not only to offences falling under that Code as defined in its 40th section, but to every case in which a Magistrate has jurisdiction under s. 21 of the Criminal Procedure Code. Imprisonment for one month awarded in default of payment of a fine under s. 3 of the Salt Revenue Act (XXXI. of 1850) was accordingly reduced to three weeks' simple imprisonment.—REG. *v.* VITHOBA BIN SOMA, 5 Bom. H. C. R. 61. [Newton and Tucker, JJ. July 30, 1868.]

A Subordinate Magistrate of the first class has power to deal with the case of an offence provided for by a special law—in this case Act III. of 1863 (B C.)—when the punishment awardable is six months' imprisonment and fine only, s. 67 (and *not* s. 65) of the Penal Code being applicable to such a case.—IN THE MATTER OF CHUNDER PERSHAD SINGH, 10 W. R. 30 [Loch and Glover, JJ. Aug. 24, 1868.]

The Income Tax Act (IX. of 1869, supplemented by Act XXIII. of 1868) having been passed subsequently to the General Clauses Act (I. of 1868), s. 5 of the latter authorizes the award of imprisonment in default of payment of the fine imposed under s 25 of the former.—REG. *v.* SANGAPA BIN BASHAPA, 7 Bom H. C. R. 76. [Gibbs and Melvill, JJ. Dec. 1, 1870.]

In a case of assault, a sentence inflicting a fine of Rs. 50, and awarding imprisonment for one month in default of payment of the fine, is illegal, with reference to ss 65, 352 of the Penal Code.—IN THE MATTER OF JEHAN BUKSH, 16 W. R. 42. [Kemp and Ainslie, JJ. Sep. 2, 1871.]

S. 309 of the Criminal Procedure Code does not extend the period of imprisonment which may be awarded by a Magistrate under s. 65 of the Penal Code; it only regulates the proceedings of Magistrates, which are limited.—EMPRESS *v.* DARBA, I. L. R., 1 All. 461. [Stuart, C.J., and Pearson, Turner, and Spankie, JJ. Aug 3, 1877.]

Prisoners were convicted by a Cantonment Magistrate of an offence (affray) punishable under s. 160 of the Penal Code, and were sentenced to pay a fine of Rs. 25 each, or in default to be rigorously imprisoned for 30 days. An offence under s. 160 being punishable with imprisonment for one month, or with fine to the extent of Rs. 100,

**Limit to imprisonment for non-payment of fine when imprisonment and fine awardable—(*contd.*)**

or with both, the Sessions Judge, while referring the proceedings of the Cantonment Magistrate to the High Court, submitted that the Magistrate was not authorized in awarding imprisonment, in default of payment of fine, for a period exceeding one-fourth of one month. "The High Court, after giving careful consideration to the provisions of s. 309 of the Code of Criminal Procedure (Act X. of 1872), are of opinion that the sentence of the Cantonment Magistrate is not illegal. The final clause of s. 309 enacts that, where a person is sentenced to fine only, the Magistrate may award such term of imprisonment in default of payment of fine as is allowed by law, provided the amount does not exceed the Magistrate's powers under the Act. It appears to the High Court that the proper construction of this clause is as follows: If imprisonment and fine and further imprisonment in default of payment of fine, is the sentence, the imprisonment in default cannot exceed one-fourth of the period of imprisonment which the Magistrate is competent to inflict for the offence; but if the sentence is fine only, the imprisonment in default of payment may be the whole period of imprisonment which the Magistrate is competent to inflict for the offence."—REG. *v.* MAHAMMAD SAIB, I. L. R., 1 Mad. 277. [Innes, Offg. C J., and Kindersley, Busteed, and Tarrant, JJ. Sep. 4, 1877.] But see the following ruling:

S. 33 of the Code of Criminal Procedure, 1882, does not authorize a Magistrate to pass a sentence in default of payment of fine in excess of the term prescribed by s. 65 of the Penal Code *Reg. v. Mahammad Saib* (I. L. R., 1 Mad. 277) was overruled in 1881. — QUEEN-EMPRESS *v.* VENKATESAGADU, I. L. R., 10 Mad 165. [Collins, C J., and Kernan, Muttusami, Ayyar, Brandt, and Parker, JJ. Jan. 18, 1887.]

Description of imprisonment for non-payment of fine.

**66.*** The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.†

**Description of imprisonment when fine not paid.**—The sentence of imprisonment passed in default of the payment of a fine inflicted under s. 290 of the Penal Code (for committing a public nuisance) should be one of simple, not rigorous, imprisonment.—REG. *v.* SANTU BIN LAKHAPPA KORE, 5 Bom. H. C. R. 45. [Couch, C.J., and Newton, J. June 17, 1868.]

Imprisonment for non-payment of fine when offence punishable with fine only.

**67.*** If the offence be punishable with fine only, "the imprisonment which the Court imposes in default of payment of the fine shall be simple, and" the term for which the Court directs the offender to be imprisoned in default of payment of fine shall not exceed the following scale, that is to say, *for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case*.†

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* The provisions of ss. 66 and 67 apply to all fines imposed under the authority of any Act, Regulation, rule, or bye-law, unless the Act, Regulation, rule, or bye-law, contains an express provision to the contrary.—See the General Clauses Act (X. of 1897), s. 25.

As to the application of ss. 66, 67 to offences under special or local laws, see s. 40, *supra*.

In s. 67 the words quoted have been inserted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 3.

In the case of hill tribes to which the Kachin Hill-tribes Regulation (I. of 1895) is applied, the following words have been substituted for the portion italicized in s. 67:—

"For any term not exceeding four months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding eight months when the amount shall not exceed one hundred rupees, and for any term not exceeding twelve months in any other case."—See the Kachin Hill tribes Regulation (I. of 1895), ss. 1 (3) and 3.

This substitution is also made in the case of the hill-tribes to which the Chin Hills Regulation (V. of 1896) is applied.—See Regulation V. of 1896, s. 3, and schedule.

† As to the application of ss. 66 and 67 to sentences passed in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 15 (2), 52.

**Imprisonment for non-payment of fine when offence punishable with fine only.**

Where an offence is punishable with both fine and imprisonment, or with fine only, and the Magistrate fines only, but awards imprisonment in default of payment, the term of imprisonment is regulated by s. 67, and not s. 65.—IN THE MATTER OF CHUNDER PERSHAD SINGH, 10 W. R. 30. [Loch and Glover, JJ. Aug. 24, 1868.]

In cases of simple imprisonment ordered as a process for enforcement of payment of fine, the rule of s. 262 of the Criminal Procedure Code limiting the period of imprisonment in summary trials does not apply, as that section only refers to substantive sentences of imprisonment—EMPRESS v. ASGHAR ALI, I. L. R., 6 All. 61. [Tyrrell, J. Aug. 13, 1883.]

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**In a case of public nuisance under s. 290, the sentence in default should be one of simple (not rigorous) imprisonment.**—The sentence of imprisonment passed in default of the payment of a fine inflicted under s. 290 of the Indian Penal Code (for committing a public nuisance) should be one of simple, not rigorous, imprisonment.—REG. *v.* SANTU BIN LAKHAPPA KORE, 5 Bom. H. C. R., 45. [Couch C.J., and Newton, J. June 17, 1868]

**Section 67 refers solely to cases in which the offence is punishable with fine only.**—An accused having been convicted of an offence under s. 3, cl. 10, of the Towns Nuisances Act (Madras), 1889, and sentenced to pay a fine of Rs 8, and in default of payment to undergo simple imprisonment for a week. *Held* (1) that s. 67 of the Indian Penal Code refers solely to cases in which the offence is punishable with fine only, and has no application to offences punishable either with imprisonment or with fine, but not with both, such sentences are governed by s. 65 of the Indian Penal Code; and (2) that the sentence of imprisonment in default should not exceed one-fourth of the maximum term of imprisonment provided for the offence.—QUEEN-EMPRESS *v.* YAKOOB SAHIB, I L. R, 22 Mad. 238. [Benson and Moor, JJ. Sep. 16, 20, 1898.]

Imprisonment to terminate on payment of fine.

**68.*** The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.†

Termination of imprisonment on payment of proportional part of fine.

**69.*** If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid of levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.†

*Illustrations.*

A is sentenced to a fine of one hundred rupees, and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

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* The provisions of ss. 68 and 69 apply to all fines imposed under the authority of any Act, Regulation, rule, or bye-law, unless the Act, Regulation, rule, or bye-law, contains an express provision to the contrary.—See the General Clauses Act (X. of 1897), s. 25.

† As to the application of ss. 68 and 69 to sentences passed in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 15 (2), 52.

**Fine paid, but jailor not informed.**—A prisoner was sentenced to imprisonment and fine, and, in default of payment of the latter, to a further term of imprisonment. He paid a portion of the fine, but that fact not having been communicated to the jailor, he underwent the entire further term of imprisonment. *Held* that, under these circumstances, the Court had no power to order the fine to be refunded.—REG. *v.* NATHA MULA, 4 Bom. H. C. R. 37. [Couch, C.J., and Newton, J. Oct. 9, 1867.]

**70.*** The fine or any part thereof which remains unpaid may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.†

Fine leviable within six years, or during imprisonment.

Death not to discharge property from liability.

**Fine can be levied though imprisonment served.**—Where a person has undergone imprisonment in default of payment of fine, he is not thereby exonerated from paying the fine (5 R. J P., J 37). This ruling is in accordance with the principle laid down by the Law Commissioners, who say: "We do not mean that this imprisonment shall be taken in full satisfaction of the fine; we cannot consent to permit the offender to choose whether he will suffer in his person or his property ..... The imprisonment which an offender has undergone shall not release him from the pecuniary obligation under which he lies. His person will, indeed, cease to be answerable for the fine; but his property will for a time continue to be so."

**Fine may be levied by distress, though offender has undergone full term of imprisonment to which he was sentenced for default in paying fine.**—*Held* by the majority of the Court that an offender who has undergone the full term of imprisonment to which he was sentenced in default of the payment of a fine, is still liable to have the amount levied by distress and sale of any moveable property belonging to him, which may be found within the jurisdiction of the Magistrate of the District, whether the officer who inflicted the fine issued any special directions on the subject or not. (Seton-Karr, J., dissenting.)—QUEEN *v.* MODOO-SOODUN DAY, 3 W. R. 61. [Kemp and Seton-Karr, JJ. Aug. 15, 1863.]

**Prisoner's property (acquired after his release) liable for the fine even though he has served out his term of imprisonment in default.**—Property acquired even after the release of a prisoner would be liable for the fine to the end of the period specified.—3 W. R. Cr. L. 9, No. 540, 1865. [Trevor, J. June 12, 1865.]

**Where imprisonment in default is a punishment for the default, and not a substitute for the fine.**—Imprisonment, which a Court is authorized to impose in default of payment, is a punishment for the default, and not a substitute for the fine imposed.—3 W. R. Cr. L 19, No. 726, 1865 [Trevor, J. July 26, 1865.]

**Only moveable property liable.**—Only moveable property belonging to the offender which may be found within the jurisdiction of the Magistrate of the District in which he had been sued and sentenced is liable.—4 W. R. Cr. L. 6, No. 968. [Trevor, J. Sep. 19, 1865.]

**Rule as to fines inflicted for offences punishable under other laws.**—Fines inflicted for offences punishable under other laws are not within the provisions of that section unless its operation be specially extended thereto.—4 W. R. Cr. L. 7, No. 1059, [Trevor, Loch, and Bayley, JJ. Nov. 27, 1865.]

**Warrant for levy of fine.**—In every case in which an offender is sentenced to fine, the Court which sentences the offender may issue a warrant for the levy of the amount by distress and sale. The successor in office of a Judge or Magistrate may levy a fine imposed by his predecessor. But the

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* The provisions of s. 70 apply to all fines imposed under the authority of any Act, Regulation, rule, or bye-law, unless the Act, Regulation, rule, or bye-law, contains an express provision to the contrary.—See the General Clauses Act (X of 1897), s. 25.

† As to the application of s. 70 to sentences passed in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 15 (2), 52.

Court which levies the fine must be the same as the Court which imposed it.—CHUNDER COOMAR MITRA *v.* MODHOOSOODUN DEY, 9 W. R. 50. [Peacock, C.J., and Jackson, Phear, Macpherson, and Mitter, JJ. Mar. 20, 1868.]

**Fine leviable from moveable property only.** — On a reference as to whether the restriction for the recovery of fines to moveable property (Criminal Procedure Code, s. 61) applied only during the lifetime of the offender, and whether the fine could, after his death, be recovered, under s. 70 of the Penal Code, from his immoveable property, the Court was of opinion that the law had only provided for the distress and sale of moveable property, and that there was no way in which immoveable property could be made liable.—REG. *v.* LALLU KARWAR, 5 Bom. H. C. R. 63. [Newton and Tucker, JJ. July 30, 1868.]

**Fine cannot be levied from immoveable property.**—Where a person was fined under the Penal Code, and died before the fine was paid, and the Magistrate ordered the fine to be realized by sale of his joint moveable property; and, that being found insufficient to cover the fine, his immoveable property was also attached under the order: *held* that the liability of the immoveable property of the deceased could not be enforced by distress. *Reg.* v. *Lallu Karwar* (5 Bom. H. C. R. 63) followed. S. 386 of the Criminal Procedure Code is not applicable to such a case.—QUEEN-EMPRESS *v.* SITA NATH MITRA, I. L. R., 20 Cal. 478. [Pigot and Hill, JJ. Oct. 24, 1892.]

**Magistrate, who has issued a distress-warrant, not required by law to try any claim to ownership of property distrained.**—A Magistrate who has issued a distress-warrant, under s. 386 of the Criminal Procedure Code, is not required by law to try any claim which may be preferred to the ownership of the property distrained.—QUEEN-EMPRESS *v.* GASPER, I. L. R., 22 Cal. 935. [Petheram, C.J., and Beverley, J. Sep 11, 1894.]

**71.*** Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

Limit of punishment of offence made up of several offences.

"Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

"where several acts, of which one or more than one would, by itself or themselves, constitute an offence, constitute, when combined, a different offence.

"the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences."

*Illustrations.*

(*a*.) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(*b*.) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

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* As to the application of s. 71 to sentences passed in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 15 (*2*), 52.

In s. 71 the clauses quoted have been added by the Indian Penal Code Amendment Act (VIII of 1882), s. 4.

As to the application of s. 71 to offences under special or local laws, see s. 40, *supra*.

Separable offences, which come within the provisions of s. 71, are not "distinct offences" within the meaning of s. 35 of the Code of Criminal Procedure (Act V. of 1898).

**House-breaking and theft.**—S. 71 of the Penal Code applies to the case of a person charged with "house-breaking" under s. 457, and "theft" committed on the same occasion under s. 380 of the Penal Code. A Magistrate has power to inflict only two years' imprisonment for a single offence—REG. v. ARJUN, 1 Bom. H. C. R. 87. [Forbes and Westropp, JJ. Nov. 4, 1863.]

**Conviction for both rioting and being members of an unlawful assembly illegal.**—There cannot be a conviction both of "rioting" and of "being members of an unlawful assembly." The greater charge includes the less, and to punish under both sections of the Penal Code would be cumulative and illegal. Were both original sentences legal, the appeal would lie to the Sessions Judge.—MEELUN KHALIFA v. DWARKA NATH GOOPTO, 1 W. R. 7. [Kemp and Glover, JJ. Aug. 17, 1864.]

**Person convicted of robbery or theft cannot also be convicted of dishonest receipt.**—A person convicted of robbery or theft cannot be also convicted of dishonestly receiving in respect of the same property.—QUEEN v. SHEIKH MUDDUN ALLY, 1 W. R. 27. [Kemp and Glover, JJ. Nov. 23, 1864.]

**Robbery and hurt punishable under s. 394 alone.**—The two offences of robbery and of voluntarily causing hurt, when combined, are punishable under s. 394 alone, and not under ss. 392 and 394.—QUEEN v. MOOTKEE KORA, 2 W. R. 1. [Kemp and Glover, JJ. Jan. 2, 1865.]

**Trespass and grievous hurt: Separate sentence for grievous hurt not necessary.**—The prisoner entered a house for the purpose of committing an assault, and, in carrying out that intention, caused grievous hurt. In convicting and punishing him for the substantive offence (grievous hurt), *held* that it was not necessary to pass a separate sentence for the offence of house-trespass—QUEEN v. BASSOO RANNAH, 2 W. R. 29. [Kemp and Glover, JJ. Jan. 30, 1865.]

**Same act committed at more than one place: Each act to be charged under a separate head: Separate sentence for each act.**—When the accused is charged with having committed the same act at more than one place, under such circumstances, each act should have been charged under a separate head; and, on conviction, the prisoner would be liable to a separate sentence for each act, due regard being paid to s. 71 of the Penal Code.—2 W. R. Cr. L. 12, No. 115, 1865. [Trevor, J. Feb. 6, 1865.]

**Lurking house-trespass by night. In committing such offence, prisoner attempts to cause grievous hurt to owner of house who tries to capture him: Punishment under s. 460, not under ss. 457 and 324.**—A prisoner who, in the commission of lurking house-trespass by night, voluntarily attempts to cause grievous hurt to the owner of the house, who tries to capture him, is punishable under s. 460, and not under ss. 457 and 324 of the Penal Code.—2 W. R. 52. [Jackson and Glover, JJ. April 1, 1865.]

**In a fresh conviction, whipping illegal in addition to imprisonment.**—S. 3, Act VI. of 1864, does not allow of whipping in addition to imprisonment in the case of a fresh conviction. House-breaking by night and theft form a single and entire offence, and cannot be punished separately.—QUEEN v. TONAOKOCH, 2 W. R. 63. [Jackson and Glover, JJ. April 19, 1865.]

**Theft and taking or receiving stolen goods form one offence, and cannot be punished separately.**—The theft and the taking or retention of stolen goods form one and the same offence, and cannot be punished separately.—QUEEN v. SREEMUNT ADUP, 2 W. R. 63. [Glover, J. April 19, 1865.]

**No separate convictions and sentences deemed requisite in a case of trespass and mischief.**—House-trespass and mischief not being separate offences, but being included in the graver offence of being members of an unlawful assembly armed with deadly weapons, no separate convictions and sentences were deemed to be requisite—QUEEN v. SURROP NAPIT, 3 W. R. 54. [Kemp and Seton-Karr, JJ. July 15, 1865.]

**Rioting and grievous hurt: Conviction and sentence for both upheld.**—Conviction and sentence, both for rioting and for grievous hurt, upheld, the punishment being, on the whole, not more severe than might properly have been awarded if the conviction had been for grievous hurt only. A person convicted of rioting should not be convicted of hurt or grievous hurt caused to himself.—QUEEN v. AZGUR, 5 W. R. 19. [Seton-Karr and Macpherson, JJ. Jan. 26, 1866.]

**House-breaking and theft punishable under s. 457.**—A person convicted of house-breaking, followed immediately by theft, is punishable only under s. 457 of the Penal Code.—QUEEN v. CHYTUN BOWRA, 5 W. R. 49. [Jackson and Glover, JJ. Mar. 5, 1866.]

**Theft and mischief: Double sentence illegal.**—A double sentence for theft and mischief is illegal and improper.—BECHUK AHEER v. AUHUCK BHOONIAH, 6 W. R. 5. [Jackson and Campbell, JJ. June 18, 1866.]

**Mischief and theft: Government trees: Legality of conviction.**—*Held* that it was not illegal to convict prisoners of mischief, as well as of theft, the offences charged being that they had cut down Government trees without leave, and appropriated them.—REG. v. NARAYAN KRISHNA, 2 Bom. H. C. R. 392. [Couch, C J., and Newton, J. June 27, 1866.]

**Convictions under ss. 456 and 380: Conviction under s. 380 set aside.**—The prisoner was convicted by the Magistrate of two separate offences under ss. 456 and 380 of the Penal Code, and sentenced for both. On appeal, the Sessions Judge, holding that the offence proved was under s. 457, ordered a new trial for offences under ss. 457 and 380. *Held* that there ought not to be a new trial, but that the conviction and sentence under s. 380 should be set aside.—QUEEN v. RAMCHARAN KAIRE, B. L. R. Sup. Vol. 488; 6 W. R. 39. [Peacock, C.J., and Norman, Kemp, Seton-Karr, and Campbell, JJ. July 9, 1866.]

**Separate convictions and sentences for house-breaking by night and theft: Conviction for theft set aside.**—In a case of separate convictions and sentences for house-breaking by night and theft under ss. 457 and 459 of the Penal Code, the conviction and sentence under s. 379 were quashed, and those under s. 457 were upheld.—JOGEEN PULLEE v. NOBO PULLEE, 6 W. R. 49. [Kemp and Markby, JJ. July 28, 1866.]

**Conviction for two offences, one being an integral part of the other: Illegality of.**—The conviction of prisoners for two offences, when the one offence formed an integral portion of the other, *held* to be in effect punishing twice for the same offence, and therefore illegal.—GOVERNMENT v. LALAWUN SINGH, 1 Agra H. C. R. 31. [Turner, J., and Spankie, Offg. J. Nov. 22, 1866.] Followed in *Queen* v. *Mungroo*, 6 N.-W. P. 294.

**Theft and house-breaking: Illegality of sentence.**—Theft is the sequel of, and cannot be separated from, house-breaking. A cumulative sentence of three years' imprisonment was held to be illegal in such a case.—MUSSAHUR DAOUDH, 6 W. R. 92. [Kemp and Markby, JJ. Dec. 19. 1866.]

**Sentences of imprisonment may be accumulated beyond 14 years.** — Sentences of imprisonment may be accumulated beyond the period of 14 years, notwithstanding s. 46 of the Code of Criminal Procedure (Act XXV. of 1861), which limit has reference only to sentences passed simultaneously, or passed upon charges tried simultaneously.—QUEEN v. PUBAN, 7 W. R. 1. [Kemp and Markby, JJ. Jan. 3, 1867.]

**Alternative finding legal.**—An alternative finding is perfectly legal.—QUEEN v. TARINEE MYTEE, 7 W. R. 13. [Kemp and Glover, JJ. Jan. 14, 1867.]

**Culpable homicide not amounting to murder and being member of an unlawful assembly: Conviction for second offence quashed.**—The prisoner was convicted and sentenced separately for culpable homicide not amounting to murder, and for being a member of an unlawful assembly. The two offences, however, being held to be one (the latter being only part of the evidence of the former), the conviction and sentence for the second offence were quashed.—QUEEN v. RUBBEEOOLAH, 7 W. R. 13. [Norman and Seton-Karr, JJ. Jan. 16, 1867.]

**Conviction under s. 366 (kidnapping a woman to compel her marriage) quashed.**—Where a girl of 11 years of age was taken out of the custody of her lawful guardian by the first prisoner, and offered for sale in marriage to another, and the second prisoner illegally concealed her, the conviction of the former was upheld under s. 363 of the Penal Code only, and of the latter under s. 368 only, while the separate conviction of both under s. 366 was quashed.—QUEEN v. ISREE PANDAY, 7 W. R. 56. [Norman J. April 8, 1867.]

**False charge supported by false evidence.**—Where a man brought a false charge against another, and at the trial gave false evidence in support of the charge, it was held that he was liable to be tried and punished separately on separate charges of bringing a false charge and of giving false evidence.—QUEEN v. ABDOOL AZEEZ, 7 W. R. 59. [Kemp and Glover, JJ. April 27, 1867.]

**Rioting armed with deadly weapons and stabbing: Distinct offences: Punishable as such.**—The offences of rioting armed with deadly weapons, and stabbing a person on whose premises the riot takes place, are distinct offences, and punishable as separate offences under ss. 148, 149, and 324 of the Penal Code, s. 149 being read as a proviso to s. 148.—QUEEN v. CALLACHAND, 7 W. R. 60. [Norman and Seton-Karr, JJ. April 29, 1867.]

**Separate sentences for kidnapping and selling for prostitution.**—The evidence of a kidnapped girl, if thoroughly credible, is legally sufficient for a conviction for kidnapping. There is nothing illegal in passing separate sentences for kidnapping, and for selling for purposes of prostitution.—QUEEN v. DOORGA DASS, 7 W. R. 68. [Kemp, J. May 18, 1867.]

**Separate convictions set aside.**—Separate convictions and sentences under ss.

429 and 379, and under ss. 457 and 380, of the Penal Code, were set aside; and the convictions under s. 429 in the former case, and under s. 457 in the latter, allowed to stand.—QUEEN *v.* SAHRAB, 8 W. R. 31. [Jackson and Hobhouse, JJ. July 1, 1867.]

**Kidnapping (s. 363) is included in kidnapping to steal from the person (s. 369).**—The offence described in s. 363 of the Penal Code is included in that described in s. 369, the kidnapping, and the intention of dishonestly taking property from the kidnapped child, being included in the latter section.—QUEEN *v.* SHAMA SHEIKH, 8 W. R. 35. [Kemp and Glover, JJ. July 8, 1867.]

**Criminal trespass part of mischief on land and house-breaking by night**—Criminal trespass is a part of the offence of mischief committed upon land as well as of house-breaking by night.—QUEEN *v.* LALLOO SING, 8 W. R. 54. [Jackson and Hobhouse, JJ. July 29, 1867.]

**Sessions Judge illegally recording a conviction under two sections.**—Where a person, though charged under two heads, was found guilty of what was substantially but one offence, *held* that it was improper for the Sessions Judge to record a conviction under two sections of the Penal Code, and thereupon to award a punishment of two years' imprisonment in excess of what the law prescribed for the offence committed.—REG. *v.* YORA KARUBEG, 4 Bom. H. C. R. 12. [Couch, C.J., and Newton, J Sep. 26, 1867.]

**Where prisoner commits more than one offence, he should be convicted of each offence.**—When more than one offence is proved, it is not proper to convict only of one and to acquit of the other, although the offences may be cognate. *Reg.* v. *Vinayak Trimbak* (2 Bom. H C R. 391) followed.—REG. *v.* MURAR TRIKAM, 5 Bom H. C R. [Couch, C.J., and Newton, J. Jan 20, 1868.]

**Three different persons threatened at the same time: each of such persons brings a separate charge: Accused liable to punishment separately for each offence.**—An accused, who threatened three witnesses, was convicted and sentenced to four months' imprisonment for the threat to each witness—in all to one year. It was held that, if a person at one time criminally intimidates three different persons, and each of those persons brings a separate charge against him, the accused may be convicted for an offence as against each person, and be punished separately for each offence. The facts and evidence in this case, however, were considered insufficient to support the sentence, which was reversed as extremely harsh and unjust.—9 W. R. 30. [Kemp and Jackson, JJ. Mar. 10, 1868.]

**Sentence of whipping.**—*Held* by the majority that, when a person who has not been "previously convicted" (*vide* s. 4, Act VI. of 1864) is convicted at one time of two or more offences, it is illegal to sentence him to whipping for one of those offences, in addition to imprisonment or fine for the other or others; but it is not illegal to sentence him to one whipping in lieu of all other punishments. *Held*, further, that, when a person who has been "previously convicted" is convicted at one time of two or more offences, he may be punished with one, but only one whipping, in addition to any other punishment to which, under s. 46 of the Code of Criminal Procedure, he may be liable.—NASSIR *v* CHUNDER, 9 W. R. 41; B. L. R. Sup. Vol. 951 [Peacock, C.J., and Seton-Karr, Jackson, Phear, and Macpherson, JJ. Mar. 12, 1868.]

**Cumulative sentence for rioting and causing hurt: Illegality of sentence.**—Where prisoners are charged both with rioting, being armed with deadly weapons, and with causing hurt by shooting, and their conviction of the latter offence rests solely on the fact of their belonging to a party by one of whom (not one of the prisoners) firearms were used, it is wrong to pass a cumulative sentence, and to punish the prisoners both for the rioting and for the causing hurt. The punishment should be for either one or other of those offences. A charge should be so framed as to refer to the section of the Penal Code under which the offence charged is punishable, as required by ss 234 and 237 of the Code of Criminal Procedure. Where there is a riot and fighting between two factions, the members of each party should be committed for trial separately, and not all together.—QUEEN *v.* DURZOOLA, 9 W R. 33. [Seton-Karr and Macpherson, JJ. Mar. 14, 1868.] But see *Queen* v. *Callachand*, 7 W. R. 60.

**Offences under ss. 411 and 414 are not two distinct offences**—The offences specified in ss. 411 and 414 of the Penal Code cannot be considered as two distinct offences so as to allow of the procedure of s. 46 of the Criminal Procedure Code being adopted.—4 Mad. H. C R. Ap. 14. [Aug. 12, 1868.]

**House-breaking to commit theft and theft: Separate sentences disapproved.**—When a prisoner convicted of "house-breaking in order to commit theft," and of "theft," both offences being portions of one continuous criminal act, was sentenced, on the first head of charge, to one year's rigorous imprisonment, under s. 457 of the Penal

Code, and on the second head of charge to receive twenty stripes, under s. 2 of the Whipping Act (VI of 1864), the separate sentences (though not illegal) were disapproved of, as contrary to the spirit and intention of the Whipping Act.—REG. *v.* GENU BIN AKU, 5 Bom. H. C. R. 83. [Couch, C.J., and Newton, J. Sep. 16, 1868.]

**Rioting armed with deadly weapons and causing hurt with dangerous weapons: Sentence should have been under one section.**—Where the prisoners were charged under s. 148 of the Penal Code of rioting armed with deadly weapons, and also under s. 324 of voluntarily causing hurt by dangerous weapons, they should have been sentenced only under *one or other* of these sections, the charges being, properly speaking, only alternative charges. The High Court refused to interfere with the reception by the Sessions Judge of the uncorroborated evidence of accomplices.—QUEEN *v.* DINA SHEIKH 10 W. R. 63; 3 B. L. R. 15n. [Phear and Hobhouse, JJ. Dec. 15, 1868.]

**Conviction for theft, though the offence charged is lurking house-trespass by night: There should have been committal on latter charge.**—A Deputy Magistrate has no power to convict of theft (s. 380, Penal Code), where the offence charged is lurking house-trespass by night with aggravating circumstances (ss. 458, 459, Penal Code), but must commit on the latter charge.—PURAN TELRE *v.* BHUTTOO DOME, 9 W. R. 5. [Kemp and Jackson, JJ. Jan. 13, 1869.]

**For separate offences, there must be separate sentences**—Where prisoners are convicted of separate offences, a separate sentence should be passed in each case, with a direction that imprisonment in the second case should commence on the expiration of that in the first, and so on, otherwise it would be impossible, in case of an appeal and a reversal of the conviction in one or more of the separate cases, to determine to what portion of the aggregate imprisonment the prisoners still remained liable.—PRO., Jan 15, 1869, 4 Mad. H. C. R. Ap 27.

**Conviction of theft and receiving: Sentence passed for theft.**—Where, in a case in which a prisoner was convicted of theft and also of receiving stolen property, the sentence passed was really one for theft, the High Court nevertheless refused to allow the conviction for receiving stolen property to remain on the record against the accused, and reversed it.—QUEEN *v.* SEEB CHUNDER HAREE, 11 W. R. 12. [Jackson and Hobhouse, JJ. Mar. 1, 1869.]

**Acts which, taken together, constitute one offence, cannot be treated as separate offences.**—Where, substantially, only one offence has been committed, the several acts which, taken together, constitute that offence, cannot legally be treated as separate offences, and the prisoner cannot legally be sentenced in respect of these as well as in respect of the principal offence.—QUEEN *v.* CHUNDER KANT LAHOREE, 12 W. R. 2; s.c., 3 B. L. R. A. Cr. 14 (where the name of the case is given as QUEEN *v.* KALISANKAR SANDYAL). [Macpherson and Jackson, JJ. June 11, 1869.] But see s. 235 (ill. *a*) of the Criminal Procedure Code (Act V. of 1898), *infra*, p. 64.

**Sessions Judge directing committal of accused for adultery, though he had already been convicted of enticement: Sentence for enticement annulled, the requisite intention in one case being the substantive delict in the other.**—Where the Sessions Judge directed the committal of the defendant for adultery, the defendant having been already convicted by the Magistrate of enticing away *Held* that the sentence passed by the Magistrate should have been at once annulled, the requisite intention in the one case being the substance delict in the other.—PRO. Feb. 10, 1870. 5 Mad. H. C. R. App. 16.

**Separate sentences for separate offences.**—*Held*, on the facts of this case, that a party A, who objected to accompany a constable who had been directed to produce him before the Court, and also seized the constable by the arm, and resisted his carrying away a pony which A was charged with having misappropriated, was guilty of separate offences under ss. 353 and 183 of the Penal Code, and the infliction of separate sentences for each offence was not prevented by s. 71 of that Code.—QUEEN *v.* JOYAH MOHUN CHUNDER, 14 W. R. 19. [Loch and Hobhouse, JJ. July 16, 1870.]

**A person convicted of criminal breach of trust cannot also be convicted of receiving or retaining the same property.**—A prisoner cannot be convicted under s. 411 of the Penal Code for dishonestly receiving or retaining stolen property in respect of property which he himself has been convicted under s. 409, Penal Code, of having obtained possession by committing criminal breach of trust.—QUEEN *v.* SHUNKUR, 2 N.-W. P. 312. [Spankie, J. Aug. 5, 1870.]

**Several false statements made in one deposition constitute one case of giving false evidence**—The making of any number of false statements in the same deposition is one aggregate case of giving false evidence

**Charges of false evidence cannot be multiplied according to the number of false statements contained in the deposition.**—PRO., May 1, 1871, 6 Mad. H. C. R. Ap. 27.

**A person convicted at the same time of two or more offences under the Penal Code may also be sentenced to whipping.** —*Held* (Kemp and Phear, JJ., dissenting) that, notwithstanding s. 46 of the Code of Criminal Procedure (Act XXV. of 1861), a person convicted at the same time of two or more offences punishable under the Penal Code may, in addition to the punishments prescribed by the Penal Code, be sentenced to whipping under Act VI. of 1864. The Penal Code and the Code of Criminal Procedure must be read as if the Whipping Act formed a part of the Penal Code from the date of its enactment, and s. 46 of the Code of Criminal Procedure is applicable to all offences and punishments as prescribed by the Penal Code in its present and amended form.—MONIRUDDEEN SHAMADAR, 15 W. R. 89; 7 B. L. R. 165. [Norman, Offg. C.J., and Loch, Bayley, Kemp, Phear, Macpherson, and Mitter, JJ. May 30, 1871.]

**Persons guilty of *rioting* may also be convicted of rioting armed with deadly weapons, culpable homicide, and grievous hurt**—Persons found guilty of rioting may, if the circumstances warrant it, be convicted of the several offences of rioting armed with deadly weapons, culpable homicide, and grievous hurt.—QUEEN *v.* HURGOBIND, 3 N.-W. P. 174. [Turner, J. July 7, 1871.]

**Hurt included in rioting: Conviction first for rioting, then for hurt, set aside** — An accused person cannot be punished, first on a charge for rioting, and afterwards on a charge for hurt, when the latter is included in the former.—17 W. R. 59. [Mitter and Ainslie, JJ. May 8, 1872.]

**When a separate sentence for each of two charges (house-breaking in order to commit theft and theft in a human dwelling) may be passed.**—*It is competent to a* Magistrate to pass a separate sentence in respect of each of the two charges, of house-breaking in order to commit theft, and of theft in a human dwelling, of which a prisoner is found guilty, provided the aggregate punishment awarded on the two charges does not exceed the punishment which the case warrants for the greater of the two offences of which the accused has been convicted, and provided, further, such aggregate punishment does not exceed the jurisdiction of the Court passing the sentences.—REG. *v.* ANVARKHAN VALAD GULKHAN, 9 Bom. H. C. R. 172. [Westropp, C.J., and Lloyd and Kemball, JJ. May 23, 1872.]

**A prisoner convicted of abducting a child with intent to take its moveable property cannot also be punished for theft of part of such property.**—A prisoner, tried, convicted, and punished, under s. 369 of the Penal Code, of abducting a child with intent dishonestly to take moveable property, cannot also be punished for the theft of a part of the moveable property which he intended dishonestly to take through means of the abduction; and the second punishment for theft is, by the present Code of Criminal Procedure, illegal.—IN THE MATTER OF NOUJAN, 7 Mad. H. C. R. 375. [Morgan, C.J., and Holloway, J. July 8, 1873.]

**Using as genuine forged documents and being in possession of such documents.**—Convictions under s. 471 of the Penal Code and s. 474 cannot stand together.—QUEEN *v.* NUZUR ALI, 6 N.-W. P. 39. [Turner, J. Dec. 6, 1873.]

**A charge of perjury, based upon contradictory statements, is a good charge.** —*Held* by the majority (Jackson, J., dissenting) that a charge framed on the model given in sch. iii. of the Code of Criminal Procedure, charging the accused upon two charges with having made contradictory statements in the course of judicial proceedings under s. 193, Penal Code, is a good charge, and that (Phear and Jackson, JJ., dissenting) the Court or jury, if convicting, need not, by direct evidence, find which of the two statements is false; all that is necessary being that the Court or jury should find that the allegations made in the charge are proved.—QUEEN *v.* MAHOMED HOOMAYOON SHAH, 21 W. R. 72; 13 B. L. R. 324. [Couch, C.J., and Kemp, Jackson, Phear, Markby, Glover, Ainslie, Pontifex, Birch, and Morris, JJ. April 11, 1874.]

**An act of restraining or confining in an attempt to kidnap forms part of offence of kidnapping: No separate conviction and sentence**—Where an act of restraint or confinement in an attempt to kidnap has been exercised in furtherance of the attempt, and goes to form part of that offence, and is not done with an intention or object which can be separated from the general intention to kidnap, it will constitute an integral part of that offence, and should not form the subject of a separate conviction and sentence. —QUEEN *v.* MUNGROO 6 N.-W. P. 293. [Oldfield, J. Aug. 13, 1874.]

**Judgment in the alternative: When such judgment cannot be passed.**—S. 455 of Act X. of 1872 applies to cases in which, not the facts are doubtful, but the applica-

tion of the law to the facts is doubtful. Judgment in the alternative cannot be passed in cases in which it is doubtful whether the accused person is guilty of any one of the several offences charged, but where it is doubtful of which of those offences he is guilty. The accused persons were committed for trial under an erroneous and untenable alternative charge under s. 193 of the Penal Code. The Court of Session amended the charge under s. 193, and added charges under ss. 201 and 203 It was doubtful whether the amendment and addition were not likely to prejudice the accused in their defence. The alleged false evidence, and not its assumed substance and purport, should be set forth in a charge under s. 193.—QUEEN v. JAMURHA, 7 N.-W. P. 137. [Pearson, J. Feb. 4, 1875.]

**For purposes of appeal, the whole punishment awarded to one person in one trial for several instances of the same offence is to be regarded as one sentence.**—For purposes of appeal the whole punishment awarded to one person in one trial for several instances of the same offence is to be regarded as one sentence. *Semble*, that where a person is tried at the same time for several instances of the same offence, it is not necessary that more than a single sentence should be passed. But if a separate sentence be passed on each head, *held* that an appeal brings the aggregate of those sentences, as together constituting the punishment awarded in a single trial, within the jurisdiction of the Appellate Court.—REG. v. GULAM ABAS, 12 Bom. H. C. R. 147. [West and Pinhey, JJ. April 15, 1875.]

**Conviction for house-breaking by night to commit theft (s. 457) and theft (s. 380): One sentence for both offences or separate sentence for each offence, provided the total punishment does not exceed that which may be given for the graver offence.**—In a case of conviction of house-breaking by night in order to commit theft under s. 457, and theft under s. 380 of the Penal Code, there may be either one sentence for both offences, or separate sentences for each offence, provided that the total punishment awarded does not exceed that which may be given for the graver offence. —REG. v. TUKAYA BIN TAMANA, I. L. R., 1 Bom. 214. [Westropp, C. J., and Kemball, West. and Nanabhai Haridas, JJ. Sep. 14, 1875.]

**Theft and mischief: Double sentence for, illegal.**—A double sentence for theft and mischief is illegal and improper.—BECHUK AHEER v. AUHUCK BHOONEEA, 6 W. R. 5. [Jackson and Campbell, JJ. June 18, 1876.]

**Conviction and punishment for two separate offences: Fabricating false evidence for use in a judicial proceeding, and voluntarily assisting in concealing stolen property.**—Where the petitioner was convicted of having assisted in concealing stolen railway-pins in a certain person's house and field with a view to having such innocent person punished as an offender, *held* that the Magistrate was right in convicting and punishing the petitioner for the two separate offences of fabricating false evidence for use in a stage of a judicial proceeding under s. 193 of the Penal Code, and of voluntarily assisting in concealing stolen property under s. 414, Penal Code.—EMPRESS v RAMESHAR RAI, I. L. R., 1 All. 379. [Spankie, J. April 23, 1877.]

**Offence split up into its component parts to exercise summary jurisdiction.**—No Magistrate is entitled to split up an offence into its component parts for the purpose of giving himself summary jurisdiction. If a charge of an offence not triable summarily is laid and sworn to, the Magistrate must proceed with the case accordingly, unless he is at the outset in a position to show from the deposition of the complainant that the circumstances of aggravation are really mere exaggeration, and not to be believed. Therefore, a Magistrate, when he has before him a person charged with having been armed with a deadly weapon while a member of an unlawful assembly, is not at liberty to disregard that part of the charge which charges the prisoner with having been armed with a deadly weapon, and so to give himself jurisdiction to try the case summarily, and then, by inflicting a sentence of imprisonment not exceeding three months, to deprive the prisoner of his right of appeal.—EMPRESS v. ABDOOL KARIM; and EMPRESS v GOLAM MAHOMED, I. L. R., 4 Cal. 18; 3 C. L. R. 81. [Ainslie and Broughton, JJ. July 6, 1878.]

**Trespass with intent to commit mischief, and mischief: Punishment for each offence.**—Where a person committed a trespass with the intention of committing mischief, thereby committing criminal trespass, and at the same time committed mischief, *held* that such person could not, under cl. iii. of s. 454 of Act X. of 1872, receive a punishment more severe than might have been awarded for either of such offences. The provisions of that law do not in such a case prohibit the Court from passing sentence in respect of each offence established. —EMPRESS v. BUDH SING, I. L. R., 2 All. 101. [Turner, J. Jan. 24, 1879.]

**Rioting and causing hurt in such rioting: Distinct offences: Separate punishment.**—Rioting and causing hurt in the

course of such rioting are distinct offences, and each offence is separately punishable.—EMPRESS *v.* RAM ADHIN, I. L. R., 2 All. 139. [Pearson, J. Feb. 13, 1879.]

**Mother abandoning child, knowing that such abandonment would cause its death: Death of child: Conviction and punishment under s. 304 only, and not under both ss. 304 and 317.**—Where a mother abandoned her child with the intention of wholly abandoning it, and knowing that such abandonment was likely to cause its death, and the child died in consequence of the abandonment, *held* that she could not be convicted and punished under s. 304 and also under s. 317 of the Penal Code, but s. 304 only.—EMPRESS *v.* BANNI, I. L. R., 2 All. 349. [Straight, J. Aug. 4, 1879.]

**House-breaking by night to commit theft (s. 457), and theft (s. 380): Conviction under s. 457 only, and acquittal under s. 380.**—Where, in the course of one and the same transaction, an accused person appears to have committed several acts directed to one end and object, which together amount to a more serious offence than each of them taken individually by itself would constitute, although for purposes of trial it may be convenient to vary the form of charge, and to designate, not only the principal, but the subsidiary crimes alleged to have been committed, yet, in the interests of simplicity and convenience, it is best to concentrate the conviction and sentence on the gravest offence proved. Where, therefore, a person who broke into a house by night, and committed theft therein, was charged and tried for offences under ss. 380 and 457 of the Penal Code, and was convicted of both those offences, and punished for each with rigorous imprisonment for eighteen months, the Court convicted him of the offence under s. 457, and sentenced him to rigorous imprisonment for three years, and acquitted him of the offence under s. 380.—EMPRESS *v.* AJUDHIA, I. L. R., 2 All. 644. [Straight, J. Jan. 19, 1880.]

**A person accused of several offences of the same kind is tried for each such offence separately: Magistrate can inflict for each offence the punishment which he is, by his ordinary jurisdiction, competent to inflict.**—Where a person who is accused of several offences of the same kind is tried for each of such offences separately by a Magistrate, the aggregate punishment which such Magistrate can inflict on him in respect of such offences is not limited to twice the amount which he is, by his ordinary jurisdiction, competent to inflict; but such Magistrate can inflict on him for each offence the punishment which he is by his ordinary jurisdiction, competent to inflict. A person accused of theft on the 1st August, and of house breaking by night in order to steal on the 2nd August, both offences involving a stealing from the same person, was charged and tried by a Magistrate of the first class at the same time for such offences, and sentenced to rigorous imprisonment for two years for each of such offences. *Held* that the joinder of the charges was regular under s. 453 of Act X. of 1872, and the punishment was within the limits prescribed by s 314. *Empress* v. *Umeda* (unreported, decided 18th July 1879), observed on by Straight, J.—IN THE MATTER OF DAULATIA, I. L. R., 3 All. 305. [Stuart, C.J., and Pearson, Spankie, Oldfield, and Straight, JJ. Mar. 19, 1880.]

**Collective punishment under ss. 147, 148, 324. Penal Code, not to exceed that which may be awarded for the graver offence.**—Under s. 454 of the Criminal Procedure Code (Act X. of 1872), the collective punishment awarded under ss. 147, 148, and 324 of the Penal Code, must not exceed that which may be awarded for the graver offence. *Quære.*—Whether separate convictions under ss. 147 and 324 of the Penal Code are legal?—IN THE MATTER OF THE PETITION OF JUBDUR KAZI AND GOLAM KHAN: EMPRESS *v.* JUBDUR KAZI AND GOLAM KHAN, I. L. R., 6 Cal. 718; 8 C. L. R. 390. [Mitter and Maclean, JJ. Feb. 18, 1881.] *Contra Empress* v *Dungar Singh*, I. L. R., 7 All. 29. *infra.*

**Punishment for rioting and grievous hurt when illegal.**—A member of an unlawful assembly, some members of which have caused grievous hurt, cannot lawfully be punished for the offence of rioting as well as for the offence of causing grievous hurt.—EMPRESS *v.* RAM PARTAB, I. L. R., 6 All. 121. [Straight, J. Dec. 5, 1883.] Dissented from in *Queen-Empress* v. *Dungar Singh*, I. L. R., 7 All. 29, *infra.*

**Rioting, hurt, grievous hurt: Distinct offences.**—The offences of rioting, of voluntarily causing hurt, and of voluntarily causing grievous hurt—each of the two latter offences being committed against a different person—are all distinct offences within the meaning of s. 35 of the Criminal Procedure Code (Act X of 1882). Under the first paragraph of s. 235 of the Criminal Procedure Code, a person accused of rioting and of voluntarily causing grievous hurt may be charged with, and tried for, each offence at one trial, and under s. 35 a separate sentence may be passed in respect of each. *Queen-Empress* v. *Ram Partab* (I. L. R., 6 All. 121) dissented from.—QUEEN-EMPRESS *v.* DUNGAR SINGH, I. L. R., 7 All. 29. [Brodhurst, J. July 22, 1884.]

**Rioting and grievous hurt: Sentence.**—On the 8th August 1884, a Magistrate of the second class began an inquiry in a case in which several persons were accused of rioting and voluntarily causing grievous hurt. On the 6th September, the powers of a Magistrate of the first class were conferred on the Magistrate by an order of Government, which was communicated to him on the 8th September. On the 9th September, the case for the prosecution having closed, the Magistrate framed charges against each of the accused under ss. 323 and 325 of the Penal Code, recorded the statements of the accused and the evidence for the defence, and, on the 10th September, convicted the accused of all the charges, passing upon each of them, in respect of each charge, sentences which he could pass as a Magistrate of the first class, but could not have passed as a Magistrate of the second class. On appeal, the Sessions Judge, on the ground that the prisoners had committed the offence described in s. 148 of the Penal Code, *held* that the sentences passed by the Magistrate were illegal, as being inconsistent with the provisions of s. 71, paras. 2 and 4; and he accordingly reduced the sentences of imprisonment which the Magistrate had passed to the maximum of imprisonment which the Magistrate could have inflicted under s. 148. *Held* by the Full Bench (Petheram, C.J., and Brodhurst, J., dissenting) that the sentences passed by the Magistrate were legal. *Per* Oldfield, Mahmood, and Duthoit, JJ., that, with reference to the terms of s. 39 of the Criminal Procedure Code, a Magistrate of the second class, who has begun a trial as such, and continued it in the same capacity up to the passing of sentence, and who, prior to passing sentence, has been invested with the powers of a Magistrate of the first class, is competent to pass sentence in the case as a Magistrate of the first class. *Per* Oldfield and Duthoit, JJ., that the provisions of s. 71 of the Penal Code had no application to the case, inasmuch as the offences of causing grievous hurt and hurt formed no part of the offence of rioting. *Per* Petheram, C.J., that a case must be taken to be tried upon the day the trial commences; that, for all the purposes of the trial, the Magistrate in this case retained the *status* of a Magistrate of the second class; and that he was, therefore, not competent to pass sentence as a Magistrate of the first class. Also, *per* Petheram, C.J., that the Judge, in this case, had no power to alter the charge, or to frame a new charge in any way. *Per* Brodhurst, J., that the sentences passed by the Magistrate were, as a whole, illegal; that if he had convicted the accused under s. 148 of the Penal Code, his order would, under the circumstances, have been legal; that a Court of appeal is not competent to alter the finding of a Magistrate, so as to convict an accused person of an offence which the Court of which the order is in appeal was not competent to try; and that a member of an unlawful assembly, some members of which have caused grievous hurt, can be legally punished for the offence of rioting as well as for the offence of causing grievous hurt. *Empress* v. *Dungar Singh* (I. L. R., 7 All. 29) referred to.—QUEEN-EMPRESS *v.* PERSHAD, I. L. R., 7 All. 414. [Petheram, C.J., and Oldfield, Brodhurst, Mahmood, and Duthoit, JJ. Jan. 17, 1885.]

**Rioting armed with a deadly weapon and hurt with dangerous weapon to two persons are distinct offences: Conviction and sentence for rioting and hurt caused to each person.**—The offences of rioting armed with a deadly weapon and voluntarily causing hurt with a dangerous weapon to two persons are distinct offences, and a person charged with such offences can be convicted and sentenced in respect of the rioting and of the hurt caused to each of the persons injured. A and B were charged with rioting armed with deadly weapons under s. 148 of the Penal Code; and they were also charged under s. 324, coupled with s 149, with causing hurt by a dangerous weapon to X, and B was further charged under s. 324 with causing a like hurt to Y; A being also charged under s 324, coupled with s 149, in respect of the hurt caused by B to Y. A and B were convicted on all charges, and separate sentences, to take effect in succession, were awarded in respect of each offence charged. The offences under s. 324 were committed during the riot. *Held* that the several acts with regard to which the prisoners were charged did not fall within the provisions of s. 71 of the Penal Code, inasmuch as it was not found that the causing of the hurt was the force or violence which alone constituted the rioting, and that, consequently, under s. 235 of the Criminal Procedure Code, the several sentences passed were strictly legal.—LOKE NATH SIRCAR *v.* QUEEN-EMPRESS, I. L. R., 11 Cal. 349 [Tottenham and Ghose, JJ. Mar. 6, 1885 Follows *Queen-Empress* v. *Dungar Singh*, I. L. R., 7 All. 29, *supra*, p. 38. But see (in p. 40) *Nilmoney Poddar* v. *Queen-Empress* (I. L. R., 16 Cal. 442), which overrules *Loke Nath Sircar* v. *Queen-Empress* (I L. R., 11 Cal. 349).

**Conviction for rioting under s. 147, and causing grievous hurt during such riot under s. 325: Separate sentences passed under ss. 147 and 325 upheld.**—Three

persons, who were convicted (i) of riot under s. 147 of the Penal Code, (ii) of causing grievous hurt in the course of such riot, were respectively sentenced to six months' rigorous imprisonment under s 147, and three months' rigorous imprisonment under s. 325. *Held*, by Petheram, C.J., and Straight and Tyrrel, JJ, that inasmuch as the evidence upon the record showed that the three prisoners had committed individual acts of violence with their own hands, which constituted distinct offences of causing grievous hurt or hurt separate from, and independent of, the offence of riot, which was already completed, and the fact of the riot was not an essential portion of the evidence necessary to establish their legal responsibility under s. 325 of the Penal Code, the separate sentences passed under ss 147 and 325 were not illegal. *Queen-Empress* v. *Ram Partab* (I. L. R., 6 All. 121), distinguished. *Per* Brodhurst, J., that the evidence showed that only one of the three prisoners had caused grievous hurt with his own hands, and that the others could only be properly convicted of that offence under the provisions of s. 149 of the Penal Code, but that the separate sentences passed under ss. 147 and 325 were not illegal. *Queen-Empress* v. *Dungar Singh* (I. L. R., 7 All. 29), followed. Also *per* Brodhurst, J.—Ill. *g* of s. 235 of the Criminal Procedure Code does not apply merely to the case of persons who, in addition to the offence of rioting, have, with their own hands, committed the further offences of voluntarily causing grievous hurt, and of assaulting a public servant when engaged in suppressing a riot; and the convictions referred to in the illustration relate specially to convictions obtained under the provisions of s. 149 of the Penal Code.—QUEEN-EMPRESS *v.* RAM SARUP, I. L. R., 7 All. 757. [Petheram, C.J., and Straight, Brodhurst, and Tyrrell, JJ. May 12, 1885.]

**Conviction for making a false charge (s. 211) and giving false evidence (s. 193): Sentence for each offence: Concurrent sentences made to run one after another.**—Where the accused, who was a head constable, was found guilty of making a false charge under s. 211, and of giving false evidence under s 193 of the Penal Code, and the Sessions Judge passed sentences of three months' simple imprisonment for each offence, and, taking into consideration the accused's past conduct, directed that the sentences should run concurrently, *held* that the sentences were inadequate and illegal. Accordingly the sentences were enhanced to three months' rigorous imprisonment for each offence; and as the two offences were distinct, the High Court directed, under s. 35 of the Criminal Procedure Code (Act X. of 1882), one sentence to commence after the expiration of the other. *Queen* v. *Abdool Aseez* (7 W. R. 59) followed.—QUEEN-EMPRESS *v.* PIR MAHOMED, I. L. R., 10 Bom. 254. [Birdwood and Jardine, JJ. Dec. 10, 1885.]

**Rioting and assaulting a Civil Court peon: Separate conviction and sentence upheld.**—Four persons were charged with being members of an unlawful assembly consisting of themselves and others, the common object of which assembly was resisting the execution of a legal process, namely, the arrest of a judgment-debtor by a Civil Court peon, who went with a warrant for his arrest accompanied by other persons. A and B, for the purpose of identifying him, and with using force or violence in prosecution of the common object, such force or violence consisting of an assault on the Civil Court peon, and another by means of a dangerous weapon on A. The Deputy Magistrate convicted all the accused of offences under ss. 147 and 353 of the Penal Code, and sentenced them to six months' rigorous imprisonment under the former section, and two months' rigorous imprisonment under the latter. He further convicted one of the accused of an offence under s. 324 in respect of the assault on A, and sentenced him to one month's rigorous imprisonment in respect of that offence, and directed that the sentences were to take effect one on the expiry of the other. *Held* that the offence of rioting was completed by the assault on A, and that the assault on the peon was a further offence under the first subsection of s. 235 of the Code of Criminal Procedure. *Held* further that, even if A had not been assaulted, the conviction and sentences passed for rioting and the assault on the peon were legal, inasmuch as the acts of the accused, taken separately, constituted offences under ss. 143 and 353 of the Penal Code, and combined an offence under s. 147; and under s 235, sub-s. 3, of the Code of Criminal Procedure, the accused might be charged with, and tried at one trial for, the offence under s. 147, and those under ss. 143 and 353, and therefore also separately convicted and sentenced for each such offence, provided the punishment did not exceed the limit imposed by s 71 of the Penal Code as amended by s. 4 of Act VIII. of 1882, which limit had not been exceeded in the present case.—IN THE MATTER OF CHANDRA KANT BHATTACHARJEE; CHANDRA KANT BHATTACHARJEE *v.* QUEEN-EMPRESS, I. L. R., 12 Cal. 495. [Mitter and Beverley, JJ. Dec. 11, 1885.]

**House-breaking by night to commit theft (s. 457) and theft in a dwelling-house**

(g. 9le).] **Separate sentences: Aggregate punishment did not exceed twice the punishment which the trying Magistrate could inflict: Punishment upheld.**—The accused was convicted at one trial by a Magistrate of the first class of the offences of house-breaking by night with intent to commit theft, punishable under s. 457, and of theft in a dwelling house, punishable under s. 380 of the Penal Code (Act XLV. of 1860), the two offences being part of the same transaction, the theft following the house-breaking. The prisoner was sentenced to two years' rigorous imprisonment under s. 457, and to six months' rigorous imprisonment and a fine of Rs 100, or, in default of payment, three months' further rigorous imprisonment, under s. 380 The District Magistrate referred the case to the High Court, on the ground that the aggregate of punishment awarded on the two heads of charge exceeded the powers of the First class Magistrate who tried the case. The Sessions Judge, to whom an appeal had been preferred, was of the same opinion, and reduced the sentence to two years' rigorous imprisonment. *Held* that, as the accused committed two distinct offences which did not "constitute, when combined, a different offence," punishable under any section of the Penal Code (Act XLV. of 1860), s. 71 of the Code did not apply; and as the aggregate punishment did not exceed twice the amount of punishment which the trying Magistrate was competent to inflict, the sentences were legal under s. 35 of the Criminal Procedure Code (Act X. of 1882). *Per* Jardine, J.—The rules for assessment of punishment, contained in s. 454 of the Criminal Procedure Code of 1872, having been omitted in s. 235 of the Criminal Procedure Code of 1882, must now be sought for in s. 71 of the Penal Code (Act XLV. of 1860) and in s. 35 of the Criminal Procedure Code (Act X. of 1882). — QUEEN-EMPRESS *v.* SAKHARAM BHAU, I. L. R., 10 Bom. 403 Birdwood and Jardine, JJ. Feb 1886.]

**Conviction for rioting and grievous hurt: Highest aggregate punishment, six years, i.e., one for rioting, five for grievous hurt: Sentences not illegal.**—S. 149 of the Penal Code creates no offence, but was intended to make it clear that an accused person whose case falls within its term cannot put forward the defence that he did not with his own hand commit the offence committed in prosecution of the common object of the unlawful assembly, or such as the members of the assembly knew to be likely to be committed in prosecution of that object. In prosecution of the common object of an unlawful assembly, M, with his own hand, caused grievous hurt. M and other members of the assembly, as to whom it did not appear whether or not any of them personally used force or violence, were convicted of rioting under s. 147, and grievous hurt under s. 325 of the Penal Code, and were each sentenced to separate terms of imprisonment for each offence. The highest aggregate punishment, which was M's, was six years' rigorous imprisonment, being one year for rioting, and five years for causing grievous hurt *Held* that, assuming s. 71 of the Penal Code to be applicable, the sentences were not illegal, as the combined periods of imprisonment did not, in the case of any prisoner, exceed the maximum punishment of seven years' rigorous imprisonment which could have been awarded for the offence punishable under s. 325 *Held* also that the riot could not, in any of the cases, be considered a part of the offence under s. 325, that s. 71 did not apply, and that the sentences were legal. *Queen-Empress* v. *Ram Partab* (I. L. R., 6 All. 121) dissented from. *Queen-Empress* v. *Dungar Singh* (I. L. R., 7 All. 29), *Queen-Empress* v. *Ram Sarup* (I. L. R., 7 All. 767), *Queen* v. *Rubbee-oollah* (7 W. R. Cr. 13), *Loke Nath Sircar* v. *Queen-Empress* (I. L. R., 11 Cal. 349), *Queen-Empress* v *Pershad* (I. L. R., 7 All. 414), *Chundra Kant Bhattacharjee* v. *Queen-Empress* (I. L. R., 12 Cal 490), and *Reg.* v. *Tukaya bin Tamana* (I. L. R., 1 Bom 214), referred to.—QUEEN-EMPRESS *v.* BISHESHAR, I. L. R., 9 All. 645. [Edge, C.J., and Brodhurst, J. May 16, 1887.]

**Where more than one offence is proved, a conviction for each such offence must follow, and a separate sentence passed.**—Where more than one offence is proved in respect of which the accused has been charged and tried, a conviction for each such offence must follow, whether s 71 of the Penal Code applies to the case or not; and, subject to the provisions of s. 71, a separate sentence must be passed in respect of each such conviction. Under s. 35 of the Criminal Procedure Code, sentences of imprisonment cannot be passed so as to run concurrently. In a trial for offences under ss. 170 and 383 of the Penal Code, committed in the same transaction, it appeared that, but for personating a public servant, the accused would not have been in a position to commit the act of extortion complained of. *Held* that the first and second paragraphs of s. 71 of the Penal Code did not apply to the case; that the third paragraph also did not apply, because the words "constitute an offence" refer to the definitions of offences contained in the Code, irrespective of the evidence whereby the acts complained of are

proved, and personating a public servant as defined in s. 170 was not a constituent element of extortion as defined in s. 383; that in the present case the former offence was completed before the latter had begun; and that separate sentences for each offence were therefore not illegal.—QUEEN-EMPRESS *v.* WAZIR JAN, I. L. R., 10 All. 58. [*Mahmood*, J. Sep. 16, 1887.]

**House-breaking in order to the commission of theft: Theft: Separate convictions and sentences.**—Under ss. 35 and 235 of the Criminal Procedure Code, a Magistrate may legally pass a separate sentence of two years' rigorous imprisonment and fine under each of the ss. 379 or 380 and 454 of the Penal Code, for house-breaking in order to the commission of theft and theft, the two offences forming part of the same transaction, and being tried together. In such a case, where the prisoner had been three times previously convicted, *held* that the better course would have been to commit him to the Court of Session under ss. 454-75 of the Code. But a Sessions Judge, trying such a case under s. 379 or s. 380, and s. 454, would, under no circumstances, be justified in passing a sentence of ten years' imprisonment under the latter part of s. 454, and of four years' imprisonment under s. 380. The latter portions of ss. 454 and 457 were framed to include the cases of house-trespassers and house-breakers who had not only intended to commit, but had actually committed theft. *Queen Empress v. Ajudhia* (I. L. R., 2 All. 644), and *Queen-Empress* v. *Sakharam Bhan* (I. L. R., 10 Bom. 493), referred to. A Magistrate is not justified in referring, under s. 438 of the Criminal Procedure Code, orders passed by the Sessions Judge, on appeal, except in very special cases. *Queen-Empress* v. *Shere Singh* (I. L. R., 9 All. 362), referred to.—QUEEN-EMPRESS *v.* ZOR SINGH, I. L. R., 10 All. 146. [Straight and Brodhurst, JJ. Dec. 16, 1887.]

**House-breaking by night to commit mischief and assault (s. 457), and mischief and assault (ss. 426 and 352): Separate sentence for each offence held legal.**—An accused person was convicted under s. 457 of the Penal Code of house-breaking by night in order to commit an offence (mischief and assault), and also under ss. 426 and 352 for the offences of mischief and assault, and punished separately for each offence. These offences formed parts of one transaction. *Held* that the sentences were legal.—QUEEN-EMPRESS *v.* NIRICHAN, I. L. R., 12 Mad. 36. [Kernan and Muttusami Ayyar, JJ. April 17, 1888.]

**Separate sentences for rioting and grievous hurt where offenders did not individually commit any act amounting to hurt, but were guilty of that offence under s. 149.**—Separate sentences passed upon persons for the offences of rioting and grievous hurt are not legal where it is found that such persons individually did not commit any act which amounted to voluntarily causing hurt, but were guilty of that offence under s. 149 of the Penal Code. *Empress* v. *Ram Partab* (I. L. R., 6 All. 121) approved. *Loke Nath Sircar* v. *Queen-Empress* (I. L. R., 11 Cal. 349) overruled.—NILMONEY PODDAR *v.* QUEEN-EMPRESS, I. L. R., 16 Cal. 442. [Petheram, C.J., and Mitter, Prinsep, Wilson, and Tottenham, JJ. Mar. 21, 1889.]

**Conviction for rioting and causing hurt and grievous hurt: Separate conviction for more than one offence when acts combined form one offence: Abetment of grievous hurt during riot.**—Six accused persons were charged with and convicted of rioting, the common object of which was causing hurt to two particular men. Four of the accused were also charged with and convicted of, respectively, causing hurt during the riot to the two men and a woman, and were sentenced to separate terms of imprisonment under ss. 147 and 323 of the Penal Code. *Held* that the sentences were legal. During the course of a riot, in which X was attacked and beaten by several of the rioters, one of them, K, inflicted grievous hurt on X by breaking his rib with a blow struck with a lathi. K and three others of the rioters were charged with offences under ss. 147 and 325 of the Penal Code, and K was convicted under those sections. The other three were convicted under s. 147, and also under s. 325 read with s. 109. Separate sentences were passed on K, and also on the other three, for each of the offences. *Held* that the sentences on K were legal; but that, as there was nothing to show that the other three had abetted the particular blow which caused the grievous hurt, although they had each of them assaulted X, the conviction of them, under s. 325, read with s. 109, could not be supported.—IN THE MATTER OF THE PETITION OF MOHUR MIR *v.* QUEEN-EMPRESS, AND IN THE MATTER OF THE PETITION OF KALI ROY *v.* QUEEN-EMPRESS, I. L. R., 16 Cal. 725. [Trevelyan and Beverley, JJ. June 12, 1889.]

**Rioting armed with deadly weapons (s. 148): Assaulting public servant when suppressing riot (s. 152): Voluntarily causing hurt and grievous hurt to deter public servant from doing his duty (ss. 332, 333): Common object: Separate sentences: Some sentences held legal; others, illegal.**—Eight persons, who were charged with a number of others, were tried

on various charges consisting of rioting armed with deadly weapons (s. 148, Penal Code), assaulting or obstructing a public servant when suppressing a riot (s. 152), and voluntarily causing hurt and grievous hurt to deter a public servant from his duty (ss. 332 and 333). The common object set out in the charge was "to resist the execution of a decree obtained by Suresh Chunder Deb against Shaik Ali Yar in the Court of the Second Subordinate Judge of Alipore, dated 30th April 1891, and also by means of criminal force, or show of criminal force, to overawe the members of the police-force in the execution of their lawful powers as police-officers," and it was held that resistance to the police was one of the component parts of the offence of rioting charged. At the trial in the Court of Session all eight accused were convicted of the offence charged under s. 148, and each was sentenced to the maximum punishment allowed under that section, viz., three years' rigorous imprisonment. Seven out of the eight were convicted of offences under s. 152, and sentenced each to an additional term of two years' rigorous imprisonment for those offences. Two out of the seven accused were further convicted of offences under s. 332 of the Penal Code, the hurt therein charged being caused to police-officers engaged in suppressing the riot, and each sentenced to a further additional term of two years' rigorous imprisonment for that offence. The eighth accused, who was not convicted of an offence under s. 152, was convicted of an offence under s. 333, the grievous hurt being similarly caused to a police-officer, and for that offence was sentenced to five years' rigorous imprisonment in addition to the sentence of three years passed on him under s. 148. It was contended on appeal—(1) that the sentences passed under s. 152, in addition to those under s. 148, were illegal; (2) that separate sentences under s. 152 and ss. 332 and 333 were illegal; (3) that the cumulative sentences under s. 148 and ss. 332 and 333 were illegal, in so far as they exceeded the maximum sentence provided for either of the offences. *Held, as regards* (1), that as resistance to the police was one of the component parts of the offence of rioting, of which the accused were convicted and sentenced to the maximum punishment, provided by s. 148, and having regard to the provisions of s. 71, the additional sentences under s. 152 were illegal. *Held*, further, that s. 152 contemplates an assault or obstruction to some particular public servant, and that, as the charge against the accused as framed was merely to the effect that they assaulted and obstructed *members of the police force* in the discharge of their duties, &c., the conviction under that section could not be upheld. *Held as regards* (2), that separate sentences under s. 152 and ss. 332 and 333 were illegal, as the hurt inflicted on the police-officers was the violence used towards them which constituted the essence of the offence under s. 152. *Held, as regards* (3), that the separate sentences passed under s. 148 and ss. 332 and 333 were not illegal, there being nothing in s. 71 of the Penal Code which limits the amount of punishment that may be imposed for these offences.—FERASAT *v.* QUEEN-EMPRESS, I. L. R., 19 Cal. 105. [Beverley and Ameer Ali, JJ. Nov. 9, 1891.]

**Two sentences for rioting and hurt.**—When a prisoner is convicted of rioting and of hurt, and the conviction for hurt depends upon the application of s. 149 of the Penal Code, it is illegal to pass two sentences, one for riot, and one for hurt. But in such a case the two sentences would be legal, provided the total punishment does not exceed the maximum which the Court might pass for any one of the offences. When, however, the accused is guilty of rioting, and is also found to have himself caused the hurt, he may be punished both for rioting and for hurt. In such a case the total punishment can legally exceed the maximum which the Court might pass for any one of the offences *Queen-Empress* v. *Ram Sarup* (I. L. R., 7 All. 757) approved —QUEEN-EMPRESS *v.* BANA PUNJA, I. L. R., 17 Bom. 260. [Sargent, C.J., and Parsons and Telang, JJ. Dec. 19, 1892]

**House-breaking to commit theft, and theft: Accused may be charged with and convicted of each of such offences.**—Where a person commits house breaking in order to commit theft, and theft, he may be charged with, and convicted of, each of these offences. In awarding punishment under the provisions of s. 71 of the Indian Penal Code (Act XLV. of 1860), the Court should pass one sentence for either of the offences in question, and not a separate one for each offence. If in such a case two sentences are passed, and the aggregate of these does not exceed the punishment provided by law for any one of the offences, or the jurisdiction of the Court, that would be an irregularity, and not an illegality, calling for the interference of a Court of appeal or revision. QUEEN-EMPRESS *v* MALU AND QUEEN-EMPRESS *v.* NAGU, I. L. R., 23 Bom. 706. [Parsons, C.J., and Candy, Ranade, Tyabji, Fulton, Russell, and Starling, JJ. Mar. 14, 1899]

**Sentence in cases of conviction of several offences at one trial.**—The following sections of the Criminal Procedure Code

should be read with s. 71 of the Penal Code :—

*Sentence in cases of conviction of several offences at one trial.*

35. (1) When a person is convicted, at one trial, of two or more distinct offences, the Court may sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict: such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct, *unless the Court directs that such punishments shall run concurrently.*

(2) *In the case of consecutive sentences,* it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court :

*Maximum term of punishment.*

Provided as follows :—

(*a*) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years :

(*b*) if the case is tried by a Magistrate (other than a Magistrate acting under s. 34), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

For the purpose of appeal, aggregate sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

*Explanation.—Separable offences which come within the provisions of section 71 of the Indian Penal Code are not distinct offences within the meaning of this section.*

*Illustration.*

*A breaks into a house with intent to commit theft, and steals property therein. A has not committed distinct offences.*

*Trial for more than one offence.*

235. (1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

*Offence falling within two definitions.*

(2) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

*Acts constituting one offence, but constituting, when combined, a different offence.*

(3) If several acts, of which one or more than one would, by itself or themselves, constitute an offence, constitute, when combined, a different offence, the person accused of them may be charged with, and tried at one trial for, the offence constituted by such acts when combined, or for any offence constituted by any one, or more, of such acts.

Nothing contained in this section shall affect the Indian Penal Code, s. 71.

*Illustrations.*

*to sub-section (1.)*—

(*a.*) A rescues B, a person in lawful custody, and, in so doing, causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and tried for, offences under ss. 225 and 333 of the Indian Penal Code.

(*b.*) A commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with B's wife. A may be separately charged with, and convicted of, offences under ss. 454 and 497 of the Indian Penal Code.

(*c.*) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of, offences under ss. 498 and 497 of the Indian Penal Code.

(*d.*) A has in his possession several seals, knowing them to be counterfeit, and intending to use them for the purpose of committing several forgeries, punishable under s. 466 of the Indian Penal Code. A may be separately charged with, and convicted of, the possession of each seal under s. 473 of the Indian Penal Code.

(*e.*) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding ; and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charge. A may be separately charged with, and convicted of, two offences under s. 211 of the Indian Penal Code.

(*f.*) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the

trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under ss. 211 and 194 of the Indian Penal Code.

(*g*.) A, with six others, commits the offences of rioting, grievous hurt, and assaulting a public servant endeavouring, in the discharge of his duty as such, to suppress the riot. A may be separately charged with, and convicted of, offences under ss. 147, 325, and 152 of the Indian Penal Code.

(*h*.) A threatens B, C, and D, at the same time, with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under s. 506 of the Indian Penal Code.

The separate charges referred to in illustrations *a* to *h* respectively may be tried at the same time.

*to sub-section* (*2*).—

(*i*.) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under ss. 352 and 323 of the Indian Penal Code.

(*j*.) Several stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under ss. 411 and 414 of the Indian Penal Code.

(*k*.) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under ss. 317 and 304 of the Indian Penal Code.

(*l*.) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under s. 167 of the Indian Penal Code. A may be separately charged with, and convicted of, offences under ss. 471 (read with s. 466) and 196 of the same Code.

*to sub-section* (*3*).—

(*m*.) A commits robbery on B and, in doing so, voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under ss. 323, 392, and 394 of the Indian Penal Code.

*Execution of sentences on escaped convicts.*

396. When a sentence is passed under this Code on an escaped convict, such sentence, if of death, fine, or whipping, shall, subject to the provisions hereinbefore contained, take effect immediately, and, if of imprisonment, penal servitude, or transportation, shall take effect according to the following rules, that is to say:—

If the new sentence is severer in its quality than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

When the new sentence is not severer in its quality than the sentence, the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude, or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

*Explanation.*—For the purposes of this section—

(*a*) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment;

(*b*) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and

(*c*) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

*Sentence on offender already sentenced for another offence.*

397. When a person already undergoing a sentence of imprisonment, penal servitude, or transportation, is sentenced to imprisonment, penal servitude, or transportation, such imprisonment, penal servitude, or transportation, shall commence at the expiration of the imprisonment, penal servitude, or transportation to which he has been previously sentenced:

Provided that, if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction be one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately or at the expiration of the imprisonment to which he has been previously sentenced.

*Saving as to ss. 396 and 397.*

398. Nothing in s. 396 or s. 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

**72.*** In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of those offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which.

**Doubt as to which offence committed.**—With s. 72 of the Penal Code read the following section of the Criminal Procedure Code (Act V. of 1898):—

236. If a single act or series of acts, is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

*Where it is doubtful what offence has been committed.*

*Illustration.*

A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust, or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust, and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust, or cheating.

*A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.*

Proof of contradictory statements on oath or solemn affirmation, without evidence as to which of them is false, is sufficient to justify a conviction, upon an alternative finding of the offence of giving false evidence, under s. 72 of the Penal Code, and ss. 242, 381, and 382 of the Criminal Procedure Code. The English law upon the subject stated.—*In re* PALANY CHETTI, 4 Mad. H. C. R. 51. [Scotland, C.J., and Collett, J. May 18, 1868.] But see rulings under s. 193.

**False evidence: Contradictory statements: Alternative finding.**—When a witness intentionally gives false evidence, and it is doubtful whether the false statement was made before the Magistrate or before the Sessions Judge, the witness may be convicted of the offence of giving false evidence upon an alternative finding (Norman and Campbell, JJ., *dubitantibus*). The deposition voluntarily given before the Sessions Judge is admissible in evidence against the witness to show the falsehood of his deposition before the Magistrate, anything in s. 32, Act II. of 1855, notwithstanding (Campbell, J., *dissentiente*).—QUEEN *v.* MUSSAMUT ZUMEERUN, 6 W. R. 65; B. L. R. Sup. Vol. 521. [Peacock, C.J., and Norman, Kemp, Seton-Karr, and Campbell, JJ. Aug. 31, 1886.]

An accused person was convicted under s. 457 of the Penal Code of house-breaking by night in order to commit an offence (mischief and assault), and also under ss. 426 and 352 for the offences of mischief and assault, and punished separately for each offence. These offences formed parts of one transaction. *Held* that the sentences were legal.—QUEEN-EMPRESS *v.* NIRICHAN, I. L. R., 12 Mad. 36. [Kernan and Muttusami Ayyar, JJ. April 17, 1888.]

**73.*** Whenever any person is convicted of an offence for which, under this Code, the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say:—

Solitary confinement.

a time not exceeding one month if the term of imprisonment shall not exceed six months;

* As to the application of ss. 72 and 73 to sentences passed in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 15 (2), 52.

a time not exceeding two months if the term of imprisonment shall exceed six months, and "shall not exceed one" * year;

a time not exceeding three months if the term of imprisonment shall exceed one year.

**Solitary confinement in a case tried summarily.**—It is not illegal to impose solitary confinement as part of the sentence in a case tried summarily.—EMPRESS *v.* ANNU KHAN, I. L. R., 6 All. 83. [Oldfield, J. Sep. 11, 1883.]

**74.**† In executing a sentence of solitary confinement, such confinement shall, in no case, exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement awarded shall not exceed seven days, in any one month, of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

Limit of solitary confinement.

**Limit of solitary confinement.**—Solitary confinement must not be imposed for the whole term of a person's imprisonment. Under s. 74 of the Penal Code it is to be imposed at intervals.—IN THE MATTER OF NYAN SUK METHER, 3 B. L. R. A. Cr. 49. [Jackson and Mitter, JJ. Aug. 10, 1869.]

**Reduction of solitary confinement.**—Where a prisoner was sentenced to imprisonment for a year and a day, during three months of which he was to be kept in solitary confinement, the Madras High Court reduced the solitary confinement, to 84 days—Dec. 15, 1879; S. C. Weir, 1st Ed. Sup., 2nd Ed. 15.

**75.**‡ Whoever, having been convicted of an offence punishable under Chapter XII. or Chapter XVII. of this Code with imprisonment of either description for a term of three years or upwards, shall be guilty of any offence punishable under either of those chapters with imprisonment of either description for a term of three years or upwards, shall be subject for every such subsequent offence to transportation for life, "or to imprisonment of either description for a term which may extend to ten years."§

Enhanced punishment for certain offence under Ch. XII. or Ch. XVII. after previous conviction.

**Punishment can be enhanced if offences punishable under Ch. XII. and XVII., Penal Code.**—To justify enhanced punishment under s. 75 of the Penal Code, on account of previous convictions, both convictions must be of offences punishable

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* In s. 73, the words quoted have been substituted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 5, for the words "be less than a."

† As to the application of s. 74 to sentences passed in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), ss. 15 (*a*), 52.

‡ In s. 75, the words quoted have been substituted by the Indian Criminal Law Amendment Act (X. of 1886), s. 22, for the words, "or to double the amount of punishment to which he would otherwise have been liable for the same: provided that he shall not in any case be liable to imprisonment for a term exceeding ten years."

§ In its application to hill tribes to which the Kachin Hill-tribes Regulation (I. of 1895) is applied [see ss. 1 (*3*) and 3 of that Regulation], the Code is to be read as if the following additional section were inserted—

"75A. Notwithstanding anything in this Code, or in any other enactment for the time being in force, a person convicted of any offence punishable under this Code or under any other enactment shall be punishable with fine in lieu of, or in addition to, any other punishment to which he may be liable."

In the Chin Hills the Code is to be read as if a section similar to the preceding, save a few verbal differences, and similarly numbered, were inserted.—See the Chin Hills Regulation (V. of 1896).

under Ch. XII. and Ch. XVII. of the Code, and committed after the Code came into operation. — QUEEN *v.* MOLUCK CHUND KHALIFA, 3 W. R. 17. [Jackson and Glover, JJ. May 22, 1865.]

**Previous conviction not to be put until close of trial.**—Records of previous convictions should not be put in until the close of the trial, as they can only be used after conviction in determining the measure of punishment—QUEEN *v.* SHIBOO MUNDLE, 3 W. R. 38. [Glover, J. June 29, 1865.] Overruled by *Queen-Empress* v. *Kartick Chunder Dass*, I. L. R., 14 Cal. 727; but this case has itself been overruled by s. 54 of the Evidence Act as amended by Act III. of 1891, s. 6.

**Convictions after Penal Code came into force.**—S. 75 of the Penal Code only applies to convictions of offences committed after the Code came into operation.—QUEEN *v.* HURPAUL, 4 W. R. 9 [Kemp, Campbell, and Glover, JJ. Sep. 12, 1865.]

**Whipping in addition to imprisonment legal in case of second conviction if offence same in both cases.**—*In* order to legalize whipping in addition to imprisonment in the case of a second conviction, the offence must be the same in both cases.—QUEEN *v.* AMARUT SHEIK, 4 W. R. 20. [Glover, J. Oct. 28, 1865.]

**Previous conviction does not affect Deputy Magistrate's jurisdiction.**—The jurisdiction of a Deputy Magistrate competent to try the offence charged is not affected by the previous conviction of the prisoner.—*In re* SHEIKH BOOLUCK, 5 W. R. 53. [Seton-Karr and Macpherson, JJ. Mar. 21, 1866.]

**When an offender is liable to enhanced punishment.**—An offender is only liable to enhanced punishment under s. 75 of the Penal Code for an offence punishable under Ch. 17, after having been punished with imprisonment for the same offence, or for an offence punishable under the same chapter. —QUEEN *v.* PUBON, 5 W. R. 66. [Seton-Karr and Glover, JJ. April 14, 1866.]

**Previous conviction cannot be taken into account if it took place before Penal Code came into force.**—Where a previous conviction takes place before the Penal Code came into operation, such conviction cannot be taken into account in awarding enhanced punishment under s. 75. The previous conviction must be after the Penal Code came into operation.—REG. *v.* PUBUN, 5 W. R. 66. [April 14, 1866.] The following important remarks were made by Seton-Karr and Glover, JJ., in delivering judgment in the above case: "The meaning of the law appears to us to be that, when an offender, after having been punished with imprisonment for a crime under Ch. 17, again, *after his release from prison*, commits a similar description of crime, or a crime punishable under the same chapter, he is liable, under s. 75, to enhanced punishment, on the ground that the sentence already borne had no effect in preventing a repetition of his crime, and has been, therefore, insufficient as a warning. But where the prisoner's conviction has taken place a very short time before, and where no imprisonment under it has yet been undergone, and no time has been given for reformation, it cannot be said that a prisoner has had any opportunity of showing what the effect of the first sentence would have been upon him, and it would not be just to punish him as though he were an incorrigible offender, whom no comparatively light sentence could wean from evil courses."

**Previous conviction not to be proved until prisoner convicted in the case then being tried.**—Records of previous convictions should not be put in until the prisoner has been convicted in the case then under trial.—QUEEN *v.* JEHAN MULLICK, 5 W. R. 67. [Glover, J. April 16, 1866.] Overruled by *Queen-Empress* v. *Kartick Chunder Dass* (I. L. R., 14 Cal. 721); but this case has itself been overruled by s. 54 of the Evidence Act, as amended by Act III. of 1891, s. 6.

**Sentence of whipping annulled as the offence not committed after previous conviction.** — On a reference by a Sessions Judge under s. 434 of the Criminal Procedure Code, a sentence of whipping, in addition to one of rigorous imprisonment, in the case of an offence specified in s. 2 of Act VI. of 1864, was annulled, as the offence was not committed after previous conviction.—REG. *v.* SURYA BIN KRISHNA MANDAVKAR, 3 Bom. H. C. R. 38. [Couch, C.J., and Newton and Warden, JJ. Dec. 12, 1866.]

**To make a former acquittal or conviction a defence in a second trial, the offence must be the same.**—To render a former acquittal or conviction a defence on second trial, the offence must, according to s. 55 of the Code of Criminal Procedure (Act XXV. of 1861), be the same offence. The prisoner was charged with having forged pottas A and B, bearing the same date, and adduced in evidence by him in the same suit. No mention of any charge as to potta B was made in the order of commitment; and the prisoner having been acquitted on an indictment for forging potta A, it was held by the majority of the Court (Markby, J., dissenting) that the plea of autrefois acquit was

inadmissible on a subsequent trial of the prisoner for forging the potta B.—QUEEN v. DWARKANATH DUTT, 7 W. R. 15; 2 Ind. Jur. N. S. 67. [Peacock, C.J., and Kemp and Markby, JJ. Jan. 23, 1867.]

**Sentence of whipping annulled, as prisoner was not previously convicted of same offence.**—On a reference by a Sessions Judge, under s. 434 of the Criminal Procedure Code, a sentence of whipping, in addition to one of rigorous imprisonment, in the case of an offence specified in s. 4 of Act VI. of 1864, was annulled, as the prisoner had not been previously convicted of the same offence.—REG. v. BABJI VALAD BAPU, 4 Bom. H. C. R. 5. [Couch, C.J., and Newton, J. July 24, 1867.]

**Previous convictions before Penal Code: Present offence, therefore, not punishable under s. 75.**—A prisoner convicted under s. 380 of the Penal Code of theft in a building used for the custody of property, was sentenced, under s. 75, to fourteen years' transportation, as he had been previously convicted thirteen times of offences now punishable under Ch. 17 of the Code with imprisonment for three years or upwards. *Held* that, as all the previous convictions were prior to the passing of the Penal Code, the present offence was not punishable under s. 75.—REG. v. KUSHYA BIN YESU, 4 Bom. H. C. R. 11. [Couch, C.J., and Newton, J. Sep. 18, 1867.]

**A person, not previously convicted, is convicted, at one time, of two or more offences. It is illegal to sentence him to whipping for one of those offences, in addition to imprisonment or fine for the other or others; but it is not illegal to inflict one whipping in lieu of all other punishments.**—*Held* by the majority that, when a person who had not been "previously convicted" (*vide* s. 4, Act VI. of 1864) is convicted at one time of two or more offences, it is illegal to sentence him to whipping for one of those offences, in addition to imprisonment or fine for the other or others; but it is not illegal to sentence him to one whipping in lieu of all other punishments. *Held* further that, when a person who has been "previously convicted" at one time of two or more offences, he may be punished with one, but only one, whipping, in addition to any other punishment to which, under s. 46 of the Code of Criminal Procedure, he may be liable.—NASSIR v. CHUNDER, 9 W. R. 41; B. L. R. Sup. Vol. 951. [Peacock, C.J., and Seton-Karr, Jackson, Phear, and Macpherson, JJ. Mar. 12, 1868.]

**In a charge alleging a previous conviction, the extent of the former punishment need not be shown.**—A charge alleging a previous conviction need not show the extent of the former punishment. Revised form of charge.—PRO., April 17, 1868; 4 Mad. H. C. R. Ap. 11.

**Annulment of sentence of transportation for 14 years under s. 392, as s. 75 had been improperly applied.**—Sentence of transportation for fourteen years under s. 392 of the Penal Code annulled, as the offence for which such sentence was passed was not committed subsequently to any conviction, and s. 75 had, therefore, been improperly applied. *Semble*, that a Sessions Judge cannot (under s. 75 of the Penal Code, or otherwise), by amalgamating a sentence which he is competent to pass upon a prisoner with a sentence under which such prisoner is already undergoing imprisonment, and commuting the latter sentence, condemn such prisoner to a longer period of transportation than he is liable to suffer for the crime of which he has last been convicted. — REG. v. SAKYA VALAD KABJI, 5 Bom. H C. R. 36. [Newton, Offg. C J., and Tucker, J. May 20, 1868.]

**Whipping founded on a previous conviction can be warranted where the subsequent conviction is for the same offence.** — A sentence of whipping, founded on a previous conviction of the prisoner, is only warranted where the subsequent conviction is for the same specific offence as that in respect of which the previous conviction applied. A Sessions Judge has no power to suspend a sentence in a case in the absence of appeal.—PRO., Oct. 25 1869; 5 Mad. H. C. R. Ap. 1.

**Whipping can be inflicted in addition to other punishment on a second conviction of offences specified therein.** A sentence of whipping under s. 4, Act VI. of 1864, can only be inflicted in addition to other punishment on a second conviction of the offences specified therein, when the first offence was committed some time previous to the second conviction, though after the passing of the Penal Code.—QUEEN v. UDOY PUTNAICK, 12 W. R. 68; 4 B. L. R. A. Cr. 5. [Kemp and Glover, JJ. Oct. 28, 1869.]

**Sentence of six months under s. 457: Further six months as enhanced punishment under s. 75: Latter sentence set aside** — Where a First-class Subordinate Magistrate sentenced a prisoner to six months' rigorous imprisonment under s. 457 of the Penal Code, and, finding that the prisoner was liable to enhanced punishment under s. 75 of the Penal Code, sentenced the prisoner to six months' further imprisonment under s. 46 of the Code of

**Criminal Procedure, the latter sentence was set aside by the High Court.**—PRO., Nov. 2, 1869; 5 Mad. H. C. R. Ap. 3.

**One whipping in addition to any other punishment.**—Follows the Full Bench decision ruling that, when a person who has been previously convicted (s 4, Act VI. of 1864) is a second time convicted at one time of *two or more offences*, he may be punished with only one whipping in *addition* to any other punishment to which, under s. 46 of the Code of Criminal Procedure (Act XXV. of 1861), he may be liable.—RUTTON BEWA *v.* BUHUR; JHOWLA *v.* BUHUR, 14 W. R. 7. [Loch and Hobhouse, JJ. June 18, 1870.]

**Evidence of previous conviction must be clear before awarding additional punishment under s. 75.**—To warrant a sentence awarding additional punishment under s. 75 of the Penal Code as on a second conviction, the evidence that there was a previous conviction against the accused under the Penal Code must be clear and precise.—QUEEN *v.* NAIMUDDI SHEIKH *alias* ADJAS SHEIKH, 14 W. R. 7. [Jackson and Glover, JJ. June 25, 1870.]

**First conviction for simple theft: Second conviction for theft in a dwelling-house Whipping illegal.**—A prisoner convicted of "theft in a dwelling-house" who has previously been convicted of "simple theft," is not thereby rendered liable to whipping under Act VI of 1864, s. 3.—REG. *v.* CHANGLA VALAD SHUMJI, 7 Bom. H. C. R. 68. [Westropp, C.J., and Gibbs and Lloyd, JJ. Sep. 22, 1870.]

**First conviction for simple theft Second conviction for theft in a dwelling house Whipping illegal.**—The Magistrate convicted the accused under s. 380 of the Penal Code, and a previous conviction having been proved under s. 379 of the Penal Code, sentence of imprisonment and whipping was passed. *Held* that, in order to justify the sentence of whipping, the previous conviction should have been in respect of the same specific offence.—PRO., Oct. 28, 1870, 5 Mad. H. C. R. Ap. 38.

**S. 3 of Whipping Act applies to juvenile as well as to adult offenders.**—S. 3 of Act VI. of 1864 (the Whipping Act) applies to juvenile as well as to adult offenders. That section does not apply to cases in which the second conviction is for an offence committed previously to the first conviction.—REG. *v.* KUSA VALAD LAKSHMAN, 7 Bom. H. C. R. 70. [Gibbs and Melvill JJ. Nov. 17, 1870.]

**Evidence of previous conviction must be clear before awarding additional punishment under s. 75.**—As a rule, before flogging is given as an additional punishment, there ought to be formal evidence upon the record of the previous convictions relied on. The conviction and identity of the prisoner ought to be proved in the regular way. A mere *kaifiat* is no evidence whatever.—QUEEN *v.* NUZEE NUSHYO, 15 W. R. 52. [Bayley and Macpherson, JJ. April 21, 1871.]

**How previous conviction should be proved.**—A mere *kaifiat* from the record-office is not sufficient to prove a former conviction against a prisoner. There should be sworn testimony to the fact, and also the identification of the prisoner with the person previously convicted.—QUEEN *v.* SEIKH RAMJAN, 15 W. R. 53; 6 B. L. R. Ap 151. [Kemp and Glover, JJ. April 22, 1871.]

**Order to commit a deaf and dumb accused for enhanced punishment under Ch XVII.**—In the case of an accused person who was deaf and dumb, the Deputy Magistrate who tried and convicted him, considered that he did not understand the proceedings, and accordingly referred the case to the Magistrate under s. 186 of the Code of Criminal Procedure. The Magistrate considered that the accused did understand what he was charged with. *Held*, that the finding of the Magistrate must prevail, and s. 186 did not apply. Acting under s. 297 of the Code of Criminal Procedure the High Court annulled the order of the Deputy Magistrate; and as the accused had been previously convicted of an offence under Ch XVII. of the Penal Code, punishable with three years' rigorous imprisonment, ordered that he should, under s. 315 of the Procedure Code, be committed for trial to the Sessions Court.—DOOBRI HUIWAI *v.* A Dumb Person, name unknown, 19 W. R 37 [Couch, C J., and Glover, J. Feb. 20, 1873.]

**Previous conviction should be stated in the charge.**—Under s. 439 of the new Criminal Procedure Code, if it is intended to prove a previous conviction against an accused person for the purpose of enhancing the punishment, it is necessary to state the fact of that previous punishment in the charge. If it is omitted, it may be added to the charge at any time previous to the sentence being passed, but not after.—QUEEN *v.* RAJCOOMAR BOSE, 19 W. R. 41. [Kemp and Glover, JJ. Mar. 4, 1873.]

**S. 75 does not refer to attempts.**—S. 75 of the Penal Code is restricted to offences under Chs. 12 and 17 of that Code when the term of imprisonment awardable is three years' imprisonment and upwards, and does not refer to an attempt to commit any of those offences; nor can any case be brought within it merely because the punishment

that may be given for it extends to three years and upwards. — QUEEN v. DAMU HARRI, 21 W. R. 35. [Kemp and Glover, JJ. Jan. 26, 1874.]

**Whipping cannot be passed for theft under s. 379: Previous conviction should be stated in the charge.**—A sentence of whipping cannot, with reference to Act VI. of 1864, s 7, be passed on a conviction for theft under s. 379 Penal Code, as the former section only provides for sentences of imprisonment for a term not exceeding three years. The fact of previous conviction should, under Act X. of 1872, s 439, be stated in the charge when it is intended to prove them for the purpose of enhancing punishment. The question of proof of previous conviction is one of fact which ought to go to the jury, and must be determined by a jury.—QUEEN v. ESAN CHUNDER DAY, 21 W. R. 40. [Jackson and Ainslie, JJ. Feb 5, 1874.]

**What the charge should contain if offence committed after previous conviction.** — Under s 439, Code of Criminal Procedure, a charge of having committed the offence after a previous conviction therefor should contain an allegation that the offence has been committed after a previous conviction. A statement in a count that at the time when the prisoner committed the offence (no offence being mentioned specially in the count) he had been previously convicted of offences punishable under Ch. XVII of the Penal Code is not a sufficient compliance with the provisions of s. 439.—QUEEN v SHEIKH JAKIR, 22 W. R. 39. [Phear and Morris, JJ. July 16, 1874.]

**A previous conviction should not so enormously enhance the heinousness of petty offences.**—Where, soon after his release on expiry of a sentence of seven years' imprisonment on conviction of "receiving stolen property acquired by dacoity," a person is convicted of house breaking and theft, he is sufficiently punished by a sentence of seven years' transportation. A sentence of transportation for life is too severe. It is not the intention of the Legislature that a previous conviction should so enormously enhance the heinousness of petty offences.—IN THE MATTER OF SHAMJEE NOSHYO, 1 C. L. R. 481. [Jackson and Cunningham, JJ. Feb. 6, 1878.]

**S. 75 does not refer to attempts.**—If a person who has been convicted of an offence punishable under Ch. XII. or Ch. XVII. of the Penal Code with imprisonment for a term of three years or upwards is convicted of an attempt to commit any such offence, he does not thereby become liable to the enhanced punishment allowed by s. 75 of the Code.—EMPRESS v. NANA RAHIM, I. L. R., 5 Bom. 140. [Westropp, C.J., and Melvill and Kemball, JJ. Oct. 28, 1880.]

**S. 75 does not refer to attempts.**—A person, having been convicted of an offence punishable under s. 457 (Ch. XVII) of the Penal Code, was subsequently guilty of an attempt to commit such an offence. *Held* that the provisions of s. 75 of the Penal Code were not applicable to such person.—EMPRESS v. RAM DIAL, I. L. R, 3 All. 773. [Spankie, J. May 6, 1881.]

**S. 75 does not refer to attempts.**—A person who has been convicted of the offence of theft (an offence punishable under Ch XVII. of the Penal Code) does not, on being convicted of an attempt to commit the offence of theft, become liable to the enhanced punishment allowed by s. 75 of the Penal Code.—QUEEN-EMPRESS v. SRICHARAN BAURI, I. L. R, 14 Cal. 357. [Petheram, C.J., and Cunningham, J. Mar. 12, 1887.]

**S. 75 does not apply to attempts.**—S. 75 of the Penal Code does not apply to cases which are confined to s. 511 of that Code. The offences which come under s. 511 must be punished entirely irrespective of s 75. *Queen-Empress* v. *Ajudhia* (I. L. R., 17 All 120) approved —QUEEN-EMPRESS v. BHAROSA, I L. R, 17 All 123. [Edge, C J., and Banerji, J. Jan. 9, 1895.]

**S. 75 does not apply to attempts.**—S. 75 of Act XLV. of 1860 does not apply to the case of an attempt to commit the offence punishable under s. 457 of the Code after previous convictions of offences falling within Ch. XII. or Ch. XVII., such offence being punishable under s. 511. *Sheo Saran Tato* v. *The Empress* (I. L. R, 9 Cal. 877), *Empress of India* v. *Ram Dayal* (I. L. R., 3 All. 773), *Empress* v. *Nana Rahim* (I. L. R., 5 Bom. 140), and *Queen-Empress* v. *Sricharan Hauri* (I. L. R., 14 Cal. 367). referred to.—QUEEN-EMPRESS v. AJUDHIA, I. L. R., 17 All. 120. [Banerji, J Jan. 10, 1895.]

**Where a sentence of whipping cannot be carried out the punishment must be remitted, or imprisonment substituted.** —A Court has no power, under s. 395 of the Criminal Procedure Code, to revise its sentence of whipping by inflicting a fine. In cases where the sentence of whipping cannot be carried out, all that the Court can do is either to remit the whipping altogether, or to sentence the offender, in lieu of such whipping, or of so much of the sentence of whipping as was not carried out, to imprisonment, &c. The word "imprisonment" in s. 395 of the Criminal Procedure Code means a substantive sentence of imprisonment, and not

imprisonment for default in payment of a fine.—QUEEN-EMPRESS *v.* SHEODIN, I. L. R., 11 All. 308. [Straight, J. Jan. 5, 1889.]

**Enhanced punishment can only be convicted if second offence committed after first.**—Where a person commits an offence punishable under Ch. XII. or Ch. XVII. of the Penal Code, punishable with three years' imprisonment, and, previously to his being convicted of such offence, commits another such offence punishable under either of such chapter, he is not subject, on being convicted of the second offence, to the enhanced punishment provided in s. 75 of the Penal Code.—EMPRESS *v.* MEGHA, I. L. R., 1 All. 637. [Turner, J. April 2, 1878.]

**Misdirection where a Judge directed the jury to consider the proof of previous convictions for theft as evidence of bad character.**—In charging the jury upon the trial of a prisoner for being dishonestly in the possession of stolen goods, the Judge directed the jury to consider the proof of previous convictions for theft as evidence from which inference might fairly be drawn as to the character of the accused *Held* that this amounted to a misdirection; for though s. 54 of the Evidence Act declares that "the fact that the accused person has been previously convicted of an offence is relevant" yet the same section also declares that 'the fact that he has a bad character is irrelevant," and that the evidence was irrelevant and inadmissible. Except under very special circumstances the proper object of using previous convictions is to determine the amount of punishment to be awarded should the prisoner be convicted of the offence charged.—ROSHUN DOSSADH *v.* EMPRESS I. L. R., 5 Cal. 768; 6 C. L. R. 219. [Morris and Prinsep, JJ. Feb 10 1880.] See *Queen-Empress* v. *Kartick Chunder Dass*, I. L. R., 14 Cal. 721. But see the new s. 54 of the Evidence Act, which overrules *Queen-Empress* v. *Kartick Chunder Dass*.

**Previous conviction for a like offence under the Excise Act**.—The provisions of s 74 of the Bengal Excise Act, as to additional punishment where there has been a "previous conviction for a like offence," contemplate merely the case of the offender having been already convicted of an offence punishable with a fine of Rs. 200 or upwards, and being again convicted of another offence punishable with the same punishment, it is not necessary that he should have been previously convicted of the same offence. The accused were sentenced by the Presidency Magistrate, under ss 58 and 74 of the Bengal Excise Act, to a fine of Rs. 200 each, in default to three months' imprisonment, and in addition to six months' imprisonment, which was the maximum term that could be awarded under s. 74. *Held* that the sentence of imprisonment was not in excess of the powers given to the Magistrate by s. 12 of the Presidency Magistrates Act, the imposition of the additional sentence of imprisonment not affecting the Magistrate's powers as regarded the original sentence under s. 58. No limits with regard to any distilleries in Calcutta having been fixed under s. 9 of the Act within which spirituous liquor manufactured otherwise than in that particular distillery shall be introduced or sold without a special pass, and the fixing of such limits being necessary to a conviction of an offence under s. 48, the convictions in this case were set aside. —RAM CHUNDER SHAW *v.* EMPRESS, I. L. R., 6 Cal. 575; 8 C. L. R. 250. [Morris and Prinsep, JJ. Jan. 5, 1881.]

**It is where the previous conviction is under the Penal Code that the enhanced punishment can be imposed.**—An accused person can only be punished under s 75 of the Penal Code where the previous conviction has been under that Code.—BUDHUN RUJWAR *v.* EMPRESS, 10 C. L. R. 392. [Cunningham and Tottenham, JJ. Mar. 13, 1882.]

**Recourse not to be had to s. 75, if the punishment for the offence committed is sufficient.**—The object of s. 75 of the Penal Code is to provide for an additional sentence, not a less severe sentence, on a second conviction. Recourse should not be had to that section if the punishment for the offence committed is itself sufficient.—SHEO SARAN TATO *v.* EMPRESS, I. L. R., 9 Cal. 877. [Prinsep and O'Kinealy, JJ. May 4, 1882.]

**Under s. 75, a prisoner might be transported for life, but not imprisoned for a longer period than six years.**—The accused, having been previously convicted of offences punishable under Ch. XII. or Ch. XVII. of the Penal Code with imprisonment for a term of three years or upwards, was subsequently convicted of an offence under one of these chapters punishable with imprisonment which may extend to three years, and sentenced to imprisonment for seven years. *Held* that a sentence of transportation for seven years was illegal. Under s. 75 of the Penal Code, the accused might be transported for life, but he could not be imprisoned for a longer period than six years. —EMPRESS *v.* MAHADU, I. L. R., 6 Bom 690. [Melvill and Pinhey, JJ. Sep. 7, 1882.]

**Reference should not be made to a previous conviction until the accused has been convicted of the subsequent offence,**

—In trials before a jury or assessors, the record should invariably show that reference to a previous conviction was not made until the accused had been convicted of the subsequent offence.—KRISTO BEHARI DASS *v.* EMPRESS, 12 C. L. R. 555. [Cunningham and Maclean, JJ. Mar. 13, 1883.]

**Accused called upon to answer at the same time a charge of theft and also a charge of having been previously convicted.**—Where, in a trial by jury, the Sessions Judge called upon the accused to answer at the same time a charge of theft and also a charge of having been previously convicted, the High Court refused to interfere, it not appearing that a failure of justice had been caused by the irregularity.—BEPIN BEHARY SHAHA *v.* EMPRESS, 13 C. L. R. 110. [Prinsep and Tottenham, JJ. Aug. 3, 1883.]

**A charge under s. 75 must be framed and recorded, if the prisoner is to be tried under that section.**—If a prisoner is to be tried for an offence punishable under s. 75 of the Penal Code, a separate charge under that section must be framed and recorded. —QUEEN-EMPRESS *v.* DORASAMI, I. L. R., 9 Mad. 284. [Kernan and Muttusami Ayyar, JJ. April 2, 1886.]

**Where an offence under s. 411, read with s. 75, deserves a greater punishment than he can inflict, the Magistrate must commit.**—A person convicted under ss. 411-75 of the Penal Code is not convicted of "distinct offences" within the meaning of s. 35 of the Criminal Procedure Code. *Queen-Empress* v. *Zor Singh* (I. L. R., 10 All. 146) explained. Where an offence under s 411 read with s. 75 of the Penal Code appears to be deserving of a greater punishment than the Magistrate trying it can award, the best course for him to adopt is to commit the accused for trial to the Court of Session. —QUEEN-EMPRESS *v.* KHALAK, I. L. R., 11 All. 393. [Brodhurst, J. May 3, 1889.]

**Previous commissions of dacoity relevant under s. 140, Evidence Act.**—Having regard to the character of the offence under s. 400 of the Penal Code, previous commissions of dacoity are relevant under s 14 of the Evidence Act Convictions previous to the time specified in the charge or to the framing of the charge are relevant under expl 2 of s. 14, but convictions subsequent to the time specified in the charge and to the framing of the charge are not so admissible. To support a conviction under s. 400 of the Indian Penal Code, evidence must be given of the existence of a gang of persons of their association, and association for the purpose of habitually committing dacoity and robbery. *Queen-Empress* v. *Kartick Chunder Dass* (I. L. R., 14 Cal. 721), referred to.—EMPRESS *v.* NABA KUMAR PATNAIK, 1 C. W. N. 146. [Ghose and Gordon, JJ. Jan. 15, 1897.]

**Form of charge where there has been a previous conviction.**—The following is the form of a charge of a previous conviction, according to the ruling of the Madras High Court, 17th April 1868, 3 Mad. Jur. 284: "That he, the said A B, before the committing of the said offence, was convicted, to wit, on the day of in Calender No. of on the file of , of an offence punishable under Ch. XVII. (or XII.) of the Indian Penal Code with imprisonment for a term of three years, to wit, with the offence of , which conviction is still in full force and effect; and that he, the said A B, is thereby liable to enhanced punishment under s. 75 of the Indian Penal Code, and within," &c.

**Previous conviction should be brought forward after conviction.**—The Calcutta High Court has ruled that "the previous conviction of a prisoner should not have been charged against him: it should have been brought forward by the prosecution after his conviction, and should have been taken into consideration when passing sentence. To enter such a circumstance in a charge would be apt, very improperly, to prejudice the jury trying the case"—1 Wyman's Rev., Civ., and Crim. Rep. Cir. 26. The practice, however, is different in England, where previous convictions are always entered on the indictment in cases of felony, so as to allow the prisoner to claim a formal trial on that charge also, if he so desire it; and the count containing the previous conviction is not read to the jury until the prisoner has been convicted of the subsequent offence. In fact, he is not called upon to plead to it until the other is disposed of against him. In accordance with this practice the Madras High Court has ruled that "the previous conviction should be made a separate head of charge on the trial for the subsequent offence" (Mad. H. C. Rulings, 1864, on s. 75), but that to prevent any injustice to the prisoner, the procedure should be, "first to try the prisoner on the substantive charge then under inquiry, and, if he should be convicted on that charge, to charge him with, and try the fact of, the previous conviction" (Mad. H. C. Rulings, 1865, on s. 75). But see *Queen Empress* v. *Kartick Chunder Dass* (I. L. R., 14 Cal. 721), which has been overruled by s. 54 of the Evidence Act (I. of 1872), as amended by s. 6 of Act III. of 1891.

**How previous conviction should be proved.**—In any inquiry, trial, or other proceeding under this Code, a previous convic-

tion or acquittal may be proved, in addition to any other mode provided by any law for the time being in force: (*a*) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had to be a copy of the sentence or order; or (*b*) in case of a conviction either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered; together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.—CRIM. PRO. CODE (ACT V OF 1898), S. 511.

**The fact, date, and place of the previous conviction should be stated in the charge.**—If the accused has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment, which the Court is competent to award, the fact, date, and place of the previous conviction shall be stated in the charge. If such statement is omitted, the Court may add it at any time before sentence is passed.—CRIM. PRO CODE (ACT V. OF 1898), S. 221, last para.

**Procedure in respect of previous conviction in a trial by jury, &c.**—In the case of a trial by jury or with the aid of assessors, where the accused is charged with an offence, committed after a previous conviction for any offence, the procedure laid down in ss. 271, 286, 305, 306, and 309, shall be modified as follows:—

(*a*) The part of the charge stating the previous conviction shall not be read out in Court, nor shall the accused be asked whether he has been previously convicted as alleged in the charge, unless and until he has either pleaded guilty to, or been convicted of, the subsequent offence.

(*b*) If he pleads guilty to, or is convicted of, the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the charge.

(*c*) If he answers that he has been so previously convicted, the Judge may proceed to pass sentence on him accordingly; but if he denies that he has been so previously convicted, or refuses to, or does not, answer such question, the jury or the Court and the assessors (as the case may be) shall then inquire concerning such previous conviction, and in such case (where the trial is by jury) it shall not be necessary to swear the jurors again.—CRIM. PRO. CODE (ACT V. OF 1898), S. 180.

**Charge for Theft after a Previous Conviction.**—I [*name and office of Magistrate, &c.*], hereby charge you [*name of accused person*] as follows:—

That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under s. 379 of the Indian Penal Code and within the cognizance of the Court of Session [*or* High Court *or* Magistrate *as the case may be*].

And you the said [*name of accused*] stand further charged that you, before the committing of the said offence, that is to say, on the day of , had been convicted by the [*state Court by which conviction was had*] at of an offence punishable under Ch. XVII. of the Indian Penal Code with imprisonment for a term of three years, that is to say, the offence of housebreaking by night [*describe the offence in the words used in the section under which the accused was convicted*], which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under s 75 of the Indian Penal Code.

And I hereby direct that you be tried, &c. —CRIM. PRO. CODE (ACT V. OF 1898), SCH. V., Form XXVIII. (iii).

## CHAPTER IV.*

### GENERAL EXCEPTIONS.

**Act done by a person bound, or by mistake of fact believing himself bound, by law.**

**76.** Nothing is an offence which is done by a person who is, or who, by reason of a mistake of fact, and not by reason of a mistake of law, in good faith believes himself to be, bound by law to do it.

* Ch. IV. applies to offences punishable under ss. 121A, 124A, 225A, 225B, 294A, and 304A.—See the Indian Penal Code Amendment Act (XXVII. of 1870), s. 13, as amended by the Repealing and Amending Act (XII. of 1891). As to the application of Chapter IV. to offences under special or local laws, see s. 40, *supra*.

*Illustrations.*

(*a*.) A, a soldier, fires on a mob by the order of his superior officer in conformity with the commands of the law. A has committed no offence.

(*b*.) A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

**Good faith.**—Nothing is said to be done or believed in good faith which is done without due care and attention. — PENAL CODE, s 52.

**Effect of making of charge.**—The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case. —CRIM. PRO. CODE (ACT V. OF 1898), S. 221.

**Burden of proving existence of circumstances bringing the case within exceptions.**—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances — EVIDENCE ACT (I. OF 1872), S. 105.

**A chaukidar wounding a thief to effect his arrest was held to be justified by the circumstances.**—The wounding of a thief by a chaukidar in order to his arrest was held under the circumstances to be justifiable.—QUEEN *v.* PROTAB CHAUKIDAR, 2 W. R. 9. [Campbell and Glover, JJ. Jan. 16, 1865.]

**A police-officer's duty in respect of the arrest and detention of accused persons.**—Exposition of a police-officer's powers of arrest and detention of accused persons and witnesses with a view to the suppression of the practice of torture. Markby, J., adds: "At the expiration of 24 hours, unless the special order has been obtained the prisoner must either be discharged or sent on to the Magistrate, and any longer detention is absolutely unlawful; and though the Code is not so express upon the place at the time of confinement, still, we think, it is perfectly clear that it was intended that, where a police-officer arrested any person, the prisoner should not be kept in confinement in any place which the subordinate officer might select, but that he should, if possible, be sent immediately to the police-station, and be placed in the custody of the officer in charge of the station, who is the person entrusted by the Act with the conduct of the enquiry.—*QUEEN v* BEHARY SING, 7 W. R. 3. [Kemp and Markby, JJ. Jan. 4, 1867.]

**A policeman torturing a man by order of a superior officer: Nothing but fear of instant death is a legal defence.** — Nothing but fear of instant death is a defence for a policeman who tortures any one by order of a superior. The maxim *respondeat superior* has no application in such a case. Under the Bombay Police Act (IV. of 1890) every police-officer is bound to shelter a person in custody, and to arrest persons committing assaults likely to cause grievous bodily injury. If he omits to perform this duty, he is guilty of abetment. When the law imposes a duty to act on a person, his illegal omission to act renders him liable to punishment. — QUEEN-EMPRESS *v.* LATIF KHAN, I. L. R., 20 Bom. 394. [Jardine and Ranade, JJ. Mar. 12, 1895.]

Act of Judge when acting judicially.

**77.** Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

**Protection of judicial officers where they act in good faith.** — According to Act XVIII. of 1850 (an Act for the Protection of Judicial Officers), no Judge, Magistrate, Justice of the Peace, Collector, or other person acting judicially, shall be liable to be sued in any Civil Court for any act done, or ordered to be done, by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction: Provided that he, at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any Court or other person bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector, or other person acting judicially, shall be liable to be sued in any Civil Court for the execution of any warrant or order which he would be bound to execute, if within the jurisdiction of the person issuing the same.

**A Magistrate, not acting reasonably, carefully, and circumspectly, cannot be said to have, in good faith, believed him-**

**self to have jurisdiction.**—*Held* that a Magistrate who failed to act reasonably, carefully, and circumspectly, cannot be said to have, "in good faith, believed himself to have jurisdiction," within the meaning of Act XVIII. of 1850; and consequently that he cannot claim the protection of that Act in an action brought against him in a Civil Court. — VITHOBA MALHARI *v.* ARTHUR KING CORFIELD, 3 Bom. H. C. R. App. 1. [Yardley, C J. June 16, 19, 20, 23, 25. 1855.]

**A Magistrate, not acting reasonably, carefully, and circumspectly, cannot be said to have, in good faith, believed himself to have jurisdiction.**—*Held* that neither Act XVIII. of 1850 nor sections 68 and 212 of the Code of Criminal Procedure protects a Magistrate who has failed to act reasonably, carefully, and circumspectly in the discharge of his duties. *Vithoba Malhari v. Corfield* (3 Bom. H. C. R. App. 1) followed.—VINAYAK DIVAKAR *v.* BAI ITCHA, 3 Bom. H. C. R. A. C. 36 [Westropp, Tucker, and Warden, JJ. Sep. 18, 1865.]

**A Judge wilfully acting beyond his jurisdiction.**—Wilful abuse of his authority by a Judge, that is, wilfully acting beyond his jurisdiction, is a good cause of action by the party who is thereby injured —AMMIAPPA MUDALI *v.* MOULAVI MAHOMED MUSTAFA SAIB, 2 Mad. H. C. R. 443. [Frere and Innes, JJ. Nov. 4, 1865.]

**Judicial officers not protected from being sued in a Civil Court for acts not done in good faith.**—Act XVIII. of 1850 does not protect Judicial Officers from being sued in a Civil Court, except in respect of acts done by them in good faith in the discharge of judicial functions. When a plaint is presented to a Judge against such an officer, which complains of a wrongful act on the part of that officer, the Judge is bound to receive the plaint, and to leave it to the defendant to plead Act XVIII. of 1850.—VENKAT SRINIVAS *v.* J. F. ARMSTRONG, 3 Bom. H C. R. A C. 47. [Westropp, Tucker, and Warden, JJ. Nov 30, 1865.]

**A Magistrate who has not acted with due care and attention is not protected by Act XVIII. of 1850** —Act XVIII. of 1850 does not protect a Magistrate who has not acted with due care and attention. A Magistrate cannot be said to have in *good faith* believed himself to have jurisdiction to do, or order, an act complained of, unless, in arriving at that belief, he acted reasonably, circumspectly, and carefully He is not protected against personal liability for a misconstruction of the law unless his proceedings have been in other respects regular, and his views of the law is such as a reasonable and careful man might take. Government has no right summarily to appropriate or destroy private property merely because it considers that doing so would be for the public convenience The Government and its officers are just as much bound to proceed in such matters according to law as are private individuals, and are just as much liable in damages for illegally appropriating or destroying property for the purpose of adding to the convenience of the public as is a private individual who appropriates or destroys property for his own convenience. In case of an unlawful obstruction or nuisance, a Magistrate proceeding under Ch. XX. of the Criminal Procedure Code should call upon the person who caused the same either to remove it, or to show cause why it should not be removed within a reasonable time. If the party appears to show cause, the Magistrate should proceed in a judicial manner, giving him full and fair opportunity of protecting himself. — TARUCKNATH MOOKERJEE *v.* THE COLLECTOR OF HOOGHLY ON BEHALF OF GOVERNMENT, 13 W. R. C. R. 13; 4 B. L. R. A. C. 37. [Jackson and Macpherson, JJ. Jan. 5, 1870.]

**A Magistrate who had ordered the removal of a house as a nuisance and obstruction to the public thoroughfare was held to have had no jurisdiction.**—The first defendant, acting as a Magistrate, ordered the removal of the plaintiff's house under s. 308 of the Criminal Procedure Code, upon the ground that it was a nuisance and obstruction to the public thoroughfare *Held* that the house was neither an obstruction nor a nuisance, and that the first defendant had no jurisdiction to direct its removal; but the first defendant having acted in his judicial capacity, and in good faith believed himself at the time to have jurisdiction, a suit for damages could not be maintained against him.—SESHAIYANGAR *v.* R. RAGUNATHA ROW, 5 Mad H. C. R. 345. [Scotland, C.J., and Holloway, J. June 20, 1870.]

**A Magistrate ordered the cutting of a bund: A suit for damages does not lie against him, as he acted judicially, and within his jurisdiction.**—A suit for damages does not lie against a Deputy Magistrate acting judicially and within his jurisdiction. A Deputy Magistrate has no legal authority to order the cutting of a bund, or otherwise to interfere with it, except by a proceeding held as prescribed in Ch. XX. of the Criminal Procedure Code, under which he is bound to fix a day on which the owner of the bund may shew cause why it

should not be cut, and to give a full and fair opportunity of being heard and of protecting himself. A proceeding under Ch XX., if regular, and such as the law prescribes, is a judicial proceeding. But mere irregularity or incompleteness of procedure, such as holding inquiry through the police instead of conducting it personally, does not affect the jurisdiction of a Magistrate acting under that law, or render him liable to an action for damages. A party who forces himself into a suit as defendant is as much a defendant in all respects as if he had been originally named a defendant by the plaintiff, and if issues raised by him as between himself and the plaintiff are properly tried, the judgment thereon will bind the parties whatever be the judgment on the original question between the plaintiff and those whom he sued.—COLLECTOR OF HOOGHLY ON BEHALF OF GOVERNMENT *v.* TARUCKNATH MOOKERJEE, 16 W. R. C. R. 63; 7 B. L. R. A. C. 449. [Jackson and Macpherson, JJ. June 16, 1871.]

**78.** Nothing which is done in pursuance of, or which is warranted by, the judgment or order of a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

Act done pursuant to the judgment or order of Court.

**Protection to parties if they act bona fide.**—It has been observed by their Lordships in the Privy Council that "there can be no rule more firmly established than that, if parties *bonâ fide*, and not absurdly, believe that they are acting in pursuance of Statutes and according to law, they are entitled to the special protection which the Legislature intended for them, although they have done an illegal act.—RICHARD SPOONER AND BOMANJEE NOWROJEE *v* JUDDOW, 4 Moo I. A. 353, at p. 379. [Lord Brougham, Lord Langdale, Lord Campbell, the Right Hon. Dr. Lushington, and the Right Hon T. Pemberton Leigh. Feb. 19, 1848, and Feb. 14, 1850.]

**Police-officer acting under the authority of a warrant.**—When any action or prosecution shall be brought, or any proceedings held against any police-officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate Such plea shall be proved by the production of the warrant directing the act, and purporting to be signed by such Magistrate; and the defendant shall thereupon be entitled to a decree in his favour, notwithstanding any defect of jurisdiction in such Magistrate. No proof of the signature of such Magistrate shall be necessary unless the court shall see reason to doubt its being genuine. Provided always that any remedy which the party may have against the authority issuing such warrant shall not be affected by anything contained in this section. — POLICE ACT (V. OF 1861), s. 43

**Arrest of judgment-debtor within precincts of Court with some show of violence and contempt.**—The arrest, under civil process, of a judgment-debtor going to a Court in obedience to a citation to give evidence, and made within the precincts of that Court, and with some show of violence and contempt of Court, does not entitle the officers making the arrest to protection under s. 78, Penal Code.—THACOORDOSS NUNDEE *v.* SHUNKUR ROY, 3 W. R. 53. [Kemp and Seton-Karr, JJ. July 24, 1865.]

**Bailiff no authority to break open a door by force.**—A Civil Court's bailiff, in executing a process against the moveable property of a judgment-debtor, has no authority to use force and break open a door or gate.—JOHN ANDERSON *v.* J MCQUEEN, 7 W. R. 12. [Kemp and Glover, JJ. Jan. 14, 1867.]

**A judicial officer issues a warrant, which he had authority to issue, and sentences accused to three years' rigorous imprisonment and fine of Rs. 500 under ss. 379 and 411, Penal Code. He levies fine by distress and sale of cattle, before date fixed for sale: He was held protected, though he had acted with gross and culpable irregularity.**— Under Act XVIII. of 1850, where an act done or ordered to be done by a judicial officer in the discharge of his judicial duties is within the limits of his jurisdiction, he is protected whether or not he has discharged those duties erroneously, irregularly, or even illegally, or without believing in good faith that he had jurisdiction to do the act complained of. Where the act done or ordered to be done in the discharge of judicial duties is without the limits of the officer's jurisdiction, he is protected if, at the time of doing or ordering it, he in good faith believed himself to have jurisdiction to do or order it. The word "jurisdiction" is used in Act XVIII of 1850 in the sense in which it was used by the Privy

Council in *Calder* v. *Halket* (2 Moo. I. A. 293). It means authority or power to act in a matter, and not authority or power to do an act in a particular manner or form. A judicial officer who, in the discharge of his judicial duties, issues a warrant which he has authority to issue, though the particular form or manner in which he issues it is contrary to law, acts within and not without the limits of his jurisdiction in this sense. Where a Magistrate of the first class having sentenced an accused person to three years' rigorous imprisonment and Rs 500 fine under ss. 379 and 411 of the Penal Code, and having issued a warrant, purporting to act under s. 386 of the Criminal Procedure Code, for the levy of the fine by distress and sale of cattle belonging to the accused, sold such cattle before the date fixed for the sale, and in contravention of Form 37, Sch. V., and s. 554 of the Code, and Form D in Ch. V. of the Circular Orders of the High Court: *Held* that he was acting in the discharge of his judicial duty within his jurisdiction as a Magistrate of the first class; that, under such circumstances, it was immaterial that he did not, in good faith, believe himself to have jurisdiction to sell the property in the manner he did; and that the fact that he acted with gross and culpable irregularity did not deprive him of the protection afforded by Act XVIII. of 1850. —TEVEN v. RAM LAL, I. L. R., 12 All 115. [Edge, C.J., and Tyrrell, J. Jan. 31, 1890]

**79.** Nothing is an offence which is done by any person who is justified by law, or who, by reason of a mistake of fact, and not by reason of a mistake of law, in good faith believes himself to be justified by law, in doing it.

Act done by a person justified, or by mistake of fact believing himself justified, by law.

*Illustration.*

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the fact seizes Z in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

**Acting mistakenly without jurisdiction.** —The 21st Geo. III., c. 70, s. 24, protecting Provincial Magistrates in India from actions for any wrong or injury done by them in the exercise of their judicial offices does not confer unlimited protection, but places them on the same footing as those of English Courts of a similar jurisdiction, and only gives them an exemption from liability when acting *bonâ fide* in cases in which they have mistakenly acted without jurisdiction. Trespass will not lie against a Judge for acting judicially, but without jurisdiction, unless he knew, or had the means of knowing, of the defect of jurisdiction, and it lies upon the plaintiff, in every such case, to prove that fact.—CALDER v. HALKET 2 Moore's I. A. 293 [Lord Brougham, Mr. Baron Parke, Mr. Justice Bosanquet, and the Right Hon. Dr. Lushington. Dec. 5, 1839, and July 4 and 8, 1840.]

**Wounding of thief by chaukidar.**—The wounding of a thief by a chaukidar in order to his arrest was held under the circumstances to be justifiable.—QUEEN v. PROTAB CHAUKIDAR, 2 W. R. 9; 4 R. J. P. 165. [Campbell and Glover, JJ. Jan 16, 1865]

**A police-officer who did not act in good faith not protected.**—The general exception provided by s. 79 of the Penal Code, and the power conferred by cl. 5, s. 100 of the Code of Criminal Procedure, was held not to protect a police-officer who did not act in good faith, *i.e.*, with due care and attention. Cl. 5, s 100 of the Criminal Procedure Code, refers to property which is proved to have been stolen, and not to anything which a police-officer may choose to imagine has been stolen. Where a police-officer refused to let a person go home until he had given bail, he was held to have been guilty of wrongful restraint under s. 339 of the Penal Code.—SHEO SARUN SAHAI v. MAHOMED FAZIL KHAN, 10 W. R 20 [Loch and Glover, JJ. July 17, 1868.]

**A sub-inspector not exercising any care or attention at all.**—The following facts were held to show that a police-officer did not act in good faith, that is, with due care and attention: "He sees a horse tied up, without any attempt at concealment, in Bookoo's premises; and because the animal happens to resemble one which his father had lost a short time previously, he jumps at once to the conclusion that Bookoo has either stolen the horse himself, or has purchased it from the thief; and he compels Bookoo to account for his possession accordingly. He finds that Bookoo bought the animal from one Sheo Sarun Sahai; so he

sends for that individual, charges him with the theft, and compels him to give bail for his appearance whilst an investigation is pending. The sub-inspector never sent for the supposed owner of the horse, nor took the trouble of getting any credible information as to whether it was his father's horse or not. Had he done so, he would have found that that horse had already been found in another place; but, without waiting for such information, and without making any further inquiry, he at once held Sheo Sarun to bail as a person suspected of having come by the animal dishonestly Cl. 4, s. 54 of the Criminal Procedure Code, 1882, refers to property which is proved to have been stolen, and not to anything which a police-officer may choose to imagine has been stolen." Upon the above facts the High Court held that the sub-inspector had not only not acted with due care and attention, but had not exercised any care or attention at all.—SHEO SARUN SAHAI *v.* MAHOMED FAZIL KHAN, 10 W. R. 20. [Loch and Glover, JJ. July 17, 1868.]

**A Magistrate sued for damages for ordering removal of a house: Good faith: Suit dismissed**—The first defendant, acting as Magistrate, ordered the removal of the plaintiff's house under s. 308 of the Criminal Procedure Code (Act XXV. of 1861) upon the ground that it was a nuisance and obstruction to the public thoroughfare *Held* that the house was neither an obstruction nor a nuisance, and that the first defendant had no jurisdiction to direct its removal; but the first defendant having acted in his judicial capacity, and in good faith believed himself at the time to have jurisdiction, a suit for damages could not be maintained against him. — SESHAIYANGAR *v.* R. RAGUNATHA ROW, 5 Mad H. C. Rep. 345. [Scotland, C.J., and Holloway, J. June 20, 1870.]

**A Magistrate sued for damages for directing demolition of a house: Good faith: Suit dismissed.**—Suit to recover damages from defendant, Deputy Magistrate of the zillah of Trichinopoly, for a trespass alleged to have been committed in execution of an order made by him under s 311 of the Criminal Procedure Code (Act XXV of 1861), directing the demolition of the plaintiff's house as being a nuisance to a public thoroughfare. Defendant denied his liability, alleging in justification of his order that he believed the house to be obstructive to public comfort, and proceeded in accordance with ss. 308, 310, and 311 of the Criminal Procedure Code, and that, having acted in good faith in discharge of his duties as a Magistrate, he was protected by Act XVIII. of 1850. The issues settled were (1) whether the house was an obstruction and nuisance within s. 308 of the Criminal Procedure Code; (2) whether the defendant acted in good faith in the discharge of his public duty in ordering the removal of the house; (3) whether the plaintiff was entitled to the amount of damages claimed. The Civil Judge held, upon the first issue, that the defendant had no jurisdiction to order the removal of the house; upon the second issue, that defendant had not acted with due care and attention, but from feelings of personal animosity towards plaintiff, and was, therefore, not protected by Act XVIII. of 1850. Upon the third issue, he assessed the damages at Rs. 500. The defendant appealed, relying mainly upon the objection that no action lay against him, inasmuch as, first, it had not been shown that he acted without jurisdiction in making the order complained of; and, secondly, that, even if he had acted without jurisdiction, he acted believing at the time in good faith that he had jurisdiction, and was, therefore, entitled to the protection given by Act XVIII. of 1850. *Held*, upon the first point, that an entire absence of jurisdiction upon the first point had been shown. Upon the second point, that the facts of the case furnished no reasonable or probable ground for belief in the existence of jurisdiction by a Magistrate of ordinary qualifications; that the defendant must, therefore, be held not to have entertained that belief in good faith, unless the provisions of the Criminal Procedure Code, under which he acted, admit of the view that he might, not unreasonably, think that it was probably intended to apply to such an annoyance as that complained of; that, however, those provisions were open to such a misunderstanding and misapplication by a Magistrate of ordinary qualifications, and consequently that the suit should be dismissed.—RAGUNADA RAU *v.* NATHAMUNI THATHAMYYANGAR, 6 Mad. H. C. Rep. 423. [Scotland, C J., and Holloway, J April 17, May 8, 22, and Nov. 27, 1871 ]

**What a plaint against a Judge for issuing an illegal order should aver.**—A plaint against a Judge, averring that the Judge knowingly and maliciously issued an illegal order to the plaintiff's injury, does not disclose a sufficient cause of action against the Judge. It must not only aver that the Judge had no jurisdiction, but also that he had no reasonable and probable cause for supposing that he had jurisdiction.—PRALHAD *v.* A. C. WATT, 10 Bom. H. C. Rep. 346. [West, J. Aug. 28, 1873 ]

**Removal by Magistrate of obstruction is not a judicial act: Suit will lie.**—The removal by a Magistrate of an obstruction

in the exercise of the powers conferred upon him by Sch. K, cl. 1 of Ben. Act VI of 1868, is not a judicial act; and the Magistrate is, therefore, not protected by Act XVIII. of 1850 from a suit in the Civil Court to try the question of the right of the person against whom the order was made to create the obstruction and for damages.—CHUNDER NARAIN SINGH *v.* BROJO BULLUB GOOIE, 14 B. L. R. 254; 21 W. R. 391. [Couch, C J, and Jackson and Ainslie, JJ. Mar. 24, 1874.]

**Raiyats resisting distraint of crops not protected by s. 79.**—Raiyats are not protected by this section for resistance to distraint of crops where the zemindar's people enter upon the crops with the intention of distraining after notice under s. 116, Act X. of 1859.—REG. *v.* KANHAI SHAHU, 23 W. R. 40. [Glover and Mitter, JJ. Feb. 27, 1875.]

**When zamindar can exercise right of private distraint of crops.**—A zamindar is justified in exercising his right of private distraint of crops, if he has served the defaulters with written notices under Act X. of 1859, s. 116; and, in such a case, raiyats who knowingly resist the distraint are not protected by the Penal Code, s. 79. But if the zemindar's people enter upon crops with the intention of distraining without notice, the raiyat owners are justified in considering such action as trespass. *Quære.*—Would the raiyat in the latter case be protected by the provisions of the Penal Code ss. 97 and 99, in preventing the distraint, and confining the men employed to make it.—QUEEN *v.* KANHAI SHAHU, 23 W. R. 40 [Glover and Mitter, JJ Feb. 27, 1875.]

**A commanding officer who having had an insane person arrested held not to be protected.**—Act XVIII. of 1850 is for the protection of judicial officers acting judicially and of officers acting under their orders. An officer commanding in cantonments, acting *bonâ fide* in the discharge of his public duty, and under the belief that a person was dangerous by reason of insanity, caused him to be arrested in order that he might be examined by medical officers, and caused him to be detained in his house for that purpose, he not being a dangerous lunatic. The medical officers, while, reporting him sane, recommended that he should be placed under the observation of the civil surgeon of the station, for which purpose the same officer caused his further detention. The commanding officer, who, under Act XXII. of 1864, s 11, had control and direction of the police in the cantonment, did not proceed, or intend to proceed, under s. 4 of Act XXXVI. of 1858. *Held* that, although his belief might have justified the commanding officer if he had proceeded under the provisions last mentioned, yet he, not having done so, and not having any legal authority for what he had done, was not protected from liability in respect of the above acts.—SINCLAIR *v.* BROUGHTON, I. L. R., 9 Cal. 341. [Sir Barnes Peacock, Sir M E. Smith, Sir R. P. Collier, and Sir J. Mellor, JJ. June 23, 1882.]

**Calling out "amen" aloud.**—A masjid was used by the members of a sect of Mahomedans called the Hanifis, according to whose tenets the word "amen" should be spoken in a low tone of voice. While the Hanifis were at prayers, R, a Mahomedan of another sect, entered the masjid, and, in the course of the prayers, according to the tenets of his sect, called out "amen" in a loud tone of voice. For this act he was convicted of voluntarily disturbing an assembly engaged in religious worship, an offence punishable under s. 296 of the Penal Code. The Full Bench (Mahmood, J., dissenting) ordered the case to be re-tried, and that, in re-trying it, the Magistrate *should have regard to the following* questions, namely: (1) Was there an assembly, lawfully engaged in the performance of religious worship? (2) Was such assembly, in fact, disturbed by the accused? (3) Was such disturbance caused by acts and conduct on the part of the accused by which he intended to cause such disturbance, or which acts and conduct, and at the time of such acts and conduct, he knew or believed to be likely to cause such disturbance? *Held* by Mahmood, J., that the discussion occasioned by the act of the accused having, presumably, taken place during the interval when the prayers were not going on, the assembly was not at that time 'engaged in the performance of religious worship," and was not "disturbed" within the meaning of s. 296 of the Penal Code; that, in reference to the terms of s 39 of the Code, the accused did not disturb the assembly "voluntarily;" that he was justified by the Mahomedan ecclesiastical law in entering the mosque, and joining the congregation in saying the word "amen" loudly if he thought fit, and his conduct fell within the purview of s. 79 of the Penal Code, and was, therefore, not an offence under s. 296 *Beatly v. Gillbanks* (L R, 9 Q. B. D. 308) referred to. Also *per* Mahmood, J., that, having regard to the guarantee given by the Legislature in s. 24 of Act VI. of 1871 (Bengal Civil Courts Act), that the Mahomedan law shall be administered in all questions regarding "any religious usage or institution," the Court was bound by s 57 of Act I. of 1872 (Evidence Act) to take judicial notice of the Mahomedan Ecclesiastical Law, and the

rules of that law need not be proved by specific evidence.—QUEEN-EMPRESS v. RAMZAN, I. L. R., 7 All. 461. [Petheram, C.J., and Straight, Oldfield, Brodhurst, and Mahmood, JJ. Mar. 7, 1885.]

**A policeman honestly suspecting a person who was carrying stolen cloth put him some questions, and then arrested him, the answers being unsatisfactory: The policeman was prosecuted, and convicted of wrongful confinement: The conviction was quashed, it being held that the police-officer had acted bona fide.**—On the 29th December 1887, the accused, a police-constable, was on duty at a temporary post near the Arthur Crawford Market. His turn of duty lasted from 4 to 7 A.M. Between 6-30 and 7 A.M., he saw the complainant carrying under his arm three pieces of cloth. Suspecting that the cloth was stolen property, he went up to the complainant, and questioned him. In answer to one of the questions the complainant stated that the cloth was made in England. The accused, noticing that each piece bore Gujarathi marks, and not knowing that such marks are placed on English-made goods, concluded that this statement was false, and that the cloth had been stolen. He took hold of one of the pieces of cloth in order to examine it more closely. The complainant objected to this, and there was a scuffle between them for the possession of the cloth. The accused then arrested the complainant, and took him to a European Inspector, to whom he stated the facts, alleging that he had arrested the complainant because he had assaulted him. The Inspector, seeing that the complainant was an old man, and on the accused saying he was not hurt, let the complainant go. The complainant then lodged a complaint before the Acting Chief Presidency Magistrate, charging the accused with wrongful restraint and wrongful confinement, offences punishable under ss. 341 and 342, respectively, of the Penal Code (Act XLV. of 1860) The defence was that the complainant had assaulted the accused, and had been, on that account, arrested and kept in confinement until released by the Inspector of Police. The Magistrate found that there was no justification for the suspicion which the accused professed to entertain; that there were no reasonable grounds for questioning the complainant about the cloth in his possession; and that the scuffle was caused solely by the action of the accused in treating the complainant, without any valid reason, as a suspected thief. The Magistrate convicted the accused of wrongful confinement under s. 342 of the Penal Code (Act XLV. of 1860), and sentenced him to four months' rigorous imprisonment. *Held*, by the High Court, that the conviction was wrong. The accused having, under the circumstances of the case, an honest suspicion that the cloth in the possession of the complainant was stolen property, was justified in putting questions to the complainant, the answers to which might clear away his suspicions, and having received answers which were not, in his opinion, satisfactory, he acted under a *bonâ-fide* belief that he was legally justified in detaining what he suspected to be stolen property. The putting of questions to the complainant, not for the purpose of causing annoyance or from idle curiosity, but in order to clear up his suspicions, was an indication of good faith, as defined in s. 52 of the Penal Code (Act XLV. of 1860). He was, therefore, protected by s. 79 of the Code. Even though the act of the accused in detaining the cloth might not have been strictly justifiable by law—that is, even though there might not have been a complete basis of fact to justify a reasonable suspicion that the cloth was stolen property—still the complainant had no right of private defence under s. 99 of the Code, as the accused was a public servant acting in good faith under colour of his office, and his act was not one which caused the apprehension of death or of grievous hurt. The complainant was not justified in refusing to allow the accused to inspect the cloth, in snatching it from his hands, and in scuffling with him. He was, therefore, legally arrested under s. 54, cl. 5, of the Criminal Procedure Code (Act X. of 1882), for obstructing a police-officer while acting in the execution of his duty. *Held*, also, that the High Court will exercise its powers under ss. 435 and 439 in the interests of justice in exceptional cases, as where the enquiry in the lower Court has been faulty.—BHAWOO JIVAJI v. MULJI DAYAL, I. L. R., 12 Bom. 377. [Birdwood and Parsons, JJ. Mar. 22, 1888.]

**Mistake of fact: Act done in good faith under belief it is justified by law by stopping and examining a palki.**—A Court-peon, accompanied by two of the decree-holder's men (petitioners), went to execute a warrant of arrest against the judgment-debtor M. A *palki* with closed doors was noticed to be coming out of the male apartment of M's house. The petitioners, believing that M was effecting his escape in that *palki*, stopped it, and examined it, although the persons accompanying the *palki* protested, and said there was a lady in it. Admittedly, there was in the *palki* a *parda-nashin* lady of rank. *Held* that, having regard to the terms of s. 79 of the Penal Code, a conviction of the petitioners under s. 341 was

not right.—KANAI LAL GOWALA *v.* QUEEN-EMPRESS, I. L. R., 24 Cal. 885. [Ghose and Wilkins, JJ. July 26, 1897.]

**In charges exceptions need not be repeated.**—This chapter has been framed in order to obviate the necessity of repeating in every penal clause a considerable number of limitations. Some limitations relate only to a single provision, or to a very small class of provisions. Thus, the exception in favour of true imputations on character (cl. 470) is an exception which belongs wholly to the law of defamation, and does not affect any other part of the Code. The exception in favour of the conjugal rights of the husband (cl 359) is an exception which belongs wholly to the law of rape, and does not affect any other part of the Code. Every such exception evidently ought to be appended to the rule which it is intended to modify But there are other exceptions which are common to all the penal clauses of the Code, or to a great variety of clauses dispersed over many chapters. Such are the exceptions in favour of infants, lunatics, idiots, persons under the influence of delirium; the exceptions in favour of acts done by the direction of the law, of acts done in the exercise of the right of self defence, of acts done by the consent of the party harmed by them It would obviously be inconvenient to repeat these exceptions several times in every page. We have, therefore, placed them in a separate chapter; and we have provided that every definition of an offence, every penal provision, and every illustration of a definition or penal provision, shall be construed subject to the provisions contained in that chapter.—P. C. NOTE B. 15.

**Protection of officers.** — No prosecution against any Magistrate, military officer, police-officer, soldier, or volunteer, for any act purporting to be done under this chapter (IX., Unlawful Assemblies), shall be instituted in any Criminal Court, except with the sanction of the Governor-General in Council; and (*a*) no Magistrate or police-officer acting under this chapter in good faith; (*b*) no officer acting under s. 131 in good faith; (*c*) no person doing any act in good faith in compliance with a requisition under s 128 or s. 130, and (*d*) no inferior officer, or soldier, or volunteer, doing any act in obedience to any order which under military law he was bound to obey, shall be deemed to have thereby committed an offence.—CRIM. PRO. CODE (ACT V. OF 1898), s. 132.

**Every man must be presumed to know the law.**—Mistake or ignorance of law is no ground of defence, the general rule being that every person who has capacity to understand the law is presumed to have a knowledge of it. And so far is this principle carried, that it has been held that a foreigner could not be allowed to show as a justification of his act (though he might in mitigation of punishment) that it was no offence in his own country, and that he was not aware it was considered wrong where he was tried. And, however hardly it may bear in some few cases, it is evident that the rule is a necessary one. If a criminal could get off by pleading ignorance of law, convictions would probably be rare; nor could society exist for a year, if even a sincere belief in the propriety of his conduct could justify any one who chose to murder or steal.—ARCH. 19.

**80.** Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge, in the doing of a lawful act in a lawful manner by lawful means, and with proper care and caution.

Accident in doing a lawful act.

*Illustration.*

A is at a work with a hatchet: the head flies off, and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable, and not an offence.

**Accident caused by runaway horses.**—Where a horse ran away with its rider, killing a passer-by, it was held that this was a pure accident, and the rider was not held liable, as he had lost all control over the animal (*Holmes* v. *Mather*, L. R., 10 Ex. 261); but where two omnibuses were racing, and one ran over a passer-by, it was held that this was not an accident, and that the driver was liable, because he had so urged his horses that he could not stop them afterwards, he having lost the command of them by his own act.—1 RUSS. 828.

**Nature of caution the law requires.**—The caution which the law requires is not the utmost caution that can be used, but such reasonable precaution as is used in similar cases, and has been found by long experience, and in the ordinary course of things, to answer the end.—ALISON'S CRIM. L. 143.

**Wife accidentally killed with a gun not known to be loaded.**—A man, having discharged his gun, went out to dine. On his return he took up the gun, and touched the trigger. The gun went off killing his wife. He was not aware that in his absence the gun had been loaded by some one. He was acquitted.—ALISON'S CRIM. L. 265.

**A girl accidentally killed by a shot which penetrated her eye.**—A man, having loaded a fowling-piece with small shot, fired it in a field within an easy shot of a high road, which was used by passers-by. One of the shots killed a girl who was passing by. The evidence showed that the shot was really a long one being above fifty yards, and that it proved fatal owing to one of the shots penetrating the child's eye, while the other shot hardly penetrated the skin. Under the above circumstances it was held that the death was accidental.—ALISON'S CRIM. L. 144.

**81.** Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Act likely to cause harm, but done without criminal intent, and to prevent other harm.

*Explanation.*—It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

*Illustrations.*

(*a.*) A, the captain of a steam-vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat, B, with 20 or 30 passengers on board, unless he changes the course of his vessel; and that, by changing his course, he must incur risk of running down a boat, C, with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C, and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down C.

(*b.*) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention, in good faith, of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

**Placing the juice of the milk-bush in toddy-pots to detect an unknown thief.**—Held that a person who placed in his toddy-pots juice of the milk-bush, knowing that, if taken by a human being, it would cause injury, and with the intention of thereby detecting an unknown thief who was in the habit of stealing the toddy from such pots, and which toddy was drunk by, and caused injury to, certain soldiers who purchased it from an unknown vendor, was rightly convicted, under s. 328 of the Penal Code, of 'causing to be taken an unwholesome thing with intent to injure," and that s. 81, which says that, "if an act be done without any criminal intention to cause harm, it is not an offence," did not apply to the case.—REG. v. DHANA DAJI, 5 Bom. H. C. R. 59. [Newton and Tucker, JJ. July 23, 1868.]

**A sepoy turning out to extinguish a fire, and kicking a chief constable not in uniform at a fracas between the sepoys and the police.**—The accused was a sepoy in a Native Infantry regiment. On the occasion of a fire in the city of Ahmednagar, he and the rest of his company turned out to assist in extinguishing it. He, with other sepoys, was stationed by their officer, with orders to keep clear a space in front of the burning house, and not to allow any one not in uniform to intrude on that space. The police under the city chief constable were also engaged at the fire; and, on some of them coming round from the rear, they were warned off by the sentries. A fracas between the soldiers and the police took place, and the chief constable was kicked by the accused For this he was charged before the Magistrate, and fined for voluntarily causing hurt under s. 323 of the Penal Code. In evidence it appeared that the police attempted to force the military guard which had been posted as above stated, and

it was further proved that the chief constable was not in uniform, and that the accused did not know who he was. It was not alleged that the kick was unnecessarily violent. *Held* that the conviction was bad. The Magistrate having found that the chief constable was not in uniform, and that the accused did not know who he was, the kick was justifiable as given in good faith for the purpose of preventing much greater harm under s. 81 of the Penal Code, and as a means of acting up to the military order.—QUEEN-EMPRESS v. BOSTAN, I. L. R., 17 Bom. 626. [Jardine and Telang, JJ. Aug. 18, 1892.]

**Theft committed from hunger to prevent starvation.**—The following are the remarks of the Indian Law Commissioners in connection with the above section: "Nothing is more usual than for thieves to urge distress and hunger as excuses for their thefts. It is certain, indeed, that many thefts are committed from the pressure of distress so severe as to be more terrible than the punishment of theft, and than the disgrace which that punishment brings with it to the mass of mankind. It is equally certain that when the distress from which a man can relieve himself by theft is more terrible than the evil consequences of theft, those consequences will not deter him from committing theft. Yet it by no means follows that it is irrational to punish him for theft; for though the fear of punishment is not likely to keep any man from theft when he is actually starving, yet it is very likely to keep him from being in a starving state. It is of no effect to counteract the irresistible motive which immediately prompts to theft, but it is of great effect to counteract the motives to that idleness and that profusion which end in bringing a man to that condition in which no law will keep him from committing theft."

Act of a child under seven years of age.

**82.** Nothing is an offence* which is done by a child under seven years of age.

Act of a child, above 7 and under 12, of immature understanding.

**83.** Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

**Capacity to do wrong to be measured by strength of understanding, not by years.**—In construing s. 83 of the Penal Code, the capacity of doing that which is wrong is not so much to be measured by years as by the strength of the offender's understanding and judgment. The circumstances of a case may disclose such a degree of malice as to justify the application of the maxim *malitia supplet ætatem*.—QUEEN v. MUSSAMUT AIMONA, 1 W. R. 43. [Kemp and Glover, JJ. Dec. 14, 1865.]

**Incapacity to commit offence arises where a child has not attained sufficient maturity of understanding.**—An objection that the accused is of such an age as not to have attained sufficient maturity of understanding to judge of the nature and consequences of his conduct is not one of a preliminary character, but rather a matter of defence, to be considered with the other issues arising in the case. Where the accused was over seven years of age, and under twelve, the incapacity to commit an offence only arises where the child has not attained sufficient maturity, &c.; such non-attainment would have apparently to be specially pleaded and proved. The "consequences of his conduct" mentioned in s 83, Penal Code, are not the penal consequences to the offender, but the natural consequences which flow from a voluntary act.—QUEEN v. LUKHINI AGRADANINI, 22 W. R. 27. [Jackson and McDonell, JJ. June 11, 1874.]

**Discharge of child-thief for want of understanding.**—The fact that a child has been tried for theft and discharged under s. 215 of the Code of Criminal Procedure, 1872, on the ground of want of understanding within the meaning of s. 82 of the Penal Code, is no bar to the conviction of a person charged under s. 411 of the Penal Code with receiving the property alleged to have been stolen.—QUEEN v. KRISHNA, I. L. R., 6 Mad. 373. [Kernan and Muttusami Ayyar, JJ. April 24, 1883.]

**When maturity of understanding is to be presumed.**—Upon the above section the Indian Law Commissioners remark as follows: "It would seem from this that maturity of understanding is to be presumed

* See, however, the Indian Railways Act (IX. of 1890), s. 130, as to offences committed by children against certain provisions of that Act.

in the case of such a child unless the negative be proved on the defence." But, according to the English law, during this second period, "an infant shall be *primâ facie* deemed to be *doli incapax*, and presumed to be unacquainted with guilt; yet this presumption will diminish with the advance of the offender's years, and will depend upon the particular facts and circumstances of his case. The evidence of malice, however, which is to supply age, should be strong and clear beyond all doubt and contradiction."—1 RUSS. 109.

**Confinement in reformatory.** — When any person under the age of 15 years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Local Government prescribes with regard to the discipline and training of persons confined therein.—CRIM. PRO. CODE (ACT V. OF 1898), s. 399.

**Presumption that a child has not guilty knowledge.**—If a child more than seven and under 14 (under the Penal Code, under 12) is indicted for a felony, it will be left to the jury to say whether the offence was committed by him, and, if so, whether at the time of the commission of the offence the prisoner had a guilty knowledge that he or she was doing wrong; and the presumption of law is that a child of that age has not such guilty knowledge, unless the contrary is proved—*Per* Littledale, J., in *Rex* v. *Owen*, 4 C. V. P. 236. And this maturity of understanding must be affirmatively proved by the prosecution (*Reg.* v. *Vamplew*, 3 F. & F. 520), and must, in most cases, be inferred from surrounding circumstances.

**84.** Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

Act of a person of unsound mind.

**An apparently insane person charged with murder.**—A prisoner was charged with he murder of his wife and his mother. His child was also wounded, but recovered under medical treatment. There was an absence of all motive for the crime, and there was independent evidence of the prisoner's previous insanity—evidence which is not without weight. Although the medical officer reports and deposes that, during the month, the prisoner has been under his observation, he has shown no symptoms of insanity, yet the medical officer hesitates to say that the prisoner may not have been insane at some former period. The neighbours deposed to his insanity, and gave instances of conduct on his part which were quite inconsistent with the theory that the prisoner was sane. His wife and his mother, in their dying declarations, stated that he was a good husband and son; that he never quarrelled with his wife; that he was quiet, but subject to fits of temporary insanity. With their dying breath they emphatically denied that he committed a voluntary and premeditated murder. "With all the evidence before us," say the High Court, "we cannot but acquit the prisoner, leaving the Judge to take such steps for his safe custody as the law sanctions.—QUEEN *v.* SHEIKH MUSTAFFA, 1 W. R. 19. [Loch and Seton-Karr, JJ. Aug. 1, 1864.]

**What a Judge should do when an accused person is found to be insane before the completion of the trial.**—When an accused person is found to be insane before the completion of his trial, the Judge should postpone the trial under s. 389, and report the case to the Lieutenant-Governor under s. 390 of the Code of Criminal Procedure, instead of trying the accused when he is incapable of making his defence, and acquitting him under s. 394, on the ground that he committed the offence charged when he was incapable of knowing that he was doing wrong, and consequently that he has committed no offence under s 84 of the Penal Code—QUEEN *v.* NOORKHAN CHOWDRY, 1 W. R. 11. [Kemp and Glover, JJ. Sep. 9, 1864.]

**Course to be adopted where the sanity of a prisoner, who was sentenced to death, was, before confirmation of sentence, doubted.**—The prisoner was convicted of murder, and sentenced to death. But, before confirming the sentence, as doubts were entertained of her sanity, the case was referred to the Sessions Judge with instructions for further enquiry.—QUEEN *v.* ARZAO BEBEE, 2 W. R. 33. [Kemp and Glover, JJ. Feb. 4, 1865.]

**A prisoner, who was convicted by the Sessions Judge, was acquitted by the**

**High Court on the ground of insanity.**—Case in which the prisoner, notwithstanding that he had been convicted by the Sessions Judge, was acquitted by the High Court on the ground of insanity under s. 393 of the Code of Criminal Procedure, and directed to be kept in safe custody, pending the orders of the Local Government to be applied for by the Judge.—QUEEN *v.* PURSORAM DOSS, 7 W. R. 42. [Kemp and Glover, JJ. Mar. 11, 1867.]

**Father sacrificing his son.**—Curious case of murder where a father sacrificed his son, because wealth had not accompanied its birth, and afterwards cut his own throat as a protest against his deity's injustice.—QUEEN *v.* BISHENDHAREE, 7 W. R. (100) 64. [Glover and Hobhouse, JJ. May 7, 1867.]

**Unsoundness of mind must be clearly proved to justify a verdict under s. 84.**—The fact of unsoundness of mind is one which must be clearly and distinctly proved before any jury is justified in returning a verdict under s. 84 of the Penal Code.—QUEEN *v.* NOBIN CHUNDER BANERJEE, 20 W. R. 70; 13 B. L. R. App. 20. [Macpherson and Morris, JJ. Oct. 21, 1873.]

**Test of soundness of mind at the time of the commission of the act.**—The test to determine whether a person who has committed an act, which is charged against him as an offence, was of sound mind at the time of its commission, is whether he knew that he was doing wrong.—QUEEN *v.* JUGO MOHUN MALO, 24 W. R. 5. [Glover and Mitter JJ. June 2, 1875.]

**Father killing his two younger children: Legal test of responsibility in cases of alleged unsoundness of mind.**—S. 84 of the Penal Code lays down the legal test of responsibility in cases of alleged unsoundness of mind. It is by this test, as distinguished from the medical test, that the criminality of an act is to be determined. The accused killed his two young children with a hatchet. The reason given for the crime was that, while he was laid up with fever the crying of the children annoyed him. It was alleged that the fever had made him irritable and sensitive to sound, but it did not appear that he was delirious at the time of perpetrating the crime. There was no attempt at concealment, and the accused made a full confession. *Held* that, as the accused was conscious of the nature of his act, he must be presumed to have been conscious of its criminality. He was, therefore, guilty of murder.—QUEEN-EMPRESS *v.* LAKSHMAN DAGDU, I. L. R., 10 Bom. 512. [Birdwood and Jardine, JJ. Mar. 4, 1886.]

**Accused stabbing and killing his brother's child: Plea, insanity: Conviction for murder upheld.**—The accused stabbed a child (his brother's wife) with a sword, and killed her. He was charged with murder, and a plea of insanity was set up at the trial. No motive could be assigned for his attack on the child, in which he persisted in the presence of other persons: and it appeared that he had been in the habit of treating the child kindly and affectionately. He was suffering from fever and want of food at the time, and the medical evidence showed it was possible that the act was committed under a sudden attack of homicidal mania. It was in evidence that he had abused some of his relations a short time before, the abuse being probably due to irritability of mind caused by fever. He confessed the crime to the Village Magistrate, and answered questions put to him rationally; but before the committing Magistrate and the Sessions Judge he denied that he had killed the child. He was convicted of murder. *Held* that as the accused was not proved to have been, by reason of unsoundness of mind, incapable of knowing the nature of his act, or that he was doing what was wrong or contrary to law, the conviction was right. *Queen-Empress* v. *Lakshman Dagdu* (I. L. R., 10 Bom. 512) approved.—QUEEN-EMPRESS *v.* VENKATASAMI, I. L. R., 12 Mad. 459. Collins C.J., and Muttusami Ayyar, J. April 15, 1889.]

**A ganja-smoker charged with the murder of his wife and infant son: Plea, insanity: Conviction for murder. Sentence, death.**—The accused, who was a habitual *ganja* smoker, was charged with the murder of his wife and infant son. In his confession he stated that he had killed his wife, because she quarrelled with him, and objected to go to another village, where he proposed a change of house on account of their poverty. He adhered to this statement when placed for trial before the Court of Session. The Sessions Judge treated this statement as a plea of guilty on the charge of murder, convicted the accused, and sentenced him to death, subject to confirmation by the High Court. *Held* (*per* Jardine and Candy, JJ.) that the accused's statement did not amount to a plea of guilty on the charge of murdering his wife. He alleged a sudden provocation: he ought, therefore, to have been put on his trial, in order that the Court might ascertain whether the provocation was grave and sudden enough to prevent the offence from amounting to murder. *Held* (*per* Birdwood and Jardine, JJ.) that, unless the accused's habit of smoking *ganja* had induced in him such

a diseased state of mind as to make him incapable of knowing the nature of his act or its criminality, s. 84 of the Indian Penal Code did not apply in his favour. *Queen-Empress* v. *Lakshman Dagdu* (I. L. R., 10 Bom. 512) distinguished.—QUEEN-EMPRESS v. SAKHARAM *valad* RAMJI, I. L. R., 14 Bom. 564. [Birdwood, Jardine, and Candy, JJ. Feb. 25, 1890.]

**Where unsoundness of mind held insufficient to exonerate an accused person from responsibility for crime under s. 84.**—The confession of an accused person made in Bengali, the language in which the accused was examined, was recorded in English. The committing Magistrate, in his evidence in Court, said that he could not write Bengali well, and that there was no mohurrir with him at the time when the confession was recorded. *Held* the provisions of s. 364 of the Criminal Procedure Code had been sufficiently complied with. *Jai Narayan Rai* v. *Queen-Empress* (I. L. R., 17 Cal. 862) distinguished. Where the unsoundness of mind deposed to was not such as would make the accused incapable of knowing the nature of the act, or that he was doing what was contrary to law, it was held to be insufficient to exonerate him from responsibility for crime under s. 84 of the Penal Code. — QUEEN-EMPRESS v. RAZAI MIA, I. L. R., 22 Cal. 817. [Macpherson and Banerji, JJ. July 1, 1895.]

**Unsoundness of mind: Legal test of criminal liability.**—A person subject to insane impulses, but whose cognitive faculties appear to be unimpaired, is not, by virtue of s. 84 of the Penal Code, exempt from criminal liability. *Semble.*—In extreme cases it is difficult to say that the cognitive faculties are not affected when the will and the emotions are affected. It may, therefore, be said that, under the provisions of s. 84 of the Penal Code, exemption from criminal liability by reason of unsoundness of mind extends as well to cases where insanity affects the offender's will and emotions as to those where it affects his cognitive faculties. *Queen-Empress* v. *Lakshman Dagdu* (I. L. R, 10 Bom. 512), *Queen-Empress* v. *Venkatasami* (I. L. R, 12 Mad. 459), and *Queen-Empress* v. *Razai Mia* (I. L. R., 22 Cal. 817), followed.—QUEEN-EMPRESS *v.* KADER NASYER SHAH, I. L. R., 23 Cal. 604. [O'Kinealy and Banerjee, JJ. April 15, 1896.]

**85.** Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law: provided that the thing which intoxicated him was administered to him without his knowledge, or against his will.

Act of a person incapable of judgment by reason of intoxication caused against his will.

**Murder committed in a drunken quarrel.**—In a case of murder committed in a drunken squabble, it was held that voluntary drunkenness, though it did not palliate any offence, may be taken into account as throwing light upon the question of intention.—QUEEN *v.* RAM SAHOY BHUR, W. R., Gap, 1864, 24. Steer and Glover, JJ. April 29, 1864.]

**Voluntary intoxication, no plea for offence.**—Voluntary intoxication is not a valid plea for an offence. — QUEEN *v.* BODHEE KHAN, 5 W. R. 79. [Kemp, J. May 17, 1866.]

**Offence committed during voluntary intoxication.**—Drunkenness does not, in the eye of the law, make an offence the more heinous though it is no excuse; and an act which, if committed by a sober man, is an offence, is equally an offence if committed by one when drunk, if the intoxication was voluntarily caused.—QUEEN *v.* ZOOLKAR KHAN, 16 W. R. 36; 8 B. L. R. App. 21. [Macpherson and Ainslie, JJ. July 31, 1871.]

**86.** In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge, or against his will.

Offence requiring a particular intent or knowledge committed by one who is intoxicated.

**Drunkenness is not any excuse for crime.**—The following notes on the above section, taken from Starling's "Indian Criminal Law and Procedure," will be found useful:—

"By the English law drunkenness is not any excuse for crime (Pearson's Case, 2 Lewin, C. C., 144). Still, by the practice of the Courts in England, it is constantly held that a person who is intoxicated may

be incapable of having any intention, and thus the nature of an offence may be considerably reduced, though intoxication does not render him entirely dispunishable for the act he may have committed while under the influence of liquor. Thus, in a case of stabbing, where the prisoner used a deadly weapon, the fact that he was drunk does not at all alter the nature of the case; but if he had intemperately used an instrument not in its nature a deadly weapon at a time when he was drunk, the fact of his being drunk might induce the jury to less strongly infer a malicious intent in him at the time."—*Per* ANDERSON, B., in *Rex* v. *Meakin*, 7 C. and P. 297.

"Again, Parke, B., says that, if a man is drunk, this is no excuse for any crime he may commit; but where provocation by a blow has been given to a person who kills another with a weapon which he happens to have in his hand, the drunkenness of the prisoner may be considered on the question whether he was excited by passion or acted from malice, as also it may be on the question whether expressions used by the prisoner manifested a deliberate purpose, or were the idle expression of a drunken man."—*Rex* v. *Thomas*, 7 C. and P. 817.

"In a third case, Crowder, J. laid it down that, though drunkenness is no excuse for crime, it may be taken into account by the jury when considering the motive or intent of a person acting under its influence."—*Reg.* v. *Gamlen*, 1 F and F. 90

"Where, on a trial of an indictment for an attempt to commit suicide, it appeared that the prisoner was, at the time of the commission of the alleged offence, so drunk that she did not know what she was doing it was held that this negatived the intent to commit suicide."—*Reg* v. *Moore*, 3 C. and K. 319; 16 Jur. 750.

**Murder in a drunken squabble.**—In a case of murder committed in a drunken squabble, it was held that voluntary drunkenness, though it did not palliate any offence, might be taken into account as throwing light on the question of intention —QUEEN v. RAM SAHOY BHUR, W. R. Gap, 1864, 24 [Steer and Glover, JJ. April 29, 1864.]

**Intoxication no excuse for murder.**—Intoxication is no excuse for a man throttling to death another and a weaker man who was intoxicated also. The assessors having brought the case within exception 4 of s. 300 of the Penal Code without any good evidence or substantial grounds, the Sessions Judge was held to have correctly overruled their verdict, and found the prisoner guilty of murder.—QUEEN v. AKULPUTTEE GOSSAIN, 5 W. R. 58. [Seton-Karr, J. Mar. 26, 1866.]

**Intoxication no excuse for murder.**—Voluntary intoxication is not a valid plea for an offence.—QUEEN v. BODHEE KHAN, 5 W. R. 79 [Kemp, J. May 17, 1866.]

**Murder where two parties, in a drunken state, abuse each other, and one of them strike the other with a heavy pestle.**—Two parties met each other in a drunken state, and commenced a quarrel, during which they became grossly abusive to each other. This lasted for about half an hour, when one of them ran to his own house, distant 30 yards from the spot, and came back with a heavy pestle, with which he struck the other a violent blow on the left temple as the latter was rising, or had just risen, from the ground, causing instant death. *Held* that the act was done with the intention of causing such bodily injury as was likely to cause death, and also with the knowledge that such act was likely to cause death, and that the offence committed was murder within the provisions of clauses 2 and 3 section 300 of Indian Penal Code.—QUEEN v. DASSER BHOOYAN, 8 W. R. 71. [Kemp, Seton-Karr, and Mitter, JJ. Sep. 11, 1867.]

**An offence is equally an offence if committed during drunkenness.**—Drunkenness does not, in the eye of the law, make an offence the more heinous, though it is no excuse; and an act which, if committed by a sober man, is an offence, is equally an offence, if committed by one when drunk, if the intoxication was voluntarily caused.—QUEEN v. ZULFKAR KHAN, 16 W. R. 36; 8 B. L. R. App. 21. [Macpherson and Ainslie, JJ. July 31, 1871.]

Act not intended, and not known to be likely, to cause death or grievous hurt, done by consent.

**87.*** Nothing which is not intended to cause death or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person above eighteen years of age who has given consent, whether express or implied, to suffer that harm; or by

* For exception to ss 87, 88, and 89, see s 91, *infra*.

reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

*Illustration.*

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if A, while playing fairly hurts Z, A commits no offence.

**88.*** Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit† it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm or to take the risk of that harm.

Act not intended to cause death done by consent in good faith for person's benefit.

*Illustration.*

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z with Z's consent. A has committed no offence.

**Emasculation: Culpable homicide not amounting to murder.**—One count charging each specific offence, and describing it with a reasonable degree of certainty, is sufficient. Where a man of full age (*i.e.*, above 18 years) submits himself to emasculation, performed neither by skilful hand, nor in the least dangerous way, and dies from the injury, the persons concerned in the act are guilty of culpable homicide not amounting to murder.—QUEEN *v.* BABOOLUN HIJRAH, 5 W. R 7 [Norman and Campbell, JJ. Jan. 15, 1866.]

**Murder by consent.**—In a case of murder by consent, *held* that evidence of consent, which would be sufficient in a civil transaction, must be equally sufficient in exculpation of a prisoner's guilt.—QUEEN *v.* ANUNTA RUBNAGAT, 6 W. R. 57. [Kemp and Markby, JJ. Aug. 25, 1866.]

**Emasculation: Culpable homicide.**—The benefit alluded to in this section must be some physical benefit, that is, the alleviation of some disease, or diseased or disorganized condition of some part or member of the body. Thus, if a man, desiring to enter the society of eunuchs, induces another to castrate him, the operator is liable for the consequences of the emasculation. And, in the case of *Reg. v. Baboolun Hijrah* (5 W R. 7), it was held that, where a man of full age (over 18 years) voluntarily submitted himself, for the cure of no disease, to emasculation, performed neither by a skilful hand nor in the least dangerous way, and died from the injury, the persons concerned in the act were guilty of culpable homicide, although not only did they not know that emasculation was unlawful, but believed that a man might cause himself to be emasculated if he pleased.

**Kobiraj operating for piles: Conviction under s. 304A.**—A kobiraj operated on a man for internal piles by cutting them out with an ordinary knife. The man died from hæmorrhage. The kobiraj was charged, under s. 304A of the Penal Code, with causing death by doing a rash and negligent act It was contended that inasmuch as the prisoner had performed similar operations on previous occasions, it was not a rash act within the meaning of that section, and that, at all events, he was entitled to the benefit of s. 88 of the Penal Code, as he did the act in good faith, without any intention to cause death, and for the benefit of the patient who had accepted the risk. *Held* that, as the prisoner was admittedly uneducated in matters of surgery, and having regard to the meaning of "good faith" as defined in s. 52 of the Penal Code, he was not entitled to the benefit of s. 88. *Held* further that s. 88 did not apply to the case, as it was not shown by the accused, on whom the burden of proving that fact lay, that the deceased knew the risk he was running in consenting to the operation, and he could not, therefore, be said to have accepted the risk. *Held* also that, under the circumstances, the conviction under s. 304A was a proper one.—SUKAROO KOBIRAJ *v.* THE EMPRESS, I. L. R., 14 Cal. 566. [Tottenham and Ghose, JJ. April 30, 1887.]

* For exception to ss. 87, 88, and 89, see s. 91, *infra*.

† Pecuniary benefit is not "benefit" within the meaning of this section.—See s. 92 (expl.), *infra*.

**89.*** Nothing, which is done in good faith for the benefit † of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person :

Act done in good faith for benefit of child or insane person by or by consent of guardian.

Provisos. Provided—

*First.*—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death;

*Secondly.*—That this exception shall not extend to the doing of any thing which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

*Thirdly.*—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

*Fourthly.*—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

*Illustration.*

A, in good faith, for his child's benefit, without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

**90.** A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent known to be given under fear or misconception.

if the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or,

Consent of insane person.

unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

Consent of child.

**Rape**—Sexual intercourse by a man with a woman without her free consent, *i.e.*, a consent obtained without putting her in fear of injury, amounts to rape; and the Judge should leave the question to the jury, and not direct them to find that the woman's consent after a considerable struggle renders the charge of rape nugatory.—QUEEN *v.* AKBAR KAZEE, 1 W. R. 21. [Kemp and Glover, JJ. Nov. 11, 1864.]

**Snake-charmers inducing a person to be bitten by a poisonous snake.**—The accused, who professed to be snake-charmers, persuaded the deceased to allow themselves to be bitten by a poisonous snake, inducing them to believe that they had power to protect them from harm. *Held* that the offence would have been murder under s. 300 of the Penal Code, if, under the circumstances of the case, it did not fall

* For exception to ss. 87, 88, and 89, see s. 91, *infra*.

† Pecuniary benefit is not "benefit" within the meaning of this section.—See s. 92 (expl.), *infra*.

within the 5th exception to that section. *Held* that the consent given by the deceased allowing themselves to be bitten did not protect the accused, such consent having been founded on a misconception of facts, that is, in the belief that the accused had power by charms to cure snake-bites, and the accused knowing that the consent was given in consequence of such misconception (s. 90, Penal Code).—QUEEN *v.* POONAI FATTEMAH, 12 W. R. 7; 3 B. L. R. A. Cr. 25. [Norman and Jackson, JJ. June 14, 1869.]

**91.** The exceptions in sections 87, and 88, and 89, do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Exclusion of acts which are offences independently of harm caused.

*Illustration.*

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause, or be intended to cause, to the woman. Therefore it is not an offence "by reason of such harm;" and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

**92.** Nothing is an offence by reason of any harm which it may cause to a person for whose benefit* it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit.

Act done in good faith for benefit of a person without consent.

Provisos. Provided—

*First.*—That this exception shall not extend to the intentional causing of death, or the attempting to cause death;

*Secondly.*—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

*Thirdly.*—That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

*Fourthly.*—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

*Illustrations.*

(*a.*) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(*b.*) Z is carried off by a tiger. A fires at the tiger, knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.

(*c.*) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's

* Pecuniary benefit is not "benefit" within the meaning of this section.—See explanation to this section, *infra*, p. 94.

guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(*d*.) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the house top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

*Explanation.*—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89, and 92.

**Emasculation.**—The benefit alluded to in this section must be some physical benefit, that is, the alleviation of some disease, or diseased or disorganized condition of some part or member of the body. Thus, if a man, desiring to enter the society of eunuchs, induces another to castrate him, the operator is liable for the consequences of the emasculation. And, in the case of *Reg.* v. *Baboolun Hijrah* (5 W. R. 7), it was held that, where a man of full age (over 18 years) voluntarily submitted himself, for the cure of no disease, to emasculation, performed neither by a skilful hand nor in the least dangerous way, and died from the injury, the persons concerned in the act were guilty of culpable homicide, although not only did they not know that emasculation was unlawful, but believed that a man might cause himself to be emasculated if he pleased.

**Emasculation.** — One count charging each specific offence, and describing it with a reasonable degree of certainty, is sufficient. Where a man of full age (*i.e.*, above 18 years) submits himself to emasculation, performed neither by skilful hand, nor in the least dangerous way, and dies from the injury, the persons concerned in the act are guilty of culpable homicide not amounting to murder.—QUEEN *v.* BABOOLUN HIJRAH, 5 W. R. 7. [Norman and Campbell, JJ. Jan. 15, 1866.]

**93** No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

Communication made in good faith.

*Illustration.*

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

**94**. Except murder and offences against the State, punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence: provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Act to which a person is compelled by threats.

*Explanation 1.*—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

*Explanation 2.*—A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law, for example, a smith compelled to take his tools, and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

**Abetment by police-inspector of murder.**—The conviction of a police-inspector for having abetted the bringing of a false charge of murder quashed, because it was not distinctly shown that he preferred the charge *malâ fide*. — QUEEN *v.* MATHOORA

PERSHAD PANDEY, 2 W. R. 10. [Kemp and Glover, JJ. Jan. 18, 1865.]

**False evidence: one of the false statements charged having been made to the police under compulsion.** — Discussion as to the propriety of a conviction on a charge of false evidence, one of the statements charged having been made to the police under compulsion. — QUEEN *v.* NAGENA OURUT, 3 W. R. 6. [Campbell, Jackson, and Glover, JJ. May 3, 1865.]

**Admission of commission of crime under compulsion.**—An admission by A and B that the crime charged against them was committed by C and D, and that whatever share they had in it was under compulsion, is not a confession on which any person ought to be convicted. — QUEEN *v.* KISTO MUNDUL, 7 W. R. 8. [Kemp and Markby, JJ. Jan. 7. 1867.]

**Act done under fear of death.** — A prisoner, in order to obtain the benefit of this section, must show that the act was done under fear of instant death Therefore, persons giving false evidence under the alleged influence of a threat are not protected by this section.—REG. *v.* SONOO, 10 W. R. 48. [Glover, J. Oct. 28, 1868.]

**Offering bribe owing to threats.**—The accused, who were classers employed in the Revenue Survey Department, were charged, under s. 161 of the Indian Penal Code, with taking bribes from the raiyats of certain villages The only evidence against the accused was that of persons who had either subscribed to the bribes, or collected subscription or paid the money to the accused. They stated that they had offered the bribes, because the classers had threatened to raise the assessment, cut down the hedges, and erect new boundary-marks. As regards this evidence, the trying Magistrate remarked that, even if all the witnesses for the prosecution were treated as accomplices, it was open to him to convict on their uncorroborated testimony, as "there was inherent truth in their statements, and circumstances existed which negatived the presumption of a conspiracy, and evidenced signs of truthfulness." The Magistrate was also of opinion that there was a distinction between accomplices who volunteered to assist in the receipt of illegal gratifications and those who assisted under compulsion. In the opinion of the Magistrate, the witnesses in the present case belonged to the latter class, and there was no reason to disbelieve their evidence. He, therefore, convicted the accused under s 161 of the Indian Penal Code, and sentenced them to rigorous imprisonment and fine. *Held* (Scott, J., dissenting) that the convictions were illegal, there being no evidence to corroborate the witnesses for the prosecution, all of whom were accomplices. *Held* also (Scott, J., dissenting) that there was such error in the consideration by the Magistrate of the evidence as to prejudice the accused, and such a failure of justice as to justify the Court in revision in setting aside the convictions. *Per Curiam.*—The limits of the application of the doctrine of necessity as an excuse for an act otherwise criminal are those prescribed in s. 94 of the Indian Penal Code. Therefore, witnesses who, in order to avoid pecuniary injury or personal molestation, had offered or given bribes to a public servant, were abettors of the offence of taking an illegal gratification, and their evidence should be treated as that of accomplices. By the law both of India and England, the evidence of an accomplice is admissible, and a conviction is not illegal because it proceeds upon the uncorroborated testimony of an accomplice (s. 133 of the Evidence Act, I of 1872). But the presumption that an accomplice is unworthy of credit, unless corroborated in material particulars, has become a rule of practice of almost universal application. *Per* Scott, J.—There may be, however, cases of an exceptional character in which the accomplice's evidence alone convinces a Judge, and, if he acts on that conviction, with the character of the witnesses clearly present in his mind, a Revisional Court ought not to interfere in the absence of other circumstances showing a want of judicial discretion. *Per* Jardine, J.—The mere circumstance of a person being present on a lawful occasion does not raise a presumption of that person's complicity in an offence then committed so as to make s. 34 of the Indian Penal Code applicable. *Reg.* v. *Farler*, 8 C. and P. 106. Where the Magistrate on that ground did make that presumption against an accused person, and applied the provisions of s. 34, he committed an error in law, and the High Court, as a Court of Revision, might acquit the accused.—QUEEN-EMPRESS *v.* MAGANLAL AND MOTILAL, I. L. R., 14 Bom. 115 [Bayley, Scott, and Jardine, JJ. Sep. 24, 1889.]

**A policeman was held to be guilty of abetment where he did not arrest a person who was committing assaults likely to cause grievous hurt.**—Nothing but fear of instant death is a defence for a policeman who tortures any one by order of a superior. The maxim, *Respondeat superior*, has no application in such a case. Under the Bombay Police Act (IV. of 1890) every police-officer is bound to shelter a person in custody, and

to arrest persons committing assaults likely to cause grievous bodily injury. If he omits to perform this duty, he is guilty of abetment.—QUEEN-EMPRESS *v.* LATIFKHAN, I. L. R., 20 Bom. 394. [Jardine and Ranade, JJ. Mar. 12, 1895.]

**95.** Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Act causing slight harm.

**What the Law Commissioners say.**—The Law Commissioners, in framing the above section, state: "This section is intended to provide for those cases which, though from the imperfections of language, they fall within the letter of the law, are yet not within its spirit, and are all over the world considered by the public, and for the most part dealt with by the tribunals, as innocent. As our definitions are framed, it is theft to dip a pen in another man's ink, mischief to crumble one of his wafers, an assault to cover him with a cloud of dust by riding past him, hurt to incommode him by pressing in getting into a carriage. There are innumerable acts without performing which men cannot live together in society, acts which all men constantly do and suffer in turn, and which it is desirable that they should do and suffer in turn, yet which differ only in degree from crime. That these ought not to be treated as crime is evident, and we think it far better expressly to except them from the penal clauses of the Code than to leave it to the Judges to except them in practice."

**Taking pods (almost valueless) from a tree.**—Conviction and sentence by a Magistrate reversed, as the act of which the accused were convicted—taking pods (almost valueless) from a tree standing upon Government waste ground—came within the meaning of s. 95 of the Penal Code, and did not, therefore, amount to an offence.—REG *v.* KASYA BIN RAVJI, 5 Bom. H. C. R. 35. [Newton, Offg. C.J., and Tucker, J. May 20, 1868.]

**A blow across the chest with an umbrella.** — The pain caused by a blow across the chest with an umbrella was held to be not of such a trivial character as to come within the meaning of the Penal Code, s. 95.—GOVT. OF BENGAL *v.* SHEO GOLAM LALLA, 24 W. R. 67. [Glover and Mitter, JJ. Nov. 22, 1875.]

**Tearing up a rough account.**—A, having had certain transactions with B, wrote out a rough account showing his indebtedness to B, and signed the total. The paper was not stamped. B afterwards presented it to A, and demanded payment of the total amount. A paid part only, and after an altercation tore up the paper. *Held* that the act of tearing up the paper constituted the offence of destroying a valuable security, and the harm caused was such that a person of ordinary sense and temper would complain of it.—QUEEN-EMPRESS *v.* RAMASAMI, I. L. R., 12 Mad. 148. [Collins, C.J., and Wilkinson, J. Nov. 15, 20, 1888.]

**A railway-guard, who told a passenger, "I suspect you are travelling with a wrong (false) ticket," was held to have acted bona fide.**—A railway-guard, having reason to suppose that a passenger travelling by a certain train from Madras to Chingleput had purchased his ticket at an intermediate station, called upon the plaintiff and others of the passengers to produce their tickets. As a reason for demanding the production of the plaintiff's ticket, he said to him in the presence of the other passengers, "I suspect you are travelling with a wrong (false) ticket," which was the defamation complained of. The guard was held to have spoken the above words *bonâ fide Held*, the plaintiff was not entitled to a decree for damages.—SOUTH INDIAN RAILWAY COMPANY *v.* RAMAKRISHNA, I. L. R., 13 Mad. 34. [Collins, C.J. and Wilkins, J Mar. 25, May 1, 1889.]

**Mere abusive and insulting language not amounting to defamation, such as "sala," &c., is not actionable.**—*Held* by the majority of the Full Bench (Maclean, C.J., Macpherson, Hill, and Jenkins, JJ., Ghose, J., dissenting) that mere use of abusive and insulting language, such as *sala* (wife's brother), *haramzada* (base born or bastard), *soor* (pig), *baper beta* (son of the father, that is, ironically, bastard), apart from defamation, is not actionable irrespective of any special damage. *Per* Ghose, J.—A case like the present should be decided according to the principle of justice, equity, and good conscience; and therefore it is but just and right that a person thus vilified, who has suffered from insult and mental pain, should be entitled to maintain an action irrespective of any special damage. —GIRISH CHUNDRR MITTER *v.* JATADHARI SADUKHAN, I. L. R., 26 Cal. 653. [Maclean, C.J., Macpherson, Ghose, Hill, and Jenkins, JJ. April 11, 1899.]

*Of the Right of Private Defence.*

Things done in private defence.

**96.** Nothing is an offence which is done in the exercise of the right of private defence.

**Persons, believing they will be attacked, court the attack.**—The right of private defence cannot be pleaded by persons who, believing they will be attacked, court the attack.—QUEEN *v* NOWABDEE, W R. Gap. 11. [Steer, J. Feb. 19, 1864.]

**Right of private defence of property against a thief seized in the act of burglary.**—Case of exercise of right of private defence of property against a thief, who was seized in the act of committing a burglary in the house of the accused.—QUEEN *v.* KURRIM BUX, 3 W R. 12. [Jackson and Glover, JJ. May 12, 1865.]

**Right to oppose force to force.**—Where A is in actual peaceable possession of land, B's attempt to recover possession of it by force is an illegal act, which A has a right to resist. If B uses force in carrying out his attempt, A has a right to oppose force to force, and to inflict upon B such injury as is necessary to compel him to desist.—QUEEN *v.* SACHEE *alias* SACHEE BOLER, 7 W. R. 76. [Markby and Glover, JJ. May 29, 1867.]

**Severe assault on a trespasser who had entered the house to commit adultery.**—Where a person, assisted by a friend, retaliated severely on another who trespassed into his house with the object of having intercourse with his wife, he was *held* to have committed no offence, ss. 96 and 104, Penal Code justifying him in causing any harm short of death to the trespasser; and his friend was also acquitted as having aided him to commit no offence.—QUEEN *v* DHAMUN TELI, 20 W. R. 36. [Markby and Birch, JJ. June 16, 1873.]

**Plea of right of defence advanced by pleader of defence in his argument.**—If the accused pleads not guilty, and does not admit the act, but the pleader for the defence advances in his argument the plea of the right of private defence, the duty of the Court is to accept the plea if it appears upon the evidence, either for the prosecution or from the defence, that what was done by the accused was in self defence.—PASPUT GOPE *v.* RAM BHAJAN OJHA, 1 C. W. N. 545. [Ghose and Gordon, JJ. Jan. 28, 1897.]

**No question of self-defence arises where parties engage in a fight to vindicate their rights.**—When a body of men are determined to vindicate their rights or supposed rights by unlawful force, and when they engage in a fight with men who, on the other hand are equally determined to vindicate by unlawful force their rights or supposed rights, no question of self-defence arises. In the Code of Criminal Procedure there is no apparent distinction between the right of appeal against an acquittal and a right of appeal against a conviction. *Queen-Empress* v *Gayadin* (I. L. R., 4 All. 148) and *Queen Empress* v. *Gobardhan* (I. L. R., 9 All 528) referred to.—QUEEN-EMPRESS *v* PRAG DAT, I. L. R., 20 All. 459. [Kershaw, C.J., and Knox, J. June 13, 1898.]

**If an accused person has not pleaded the right of private defence, a Court of Appeal cannot raise such a plea on his behalf.**—*Held* that an accused person, who, at his trial, has not pleaded the right of private defence, but has raised other pleas inconsistent with such a defence, cannot, in appeal, set up a case, founded upon the evidence taken at his trial, that he acted in the exercise of the right of private defence; neither is the Court competent to raise such a plea on behalf of the appellant. *Queen-Empress* v. *Prag Dat* (I. L. R., 20 All. 459) referred to.—QUEEN EMPRESS *v.* TIMMAL, I. L. R., 21 All. 122. [Knox, C.J., and Banerji, J. Nov. 18, 1898.]

Right of private defence of the body and of property.

**97.** Every person has a right, subject to the restrictions contained in section 99, to defend—

*First.*—His own body and the body of any other person against any offence affecting the human body;

*Secondly.*—The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief, or criminal trespass.

**A chaukidar who wounded a thief to arrest him was held justified.**—The wounding of a thief by a chaukidar in order to his arrest, held under the circumstances to be justifiable.—QUEEN *v.* PROTAB CHOWKEEDAR, 2 W. R. 9. [Campbell and Glover, JJ. Jan. 16, 1865.]

**A kills B, whom A finds near a hole in A's house, and, on being attacked by B, A strikes B at random in the dark.**—A commits no offence, if, in the exercise of the right of private defence of his property against B, whom he finds near a hole in A's house, and, on being attacked by B, he strikes a blow at random, and in the dark, with a stick in his hand, whereby B is killed. C and D, by assisting A in removing the body of B, cannot be convicted (under s. 201 of the Penal Code) of having caused evidence to disappear, they having no knowledge or belief that an offence had been committed, nor any intention of screening an offender.—QUEEN *v.* PEIKO NUSHYO, 2 W. R. 43. [Kemp and Glover, JJ. Mar. 15, 1865.]

**A thief suffocated to death in the act of committing burglary.**—The following is the judgment of the High Court in a case of exercise of the right of private defence of property against a thief who was seized in the act of committing a burglary in the house of the accused: "In this case the Sessions Judge has convicted the prisoner of *culpable homicide not amounting to* murder, and sentenced him to three years' simple imprisonment. It appears that he seized a thief in the act of committing a burglary in his house, and that the thief was found, on the villagers assembling, to be dead. The prisoner says that he struck the thief one blow with a *lathi*; but the Sessions Judge and the assessors disbelieved this, as the medical officer who examined the body (as the Sessions Judge reports) deposed that death resulted from strangulation. We find, on looking at this report and deposition, that the thief's death was caused by suffocation; and there seems to be no doubt from the evidence that the act of the prisoner in seizing and holding the thief, whose face was downwards, as he was getting into the house, caused the suffocation. We are not satisfied that, in exercising his right of private defence of property against the thief, the prisoner exceeded the provision of the law; and we therefore acquit the prisoner, and direct his release"—REG *v.* KURRIM BUX, 3 W. R. 12. [Jackson and Glover, JJ. May 12, 1865.]

**Right to oppose force to force.**—Where A is in actual peaceable possession of land, B's attempt to recover possession of it by force is an illegal act, which A has a right to resist. If B uses force in carrying out his attempt, A has a right to oppose force to force, and to inflict upon B such injury as is necessary to compel him to desist.—QUEEN *v.* SACHEE *alias* SACHEE BOLER, 7 W. R. 76. [Markby and Glover, JJ. May 29, 1867.]

**A prisoner, whose property had been stolen, went out with a lathi to watch his property, and struck and killed a thief: He was protected by s. 97.**—Where the accused, whose property had frequently been stolen, went out with a *lathi* to watch his property, and with the *lathi* struck a thief, who died from the effects of the blows, it was *held* (having regard to the nature of the injuries inflicted, and to the subsequent conduct of the accused) that the case did not fall within the 4th exception to s. 99, and that the prisoner was not guilty of culpable homicide not amounting to murder but was protected by ss. 97 and 104 of the Penal Code, and had not exceeded the legal right of private defence of property.—QUEEN *v.* MOKEE, 12 W. R. 15. [Norman and Jackson, JJ. June 28, 1867.]

**Confinement of a trespasser till the following day not protected by s. 97.**—Where A trespassed on the lands of B, whose servants seized and confined A till the following day, when B gave information to the police, it was *held* that the conduct of B and his servants in confining A could not be supported on the ground that they were exercising the right of private defence of property under ss. 97, 104, and 105 of the Penal Code.—SHURUFOODDIN *v.* KASSINATH, 13 W. R. 64. [Loch and Hobhouse, JJ. April 23, 1870.]

**Accused persons, who were in peaceable possession and were attacked while in such possession, did not exceed the right of private defence of property.**—*Held* on the facts of the case (and following 7 W. R. 113) that the accused, who were in peaceable possession of their property, and were attacked while in such possession, did not exceed the right of private defence of property under s 103, Penal Code.—QUEEN *v.* GOOROO CHURN CHUNG, 14 W. R. 69; 6 B. L. R. App. 9. [Kemp and Glover, JJ. Nov. 19, 1870.]

**When raiyats who knowingly resist distraint are not protected.**—A zemindar is justified in exercising his right of private distraint of crops, if he has served the defaulters with written notices under Act X. of 1859, s. 116; and in such a case raiyats who knowingly resist the distraint are not protected by the Penal Code, s. 79. But if the

zemindar's people enter upon crops with the intention of distraining without notice, the raiyat-owners are justified in considering such action as trespass. *Quære.*—Would the raiyats in the latter case be protected by the provisions of the Penal Code, ss 97 and 99, in preventing the distraint, and confining the men employed to make it—QUEEN *v.* KANHAI SHAHU, 23 W. R. 40. [Glover and Mitter, JJ. Feb. 27, 1875.]

**A fight between two parties who are armed and prepared to fight.**—Where both parties are armed and prepared to fight, it is immaterial who is the first to attack, unless it is shown that the party was acting within the legal limits of the right of private defence—IN THE MATTER OF KALEE BEPAREE, 1 C. L. R. 521. [Jackson and Cunningham, JJ. Mar. 5, 1878.]

**Accused persons held justified in resisting trespassers: Yet Sessions Judge, holding that accused had exceeded their right of private defence, convicted them of rioting: High Court set aside conviction.**—A disturbance having been created with reference to the possession of certain chur-land, the Sessions Judge on appeal found that certain persons had unlawfully trespassed thereupon, and that the accused had been justified in resisting the trespassers by force. Inasmuch, however, as he considered the accused had exceeded their right of private defence of their property, he convicted them of rioting under s. 148 of the Penal Code. *Held* that, on the findings of the Judge, the conviction could not be supported, inasmuch as on such findings the persons convicted were not members of an unlawful assembly—IN THE MATTER OF KALEE MUNDLE, 10 C. L. R. 278 [Mitter and Maclean, JJ. Feb 28, 1882.]

**Conviction for riot and hurt: On appeal the Sessions Judge held that the complainants had themselves been the aggressors, and that the accused had merely exercised the right of private defence, but as the plea of private defence was not set up, the Sessions Judge did not set aside the conviction: Held, the accused were entitled to their acquittal.**—Where the accused had been convicted of riot under s 148, and of grievous hurt under s. 325, of the Penal Code, the Sessions Judge on appeal held that the complainants had themselves been the aggressors, and that the accused had merely exercised the right of private defence; but inasmuch as they had not set up the plea of private defence, he considered it was not competent to him to set aside the conviction. *Held* that, on the finding of the Sessions Judge, the accused were entitled to an acquittal.—IN THE MATTER OF KALI CHURN MOOKERJEE, 11 C. L. R. 232. [Prinsep and O'Kinealy, JJ. May 22, 1882.]

**Conviction of an unlawful assembly, whose common object was, by show of criminal force, and by criminal force if necessary, to prevent the construction of a bund, and to demolish it so far as it was constructed.**—A party of persons, consisting of some five peadas and a number of coolies sufficient for the work to be done, went to a spot on a river flowing through the lands of M for the purpose of either repairing or erecting a bund across it to cause the water to flow down a channel on the lands of their master T. The river at the time was almost dry, and the party did not go armed ready to fight or use force, and they did not, during the subsequent occurrence, use force. Having arrived at the spot about 10 A.M., they proceeded to work at the bund until the afternoon. At about 4 P.M. a body of men, consisting of about 1,200 in all, many of them armed with *lathis*, and headed by the prisoners, who were servants of M, which had been seen collecting together during the day, proceeded to the spot, and about 25 or 30 of them attacked T's men, some five of whom were more or less severely wounded with the *lathis*. The occurrence resulted in the conviction of some of M's servants for rioting under s. 147 of the Penal Code. M's people wholly denied any right on the part of T to construct or repair the bund, and had previously denied the existence of such right, and refused permission to T to exercise it. It was contended that the assembly of M's people was not an "unlawful assembly;" that the interference by T's people with the channel of the river justified them in coming to stop the work, and the show and use of force in compelling them to do so. *Held* that the prisoners had been rightly convicted. *Held*, further, that, as no right of private defence of property is conferred by the Penal Code, except as against the perpetrators of offences under the Penal Code, and that as, upon the facts of the case as found, no offence had been committed by T's people, their acts amounting merely to a civil trespass, and that as there was no pressing or immediate necessity of a kind, showing that there was not time to have recourse to the protection of the public authorities, no question as to the right of private defence arose in the case. It was further contended that M's people did not assemble to enforce a right or supposed right within the terms of s. 141 of the Penal Code, but to defend a right, and that such action did not make the assembly an unlaw-

ful one. *Held* that they were members of an assembly, the common object of which was, by show of criminal force, and by criminal force, if necessary, to enforce the right to keep the river channel clear by preventing the construction of the bund, and by demolishing it so far as it was constructed, and that the case came within s. 141, para. 4. *Queen* v. *Mitto Sing* (3 W. R. Cr. 41), *Shunker Singh* v. *Burmah Mahto* (23 W. R. Cr. 25), and *Birjoo Singh* v. *Khub Lall* (19 W. R. Cr. 66), referred to and commented on.—GANOURI LAL DAS *v.* QUEEN-EMPRESS, I. L. R., 16 Cal. 206 [Pigot and Macpherson, JJ. Jan. 14, 1889.]

**Distraint of cattle by landlord for arrears of rent: Tenant with eleven others forcibly obstructed removal of cattle: Accused charged with rioting, and convicted: Conviction upheld.**—A landlord who had not tendered to his tenant such a pattah as the latter was bound to accept under the Madras Rent Recovery Act, distrained his cattle for arrears of rent, the assistance of the police having been procured for the purpose. The tenant, with the assistance of eleven other persons, forcibly obstructed the removal of the cattle, which had already been actually seized and driven for some yards. They were charged with the offence of rioting, and convicted. *Held* that the conviction was right.—QUEEN-EMPRESS *v.* RAMAYYA, I. L. R., 13 Mad. 148. [Collins, C.J., and Parker, J. Oct. 2, 25, 1889.

**Right of private defence of property: Causing grievous hurt in furtherance of common object.**—The accused, receiving information that the complainant's party were about to take forcible possession of a plot of land which was found by the Court to be in the possession of the accused, collected a large number of men, some of whom were armed, and went through the village to the land in question. While they were engaged in ploughing, the complainant's party came up, some of them being armed, and interfered with the ploughing. A fight ensued, in the course of which one of the complainant's party was grievously wounded, and subsequently died, and two of the accused's party were hurt. *Held* that, if the accused were rightfully in possession of the land, and found it necessary to protect themselves from aggression on the part of another body of men, they were justified in taking such precautions as they thought were required, and using such force or violence as was necessary to prevent the aggression. *Held*, also, that under such circumstances they could not rightly be held to be members of an unlawful assembly. *Queen-Empress* v. *Narsang Pathahbai* (I. L. R., 14 Bom. 441), *Birjoo Singh* v. *Khub Lall* (19 W. R. Cr. 66), and *Shunkur Singh* v. *Burmah Mahto* (23 W. R. Cr. 25), followed. *Ganouri Lal Dass* v *Queen-Empress* (I. L. R., 16 Cal. 206) distinguished.—PACHKAURI *v.* QUEEN-EMPRESS, I. L. R., 24 Cal. 686. [Ghose and Gordon, JJ. Mar. 16, 1897.]

Right of private defence against the act of a person of unsound mind, &c.

**98.** When an act, which would otherwise be a certain offence, is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind, or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

*Illustrations.*

(*a.*) Z, under the influence of madness, attempts to kill A. Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(*b.*) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

Acts against which there is no right of private defence.

**99.** There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt if done or attempted to be done by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt if done or attempted to

be done by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

**Extent to which the right may be exercised.**

The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

*Explanation 1.*—A person is not deprived of the right of private defence against an act done or attempted to be done by a public servant, as such, unless he knows or has reason to believe that the person doing the act is such public servant.

*Explanation 2.*—A person is not deprived of the right of private defence against an act done or attempted to be done by the direction of a public servant unless he knows or has reason to believe that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or, if he has authority in writing, unless he produces such authority if demanded.

**No right of private defence where persons, believing they will be attacked, court the attack.**—The right of private defence cannot be pleaded by persons who, believing they will be attacked, court the attack. — QUEEN *v.* NOWABDEE, W. R. Gap. 1854. 11. [Steer. ]. Feb. 19. 1864.

**In a case of hurt or grievous hurt, a Court should consider who was the aggressor, and was the offence committed in the exercise of the right of private defence**—In cases of hurt or grievous hurt, the question should be considered as to who was the aggressor, and whether the offence was committed in the exercise of the right of private defence — QUEEN *v.* SOHAN AND SAMOO, 2 W. R. 59 [Campbell and Jackson, JJ. April 10, 1865.]

**Causing the death of a weak half-starved old woman who was caught stealing.**—Held by the majority of the Court that the offence committed was murder where the death of a weak half-starved old woman, who was detected stealing, was caused in the exercise of the right of private defence, by the doing of more harm than was necessary for the purpose of such defence; Campbell, J., *contra*, being of opinion that a man who detects a thief stealing his property, and who, acting on the sudden impulse of the moment, inflicts on the thief blows so severe as to be likely to cause death, but which he did not at the time know or feel to be likely to cause death, and which would not necessarily have caused death to a person in ordinary health, but which, owing to abnormal weakness in the deceased not known to him, did cause death, is not guilty of murder, but of culpable homicide not amounting to murder.—QUEEN *v.* GOKOOL BOWREE, 5 W. R. 33. [Norman, Campbell, and Phear, JJ. Feb. 26, 1866.]

**Wilfully killing another whilst endeavouring to escape after having been detected in the act of house-breaking by night for the purposes of theft.**—*Held* by the majority of the Court (Campbell, J., dissenting) that when a person wilfully killed another whilst endeavouring to escape after having been detected in the act of house-breaking by night for the purposes of theft, the offence committed was murder, and could not be considered to have been committed in the exercise of the right of private defence either of person or property, nor under grave and sudden provocation.—QUEEN *v.* DURWAN GEER, 5 W R 73; 1 Ind. Jur. 253. [Jackson, Campbell, and Macpherson, JJ. April 7. 1866.]

**A thief was caught house-breaking by night, with half of his body and his head through the wall, and his head was nearly cut off. Offence—culpable homicide not amounting to murder.**—Where a thief was caught house-breaking by night, with half his body and his head through the wall of a house occupied by none but women except the prisoner and his idiot-son, and where the prisoner suddenly caught up a sort of pole-axe, and with it struck the thief five times on his neck and nearly cut off his head: *Held* that the offence committed by the prisoner was not murder, inasmuch as it was committed in the exercise of the right of private defence; but that, as the prisoner inflicted more hurt than was necessary for the purpose of defence, he was guilty of culpable homicide not amounting to murder.—QUEEN *v.* FUKEERAM CHAMAR, 6 W. R. 50. [Norman and Seton-Karr, JJ. July 30, 1866.]

**No right of private defence in a case of premeditated riot.**—There can be no right of private defence, either on one side or the other, in a case of premeditated riot.—QUEEN *v.* JEOLALL, 7 W. R. 34. [Glover and Kemp, JJ. Feb. 18, 1867.]

**An accused, whose property had frequently been stolen, went out with a lathi to watch his property, and with the lathi struck and killed a thief: Held, accused had not exceeded the legal right of private defence of property.**—Where the accused, whose property had frequently been stolen, went out with a *lathi* to watch his property, and with the *lathi* struck a thief, who died from the effects of the blows, it was *held* (having regard to the nature of the injuries inflicted, and to the subsequent conduct of the accused) that the case did not fall within the 4th exception to s. 99, and that the prisoner was not guilty of culpable homicide not amounting to murder, but was protected by ss. 97 and 104 of the Penal Code, and had not exceeded the legal right of private defence of property.—QUEEN *v.* MOKEE, 12 W. R. 15. [Norman and Jackson, JJ. June 28, 1867.]

**Confinement of a trespasser till the following day not protected by s. 97.**—Where A trespassed on the lands of B, whose servants seized and confined A till the following day, when B gave information to the police, it was *held* that the conduct of B and his servants in confining A could not be supported on the ground that they were exercising the right of private defence of property under ss. 97, 104, and 105 of the Penal Code.—SHURUFOODDIN *v.* KASSINATH, 13 W. R. 64. [Loch and Hobhouse, JJ. April 23, 1870.]

**An officer, without a search-warrant, attempted to enter a house to search stolen property, and was obstructed and resisted. As the officer acted in good faith and without malice, the obstruction and resistance was held unjustifiable.**—An officer, subordinate to an officer in charge of a police-station, who was deputed by the latter to make an inquiry under s 135 of the Code of Criminal Procedure, attempted, without a search-warrant, to enter a house in search of property alleged to have been stolen, and was obstructed and resisted. *Held* (applying s 99 of the Penal Code) that, even though the police-officer was not strictly justified in searching the house without a warrant, the person obstructing and resisting could not set up the illegality of the officer's proceeding as a justification of his obstruction, as it was not shown that that officer was acting otherwise than in good faith and without malice. A Magistrate acting judicially should not import into the case before him his previous knowledge of the character of the accused, but should determine his guilt or innocence upon the evidence given in the case.—REG. *v.* VYANKATRAV SHRINIVAS, 7 Bom. H. C. R. 50. [Gibbs and Melvill, JJ. June 15, 1870.]

**A bailiff breaking the doors of a third person to execute a decree does not find either the judgment-debtor or his property: The person obstructing the bailiff is not liable to punishment.**—If a bailiff break the doors of a third person in order to execute a decree against a judgment-debtor, he is a trespasser if it turn out that the person or goods of the debtor are not in the house; and under such circumstances the owner of the house does not, by obstructing the bailiff, render himself punishable under s. 183 or s. 186 of the Penal Code.—REG. *v.* GAZIKOM ABA DORE, 7 Bom. H. C. R. 83. [Gibbs and Melvill, JJ. July 28, 1870.]

**For the purpose of defence, the accused should not inflict more harm than is necessary.**—The right of private defence under s 103 of the Penal Code is restricted by s. 99 of that Code, and does not extend to the inflicting of more harm than it is necessary to inflict for the purpose of defence.—QUEEN *v.* DHUNUNJAI POLY, 14 W. R. 68. [Kemp, J. Nov. 14, 1870.]

**The High Court declined to interfere in four cases of dismissal, referred by the Judge.**—The High Court declined to interfere in four cases of dismissal by the Magistrate and Deputy Magistrate referred by the Judge—the first, because the Judge considered that mere persistence in demand of rent did not amount to trespass, justifying the right of private defence as held by the Magistrate; the second, because the Judge considered that the Magistrate's reasons, *viz.*, (1) want of explanation of the cause of complainant's presence on the spot where the alleged assault was committed, (2) want of explanation of delay in making complaint, and (3) want of material evidence in the shape of bruises, were not sufficient in law to justify a summary dismissal; the third, because the Judge considered that the mere assertion of a claim to land by the accused did not justify the dismissal of the criminal charge as to theft of its produce, and that the Deputy Magistrate should be directed to hold a proper inquiry and dispose of the case after recording evidence; and the fourth, because the Judge considered that delay in making complaint was not of itself a legal ground for dismissal, particularly where an explanation of the delay is tendered.—(1) MAHOMED JAN *v.* KHADI SHEIKH; (2) HUR NATH DE KHASHKHIL *v.* JOYGOPAL DE SIRKAR; (3)

HURIS CHUNDRA DAS *v.* BOLAI AUDHICAREE; (4) SHEIK AHMUDDY *v.* ANUND MOHUN MOZOOMDAR, 16 W. R. 65. [Bayley and Markby, JJ. Dec. 13, 1871.]

**Firing of a gun.**—The firing of a gun at persons at a distance of twenty-five yards, without a reasonable apprehension of danger, and without any necessity for so doing, is not justifiable by the right of private defence.—QUEEN *v.* HUSSAINUDDY, 17 W. R. 46. [Couch, C.J., and Ainslie, J. April 5, 1872.]

**A case where the right of private defence of person and property was not allowed to be pleaded.**—The right of private defence of person and property was not allowed to be pleaded in a case where there was no fear of an assault such as is described in the clauses of s. 100 of the Penal Code, and where the prisoners used deadly weapons (spears), and killed two unarmed persons whom they found ploughing land which the prisoners believed to be theirs.—QUEEN *v.* GOUR CHANDBHUNG, 18 W. R. 29. [Kemp and Glover, JJ. July 18, 1872.]

**It is for those who raise the plea of private defence to prove it.**—A Sessions Judge, holding a second trial, should not comment on the conduct of a previous trial. It is for those who raise the plea of private defence to prove it. The act charged cannot be denied, and the plea of private defence raised as an alternative. If raised, a full account of the occurrence must be given in evidence.—IN THE MATTER OF JAMSHEER SIRDAR, 1 C. L. R. 62. [Ainslie and McDonell, JJ. June 29, July 24, 1877.]

**Where both parties are armed and prepared to fight, it is immaterial who is the first to attack.**—Where both parties are armed and prepared to fight, it is immaterial who is the first to attack, unless it is shown that that party was acting within the legal limits of the right of private defence.—*In re* KALEE BEPAREE, 1 C. L. R. 521. [Jackson and Cunningham, JJ. Mar. 5, 1878.]

**A head-constable firing a gun among a crowd of gipsies, and killing one.**—A head-constable, making an investigation into a case of house-breaking and theft, searched the tents of certain gipsies for the stolen property, but discovered nothing. After he had completed the search, the gipsies gave him a certain sum of money, which he accepted, but at the same time, *not deeming it sufficient*, he demanded a further sum from them. They refused to give anything more, on the ground that they were poor, and had no more to give. Thereupon he unlawfully ordered one of them to be bound and taken away. On his subordinates proceeding to execute such order, all the gipsies in the camp—men, women, and children—turned out, some four or five of the men being armed with sticks and stones, and advanced in a threatening manner towards the place such gipsy was being bound, and the head-constable was standing. Before any actual violence was used by the crowd of advancing gipsies, the head-constable fired with a gun at such crowd when it was about five paces from him, and killed one of the gipsies, and, having done so, ran away. Any apprehension that death or grievous hurt would be the consequence of the acts of such crowd would have ceased had he released the gipsy he had unlawfully arrested, and withdrawn himself and his subordinates, or had he effected his escape. *Held* that such head-constable had not a right of private defence against the acts of such gipsies, as those acts did not reasonably cause the apprehension that death or grievous hurt would be their consequence, and such head-constable was guilty of culpable homicide amounting to murder.—EMPRESS *v.* ABDUL HAKIM, I. L. R., 3 All. 253. [Pearson and Straight, JJ. Oct. 5, 1880.]

**An accused person assaulted a sepoy, and prevented him from impressing carts for his superior officer, and was convicted and punished under s. 353, but the conviction was altered to one of simple assault under s. 352.**—The rules or executive orders of Government, printed at pages 26 and 27 of Mr. Nairne's Revenue Hand Book, have not the force of law, and a public servant acting in obedience thereto cannot be considered as acting in execution of his duty as a public servant, if his act is otherwise illegal. Accordingly, where on a complaint by a sepoy in the Revenue Department deputed by a forest settlement officer to impress some carts for the use of the latter, that the accused assaulted and prevented him from seizing his cart, a Magistrate of the First Class convicted the accused under s 353 of the Penal Code (Act XLV. of 1860) for assaulting and obstructing a public servant in the execution of his duty, and sentenced the accused to undergo twenty-one days' rigorous imprisonment, *Held* that the conviction under s. 353 of the Penal Code should be set aside The only offence of which, upon the evidence, the accused was guilty, was that of simple assault under s. 352 of the Penal Code.—*In re* THE PETITION OF RAKHMAJI, I. L. R., 9 Bom. 528. [Nanabhai Haridas and Wedderburn, JJ. July 6, 1885.]

**Execution of a warrant initialled only. It is an offence to offer resistance to executing officer.**—A warrant issued for

the arrest of a debtor under the provisions of s. 251 of the Civil Procedure Code was initialled by the Munsarim of the Court, sealed with the seal of the Court, and delivered to the proper officer for execution. The debtor forcibly resisted the officer, and was tried and convicted, under s. 353 of the Penal Code, for assaulting a public servant in the execution of his duty as such. In revision, it was contended, with reference to the requirements of s. 251 of the Civil Procedure Code, that the warrant of arrest, having been initialled only, was bad, and the officer could not legally execute it, and consequently no offence under s. 353 of the Penal Code had been committed. *Held* that this contention could not be allowed, and, although it was proper that the person signing a warrant should write his name in full, it could not be said that, because the signature was confined to the initials of the name, it was not the duty of the officer to execute the warrant. *Held* also, with reference to s. 99 of the Penal Code, that the act of the accused did not cease to be an offence on the ground that it was done in the exercise of the right of private defence.—QUEEN-EMPRESS *v.* JANKI PRASAD, I. L. R., 8 All 293. [Oldfield, J. May 4, 1886.]

**Exceeding right of private defence.**—In a case of culpable homicide not amounting to murder, it was held that, though the occasion might have been one in which the prisoner was justified in meeting force by force, still, as he inflicted a blow which he must have known was likely to cause death, he had exceeded his right of private defence with reference to cl. 4, s. 99 of the Penal Code.—QUEEN *v.* FUZZA MEEAH *alias* FUZZA MAHOMED, 6 W. R. 89. [Kemp and Markby, JJ. Dec. 13, 1886.]

**Resistance to a surveyor in execution of a Mamlatdar's decree: No offence.**—In a suit filed in a Mamlatdar's Court under Bom. Act III. of 1876, the plaintiff obtained a decree against the accused for possession of a certain piece of land. When the Mamlatdar proceeded to execute the decree, he found that there was no land corresponding to the boundaries set forth in the plaint, and that the parties were joint owners, and in joint occupation of the land in dispute. Finding himself unable to execute the decree, the Mamlatdar referred the matter to the Collector for advice. The Collector, on looking into the papers of the case, ordered a surveyor to execute the decree by dividing the land in dispute, and putting the decree-holder in possession of his share. The surveyor, in attempting to execute the decree, was obstructed by the accused, who was thereupon tried and convicted of the offence of voluntarily obstructing a public servant in the discharge of his public functions, under s. 186 of the Penal Code (Act XLV. of 1860). *Held* (reversing the conviction) that, as the Collector had no legal authority to issue the order to the surveyor in execution of the Mamlatdar's decree, the surveyor acting under that order was not discharging a public function, and the act of the accused was not an offence against s. 186 of the Penal Code. *Held*, further, that the Collector's order was so entirely *ultra vires* as to leave no room for the operation of either the first or the second clause of s. 99 of the Penal Code.—QUEEN-EMPRESS *v.* TULSIRAM, I. L. R., 13 Bom. 168. [Birdwood and Parsons, JJ. May 3, 1888.]

**In a fight, both sides received serious injuries, and the leader of the complainant's party was killed.**—The third clause of s. 99 of the Indian Penal Code must be read with the first clause of s. 105. The right of private defence of property commences when a reasonable apprehension of danger to the property commences. Before such apprehension commences, the owner of the property is not called upon to apply for protection to the public authorities. The apprehension which justifies a recourse to the authorities ought to be based on some information of a definite kind as to the time and place of the danger actually threatened. The accused No. 1 received information one evening that the complainants intended to go on his land on the following day, and uproot the *juvari* seed sown in it. At about 3 o'clock next morning, he was informed that the complainants had entered on his land, and were ploughing up the seed. Thereupon he at once proceeded to the spot, followed by the other accused, and remonstrated with the complainants. The complainants, without paying any attention to his remonstrances, commenced an attack on the accused. In the fight which ensued, both sides received serious injuries, and the leader of the complainants' party was killed. The accused were thereupon charged and convicted, under ss. 304, 114, 325, and 323 of the Indian Penal Code, of culpable homicide not amounting to murder, of voluntarily causing grievous hurt, and of causing hurt. *Held*, reversing the convictions, that the complainants being the aggressors, the accused had, under the circumstances, the right of private defence, both of person and of property, and that, in the exercise of this right, they did not inflict more harm than was necessary. *Held*, also, that the accused were not bound to act on the information received on the previous evening, and seek the protection of the public authorities, as they had no reason to apprehend a

night-attack on their property.—QUEEN-EMPRESS *v.* NARSING PATHABHAI, I. L. R., 14 Bom. 441. [Birdwood and Jardine, JJ. Jan. 8, 13, 1890.]

**A constable arrested Dalip by virtue of a copy of a warrant in good faith under colour of his office: Some of Dalip's friends aided by Dalip, attacked the complainant, rescued Dalip, and caused hurt to the constable: Conviction held not under s. 332, but under ss. 147 and 323.**—A warrant was issued by a Magistrate for the arrest of one Dalip under s. 114 of the Code of Criminal Procedure. The warrant was sent to a certain thana to be executed. It was then, after being copied into a book kept for that purpose at the thana, made over to a particular constable for execution. When the constable to whom the warrant had been made over had left the thana, it was discovered that Dalip was in a village other than that in which he had been supposed to be. Thereupon the officer temporarily in charge of the thana made a copy from the book at the thana, endorsed on the back the names of one Nazir Husain and some other constables, and, having signed the endorsement, sent Nazir Husain and others out with this paper to arrest Dalip. Nazir Husain and his companions arrested Dalip; but, as they were returning with him in custody, some of Dalip's friends, aided by Dalip himself, attacked them, rescued Dalip, and caused hurt to the police. *Held* that the police-officers concerned in arresting Dalip under the circumstances above described were not acting in the lawful discharge of their duty within the meaning of s. 332 of the Penal Code, so as to render the accused liable to conviction under that section; but, inasmuch as they were acting in good faith under colour of their office, s. 99 of the Indian Penal Code applied, and Dalip and his associates might be properly convicted under ss. 147 and 323 of the Code. The words "in the discharge of his duty as such public servant" in the earlier portion of s. 332 of the Indian Penal Code mean in the discharge of a duty imposed by law on such public servant in the particular case, and do not cover an act done by him in good faith under colour of his office. *The Queen* v. *Roxburgh* (12 Cox. Cr. Ca. 8) referred to.—QUEEN EMPRESS *v.* DALIP, 18 All. 246. [Edge, C.J., and Burkitt, J. Feb. 18, 1896.]

**A sub-inspector of salt and abkari, not having a search-warrant, attempted to enter a house in search of property, and was obstructed and resisted: As he acted in good faith and without malice, it was held that the obstruction and resistance was unjustifiable.**—A sub-inspector of salt and abkari attempted, without a search-warrant, to enter a house in search of property, the illicit possession of which is an offence under the Madras Abkari Act, and was obstructed and resisted. *Held* that, having regard to s. 99 of the Penal Code, even though the sub-inspector was not strictly justified in searching a house without a warrant, the persons obstructing and resisting could not set up the illegality of the officer's proceeding as a justification of their obstruction, as it was not shewn that that officer was acting otherwise than in good faith and without malice.—QUEEN-EMPRESS *v.* PUKOT KOTU, I. L. R., 19 Mad. 349 [Davies and Boddam, JJ. July 23, 1896.]

**S. 99 not applicable to a case in which police-officers were acting under a warrant issued illegally.**—Section 99 of the Penal Code has no application to a case, in which the police-officers were acting under a warrant, the issue of which was altogether illegal.—QUEEN-EMPRESS *v.* JOGENDRA NATH MUKERJEE, I. L. R., 24 Cal. 320, at p. 324. [Ghose and Gordon, JJ. Jan. 20, 1897.]

**Where a licensed vaccinator attempted to take lymph from a child of one petitioner to vaccinate the child of the other, and was assaulted, the assault was held justifiable.**—Where a licensed vaccinator attempted to take lymph from a child of one petitioner to vaccinate the child of the other, and was assaulted in consequence, and received slight injury, it was held that the vaccinator was not entitled to take lymph from the arm of any person who objected, and his attempting to do so was unlawful, and the petitioners were justified in assaulting him. It was also held that the slight injuries received by the vaccinator did not prevent him from discharging his duty.—MANGOBIND MUCHI *v.* EMPRESS, 3 C. W. N. 627. [Prinsep and Wilkins, JJ. April 28, 1899.]

**100.** The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death, or of any other harm, to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:—

When the right of private defence of the body extends to causing death.

*First.*—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

*Secondly.*—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

*Thirdly.*—An assault with the intention of committing rape;

*Fourthly.*—An assault with the intention of gratifying unnatural lust;

*Fifthly.*—An assault with the intention of kidnapping or abducting;

*Sixthly.*—An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

**Striking a blow at random, and killing.**—A commits no offence, if, in the exercise of the right of private defence of his property against B, whom he finds near a hole in A's house, and, on being attacked by B, he strikes a blow at random, and in the dark, with a stick in his hand, whereby B is killed. C and D, by assisting A in removing the body of B, cannot be convicted (under s. 201 of the Penal Code) of having caused evidence to disappear, they having no knowledge or belief that an offence had been committed, nor any intention of screening an offender.—QUEEN *v.* PELKO NUSHYO, 2 W. R. 43. [Kemp and Glover, JJ. Mar. 15, 1865.]

**Causing death by striking with a lathi.**—The legal right of private defence of the body and property is not exceeded by a person who is attacked by another with a spear, and who strikes a blow with a *lathi*, which results in the death of the party attacking; and such right of private defence of the body extends under s. 100 of the Penal Code to the taking of life where grievous hurt is reasonably apprehended.—QUEEN *v.* MOIZUDIN, 11 W. R. 41. [Jackson and Markby, JJ April 29, 1869.]

**No misdirection in not calling attention to cls. 1 and 2 of s. 100, when attention was called to cl. 6 of that section.**—*Held* that it was no misdirection on the part of the Judge in not calling the attention of the jury to cls. 1 and 2 of s. 100 of the Penal Code, when he particularly called their attention to cl. 6 of that section.—QUEEN *v.* MOOKTARAM MUNDLE, 17 W. R. 45. [Kemp and Glover, JJ. Mar. 23, 1872.]

**Killing two unarmed persons with spears.**—The right of private defence of person and property was not allowed to be pleaded in a case where there was no fear of an assault such as is described in the clauses of s. 100 of the Penal Code, and where the prisoners used deadly weapons (spears), and killed two unarmed persons whom they found ploughing land which the prisoners believed to be theirs.—QUEEN *v.* GOUR CHAND CHUNG, 18 W. R. 29. [Kemp and Glover, JJ. July 18, 1872.]

**Killing an aggressor.**—Under the facts of this case, a person was held to have rightly exercised the right of private defence as contemplated in cl. 2, s. 100, and cl. 4, s. 103, Penal Code, though in the exercise of such right he killed one of his aggressors.—QUEEN *v.* RAM LALL SINGH, 22 W. R. 51. [Jackson and McDonell, JJ. July 30, 1874.]

**When such right extends to causing any harm other than death.**

**101.** If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

**Who was the aggressor?**—In a case of hurt or grievous hurt, the question should be considered as to who was the aggressor, and whether the offence was committed in the exercise of the right of private defence.—QUEEN *v.* SOHUN, 2 W. R. 59. [Campbell and Jackson, JJ. April 10, 1865.]

**A fight between Mollahs and Shikdars.**—Dispute between two parties (the Mollahs and Shikdars), in which the Shikdars attacked and killed one of the Mollahs when exercising the right of retaking their own property; three of the Shikdars being also wounded. The Shikdars were convicted of culpable homicide not amounting to murder *and rioting* As to the Mollahs, Loch, J., was of opinion that they were guilty of voluntarily causing grievous hurt; while the majority of the Court held that they

were entitled to the protection conferred by s. 101, Penal Code, on those who, while exercising the right of private defence, caused their assailants any harm other than death.—QUEEN v. TANOO SHIKDAR, 3 W. R. 47. [Loch, Kemp, and Seton-Karr, JJ. July 17, 1865.]

**102.** The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed, and it continues as long as such apprehension of danger to the body continues.

Commencement and continuance of the right of private defence of the body.

**A drunken fight ending in death.**—The prisoner and the deceased met each other at a liquor-shop, and drank together. Afterwards they walked away together, a third person who had been drinking with them following them. In the way an altercation took place in respect of the deceased having, as alleged by the prisoner, caused the death of the prisoner's four children by incantations. According to the prisoner's account, the deceased admitted having done so, and added that he would also bring about the death of the prisoner; in short, that he would not allow him to leave the jungle alive, but would cause him to be taken and eaten by a tiger. Thereupon the prisoner stated that he killed the deceased with several blows of a heavy *lathi*. It was held that the prisoner had no reasonable apprehension of danger to himself from the threats of the deceased, whom he killed; and that, therefore, the right of private defence of the body did not arise, and the case was not taken out of the category of murder, by reason of the second exception to s. 300 of the Penal Code.—QUEEN v. GOBADUR BHUYAN, 13 W. R. 55; 4 B. L. R. App. 101. [Jackson and Glover, JJ. April 6, 1870.]

**103.** The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death, or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:—

When the right of private defence of property extends to causing death.

*First.*—Robbery;

*Secondly.*—House-breaking by night;

*Thirdly.*—Mischief by fire committed on any building, tent, or vessel, which building, tent, or vessel is used as a human dwelling or as a place for the custody of property;

*Fourthly.*—Theft, mischief, or house-trespass under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

**Killing a thief.**—Case of exercise of right of private defence of property against a thief, who was seized in the act of committing a burglary in the house of the accused.—QUEEN v. KURRIM BUX, 3 W. R. 12. [Jackson and Glover, JJ. May 12, 1865.]

**Death in an affray.**—In an affray respecting land one of the aggressive party was killed. The prisoners, who were exercising the right of private defence of property, were acquitted by the jury of culpable homicide, but convicted of rioting. *Held* that the prisoners, not being legally guilty of culpable homicide, were not legally guilty of any other offence coupled with rioting, and, not being rioters, or members of an unlawful assembly, could claim the benefit of s. 104, Penal Code.—QUEEN v. MITTO SINGH, 3 W. R. 41. [Seton-Karr and Campbell, JJ. July 11, 1865.]

**A thief was caught house-breaking by night, with half of his body and his head through the wall, and his head was nearly cut off: Held that the offence was culpable homicide not amounting to murder.** — Where a thief was caught house-breaking by night, with half his body and his head through the wall of a house occupied by none but women except the prisoner and his young idiot-son, and where the prisoner suddenly caught up a sort of pole-axe, and with it struck the thief five

times on his neck and nearly cut off his head: *Held* that the offence committed by the prisoner was not murder, inasmuch as it was committed in the exercise of the right of private defence; but that, as the prisoner inflicted more hurt than was necessary for the purpose of defence, he was guilty of culpable homicide not amounting to murder.—QUEEN *v.* FUKEERA CHAMAR, 6 W. R. 50. [Norman and Seton-Karr, JJ. July 30, 1866.]

**When a party has a right to oppose force to force.**—Where A is in actual peaceable possession of land, B's attempt to recover possession of it by force is an illegal act, which A has a right to resist. If B uses force in carrying out his attempt, A has a right to oppose force to force, and to inflict upon B such injury as is necessary to compel him to desist.—QUEEN *v.* SACHEE *alias* SACHEE BOLER, 7 W. R. (112) 76. [Markby and Glover, JJ. May 29, 1867.]

**Rioting: Party in possession protected.**—In investigating a case of dispute as to land between two parties, a Magistrate found that one party was in possession; but there being a charge against both parties of rioting under s. 147 of the Penal Code, he punished both parties. The High Court held that the party in possession were protected by s. 104 of the Penal Code; and the punishment inflicted on them for maintaining their possession was accordingly remitted.—IN THE MATTER OF TOOLSEE SING, 2 B. L. R. A. Cr. 16; 10 W. R. 64. [Loch and Glover, JJ. Dec. 21, 1868.]

**A person should not inflict more harm than is necessary.**—The right of private defence under s. 103 of the Penal Code is restricted by s. 99 of that Code, and does not extend to the inflicting of more harm than it is necessary to inflict for the purpose of defence.—QUEEN *v.* DHUNUNJAI POLY, 14 W. R. 68. [Kemp, J. Nov. 14, 1870.]

**An assailant killed with a bamboo in self-defence.**—Certain persons made a sudden attack upon the prisoners for the purpose of cutting their crops. The prisoners resisted, and, having no time to complain to the police, inflicted a wound upon one of the assailants with a bamboo, from the effects of which he afterwards died. The Sessions Judge convicted the prisoners under ss. 148 and 304. In appeal, the High Court held that the force used, and the injuries inflicted, were not such as to exceed the right of private defence of property, and directed an acquittal.—QUEEN *v.* GOOROO CHURN CHUNG, 6 B. L. R. App. 9; 14 W. R. 69. [Kemp and Glover, JJ. Nov. 19, 1870.]

**Killing an aggressor in self-defence.**—Under the facts of this case, a person was held to have rightly exercised the right of private defence as contemplated in cl. 2, s. 100, and cl. 4, s. 103, Penal Code, though in the exercise of such right he killed one of his aggressors.—QUEEN *v.* RAM LALL SINGH, 22 W. R. 51. [Jackson and McDonell, JJ. July 30, 1874.]

**Unlawful assembly: Rioting.**—A party of persons, consisting of some five peadas, and a number of coolies sufficient for the work to be done, went to a spot on a river flowing through the lands of M, for the purpose of either repairing or erecting a bund across it to cause the water to flow down a channel on the lands of their master T. The river at the time was almost dry, and the party did not go armed ready to fight or use force, and they did not, during the subsequent occurrence, use force. Having arrived at the spot about 10 A.M., they proceeded to work at the bund until the afternoon. At about 4 P.M., a body of men, consisting of about 1,200 in all, many of them armed with *lathis*, and headed by the prisoners, who were servants of M, which had been seen collecting together during the day, proceeded to the spot, and about 25 or 30 of them attacked T's men, some five of whom were more or less severely wounded with the *lathis*. The occurrence resulted in the conviction of some of M's servants for rioting under s. 147 of the Penal Code. M's people wholly denied any right on the part of T to construct or repair the bund, and had previously denied the existence of such right, and refused permission to T to exercise it. It was contended that the assembly of M's people was not an "unlawful assembly;" that the interference by T's people with the channel of the river justified them in coming to stop the work, and the show and use of force in compelling them to do so. *Held* that the prisoners had been rightly convicted. *Held*, further, that as no right of private defence of property is conferred by the Penal Code, except as against the perpetrators of offences under the Penal Code, and that, as, upon the facts of the case as found, no offence had been committed by T's people, their acts amounting merely to a civil trespass, and that, as there was no pressing or immediate necessity of a kind showing that there was not time to have recourse to the protection of the public authorities, no question as to the right of private defence arose in the case. It was further contended that M's people did not assemble to enforce a right or supposed right within the terms of s. 141 of the Penal Code, but to defend a right, and that such action did not make the assembly an unlaw-

ful one. *Held* that they were members of an assembly, the common object of which was, by show of criminal force, and by criminal force, if necessary, to enforce the right to keep the river channel clear by preventing the construction of the bund, and by demolishing it so far as it was constructed, and that the case came within s. 141, para. 4. *Queen v. Mitto Sing* (3 W. R. Cr. 41), *Shunker Singh v. Burmah Mahto* (23 W. R. Cr. 25), and *Birjoo Singh v. Khub Lall* (19 W. R. Cr. 66), referred to and commented on.—GANOURI LAL DAS v. QUEEN-EMPRESS, I. L. R., 16 Cal. 206. [Pigot and Macpherson, JJ. Jan. 14, 1889.]

**104.** If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

**When such right extends to causing any harm other than death.**

**An affray ending fatally.**—In an affray respecting land, one party were the aggressors, and the other side (had the affair not ended fatally) would have been in the legal exercise of the right of defence of property, and would have been entitled to the benefit of s. 104 of the Penal Code. *Held* that one year's imprisonment was sufficient punishment for the latter.—QUEEN *v.* SHUNKER, 1 W. R. 34. [Kemp and Glover, JJ. Dec. 5, 1864.]

**Where, in exercising the right of private defence of property, A, finding a man near a hole in A's house, and being attacked by the man, strikes a blow at random in the dark with a stick, and kills him, he kills no offence.**—A commits no offence, if in exercising the right of private defence of his property against B, whom he finds near a hole in A's house, and, on being attacked by B, he strikes a blow at random, and in the dark, with a stick in his hand, whereby B is killed. C and D, by assisting A in removing the body of B, cannot be convicted (under s. 201 of the Penal Code) of having caused evidence to disappear, they having no knowledge or belief that an offence had been committed, nor any intention of screening an offender. —QUEEN *v.* PELKOO NUSHYO, 2 W. R. 43. [Kemp and Glover, JJ. Mar. 15, 1865.]

**Right of defence in a case of affray.**—In an affray respecting land one of the aggressive party was killed. The prisoners, who were exercising the right of private defence of property, were acquitted by the jury of culpable homicide, but convicted of rioting. *Held* that the prisoners, not being legally guilty of culpable homicide, were not legally guilty of any other offence coupled with rioting, and, not being rioters, or members of an unlawful assembly, could claim the benefit of s. 104, Penal Code.—QUEEN *v.* MITTO SINGH, 3 W. R. 41. [Seton-Karr and Campbell, JJ. July 11, 1865.]

**Killing a thief: Private defence of property.**—Where the accused, whose property had frequently been stolen, went, armed with a *lathi*, to watch his property, and with the *lathi* struck a thief, who died from the effects of the blow, *held* (having regard to the nature of the injuries inflicted and the subsequent conduct of the accused) that the case did not fall within the 4th clause of s. 97, and that the prisoner was not guilty of culpable homicide not amounting to murder, being protected by ss. 97 and 104, he not having exceeded the legal right of private defence of property.—QUEEN *v.* MOKEE, 12 W. R. 15. [Norman and Jackson, JJ. June 28, 1867.]

**Two factions were convicted of rioting: High Court convicted the party who were found to be in possession.**—In investigating a case of dispute as to land between two parties under Ch. XXII. of the Code of Criminal Procedure (Act XXV. of 1861), a Magistrate found that one party were in possession; but there being a charge against both parties of rioting under s. 147 of the Penal Code, he punished both parties. *Held* that the party in possession were protected by s. 104 of the Penal Code; and the punishment inflicted in maintaining their possession on them was accordingly remitted. —TOOLSEE SINGH, 10 W. R. 64; 2 B. L. R. A. Cr. 16. [Loch and Glover, JJ. Dec. 21, 1868.]

**Accused's property being frequently stolen, he went out with a lathi to watch his property, and with the lathi struck a thief, who died from the effects of the blows: Accused was held to be protected by ss. 97 and 104.**—Where the accused, whose property had frequently been stolen, went out with a *lathi* to watch his

property, and with the *lathi* struck a thief, who died from the effects of the blows, it was held (having regard to the nature of the injuries inflicted and to the subsequent conduct of the accused) that the case did not fall within the 4th exception to s. 99, and that the prisoner was not guilty of culpable homicide not amounting to murder, but was protected by ss. 97 and 104 of the Penal Code, and had not exceeded the legal right of private defence of property.—QUEEN *v.* MOKEE, 12 W. R. 15 [Norman and Jackson, JJ. June 28, 1869.]

**Wrongfully confining a trespasser: Held that there was no right of private defence.**—Where A trespassed on the lands of B, whose servants seized and confined A till the following day, when B gave information to the police, it was held that the conduct of B and his servants in confining A could not be supported on the ground that they were exercising the right of private defence of property under ss. 97, 104, and 195 of the Penal Code.—SHURUPOODDIN *v.* KASSINATH, 13 W. R. 64. [Loch and Hobhouse, JJ. April 23, 1870.]

**Certain prisoners, being suddenly attacked with the view of cutting their crop, resisted, and inflicted a wound on one of the attacking party, ending fatally: Right of private defence of property: Acquittal.**—Certain persons made a sudden attack upon the prisoners for the purpose of cutting their crops. The prisoners resisted, and, having no time to complain to the police, inflicted a wound upon one of the assailants with a bamboo, from the effects of which he afterwards died. The Sessions Judge convicted the prisoners under ss. 148 and 304. In appeal to the High Court, *held* that the force used, and the injuries inflicted, were not such as to exceed the right of private defence of property, and directed an acquittal. —QUEEN *v.* GOOROO CHURN CHUNG, 6 B. L. R. App. 9; 14 W. R. 69. [Kemp and Glover, JJ. Nov. 19, 1870.]

**In a case of criminal trespass, the causing of some harm other than death is justified.**—Where the offence which occasions the right of private defence of property is criminal trespass, the right of defence under s. 104 of the Penal Code only extends (subject to the restrictions of s. 99) to the voluntarily causing to the wrong-doers some harm other than death.—QUEEN *v.* GOBURDHUN PARI, 14 W. R. 74. [Bayley and Glover, JJ. Nov. 30, 1870.]

**In a case of trespass with intent to commit adultery, the causing of any harm short of death is justified.**—Where a person, assisted by a friend, retaliated severely on another who trespassed into his house with the object of having intercourse with his wife, he was held to have committed no offence, ss. 96 and 104, Penal Code, justifying him causing any harm short of death to the trespasser; and his friend was also acquitted as having aided him to commit no offence.—QUEEN *v.* DHAUMUN TELI, 20 W. R. 36. [Markby and Birch, JJ. June 16, 1873.]

**Unlawful assembly: Common object was, by show of criminal force, to enforce the right to keep the river-channel clear by preventing the construction of a bund.**—A party of persons, consisting of some five peadas and a number of coolies sufficient for the work to be done, went to a spot on a river flowing through the lands of M for the purpose of either repairing or erecting a bund across it to cause the water to flow down a channel on the lands of their master T. The river at the time was almost dry, and the party did not go armed ready to fight or use force, and they did not, during the subsequent occurrence, use force. Having arrived at the spot about 10 A.M., they proceeded to work at the bund until the afternoon. At about 4 P. M., a body of men, consisting of about 1,200 in all, many of them armed with *lathis*, and headed by the prisoners who were servants of M, which had been seen collecting together during the day, proceeded to the spot, and about 25 or 30 of them attacked T's men, some five of whom were more or less severely wounded with the *lathis*. The occurrence resulted in the conviction of some of M's servants for rioting under s. 147 of the Penal Code. M's people wholly denied any right on the part of T to construct or repair the bund, and had previously denied the existence of such right, and refused permission to T to exercise it. It was contended that the assembly of M's people was not an 'unlawful assembly;' that the interference by T's people with the channel of the river justified them in coming to stop the work, and the show and use of force in compelling them to do so. *Held* that the prisoners had been rightly convicted. *Held*, further, that as no right of private defence of property is conferred by the Penal Code, except as against the perpetrators of offences under the Penal Code, and that as, upon the facts of the case as found, no offence had been committed by T's people, their acts amounting merely to a civil trespass, and that, as there was no pressing or immediate necessity of a kind, showing that there was not time to have recourse to the protection of the public authorities, no question as to the right of private defence arose in the case. It was further contended that M's people did not assemble to enforce a right or supposed

right within the terms of s. 141 of the Penal Code, but to defend a right, and that such action did not make the assembly an unlawful one. *Held* that they were members of an assembly, the common object of which was, by show of criminal force, and by criminal force, if necessary, to enforce the right to keep the river channel clear by preventing the construction of the bund, and by demolishing it so far as it was constructed, and that the case came within s. 141, para. 4: *Queen* v. *Mitto Sing* (3 W. R. Cr. 41), *Shunker Singh* v. *Burmah Mahto* (23 W. R. Cr. 25), and *Birjoo Singh* v. *Khub Lall* (19 W. R. Cr. 66), referred to and commented on.—GANOURI LAL DAS *v.* QUEEN-EMPRESS, I. L. R., 16 Cal. 206. [Pigot and Macpherson, JJ. Jan. 14, 1889.]

**Commencement and continuance of the right of private defence of property.**

**105.** The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

The right of private defence of property against theft continues till the offender has effected his retreat with the property, or either the assistance of the public authorities is obtained, or the property has been recovered.

The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint, or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

**No private defence where both parties turned out armed with deadly weapons.**—An affray having taken place, both parties turned out armed with deadly weapons. *Held* that there was no right of private defence, as both parties well knew beforehand what was likely to happen. The factory had no right forcibly to attempt to sow indigo in land already sown with corn, although it was indigo-contract land. The villagers had no right to oppose force to force, the police-station being near at hand.—REG. *v.* JEOLALL, 3 Wyman's Rev., Civ., and Crim Reporter 21; 7 W. R. 34. [Glover and Kemp, JJ. Feb. 18, 1867.]

**Pursuing and killing a thief after his house-trespass had ceased.**—*Held* that a case in which the accused pursued after a thief, and killed him after the house-trespass had ceased, did not fall within the 2nd exception to s. 300 of the Penal Code, the right of private defence of property continuing under cl. 5, s. 105 of that Code, only so long as the house-trespass continues.—QUEEN *v* BALAKEE JOLAHED, 10 W R. 9. [Glover, J. July 3, 1868.]

**Unlawful assembly: Ceasing of the right of private defence of property.**—Where land in the possession of A was encroached on by the servants of B, who committed mischief on the land, and the servants of A assembled, and resisted the encroachments, the High Court declined to interfere with the Magistrate's order convicting the servants of A of unlawful assembly, as there was no error in law in the order of the Magistrate, who found as a fact that the right of defence of private property had ceased under cl. 4, s. 105 of the Penal Code.—QUEEN *v.* RAJKRISTO DOSS, 12 W. R. 43. [Kemp and Markby, JJ. Aug 3, 1869.]

**Wrongful confinement of a trespasser: No justification.**—Where A trespassed on the lands of B, whose servants seized and confined A till the following day, when B gave information to the police, it was held that the conduct of B and his servants in confining A could not be supported on the ground that they were exercising the right of private defence of property under ss. 97, 104, and 105 of the Penal Code.—SHURUFOODDIN *v.* KASSINATH, 13 W. R. 64. [Loch and Hobhouse, JJ. April 23, 1870.]

**Unlawful assembly: Common object was by show of criminal force to enforce the right to keep the river-channel clear by preventing the construction of a bund.**—A party of persons, consisting of some five peadas and a number of coolies sufficient for the work to be done, went to a spot on a river flowing through the lands of M for the purpose of either repairing or erecting a bund across it, to cause the water to flow down a channel on the lands of their master T. The

river at the time was almost dry, and the party did not go armed ready to fight or use force, and they did not, during the subsequent occurrence, use force. Having arrived at the spot about 10 A.M., they proceeded to work at the bund until the afternoon. At about 4 P.M., a body of men, consisting of about 1,200 in all, many of them armed with *lathis*, and headed by the prisoners, who were servants of M, which had been seen collecting together during the day, proceeded to the spot, and about 25 or 30 of them attacked T's men, some five of whom were more or less severely wounded with the *lathis*. The occurrence resulted in the conviction of some of M's servants for rioting under s. 147 of the Penal Code. M's people wholly denied any right on the part of T to construct or repair the *bund*, and had previously denied the existence of such right, and refused permission to T to exercise it. It was contended that the assembly of M's people was not an "unlawful assembly:" that the interference by T's people with the channel of the river justified them in coming to stop the work, and the show and use of force in compelling them to do so. *Held* that the prisoners had been rightly convicted. *Held*, further, that as no right of private defence of property is conferred by the Penal Code, except as against the perpetrators of offences under the Penal Code, and that as, upon the facts of the case as found, no offence had been committed by T's people, their acts amounting merely to a civil trespass, and that as there was no pressing or immediate necessity of a kind showing that there was not time to have recourse to the protection of the public authorities, no question as to the right of private defence arose in the case. It was further contended that M's people did not assemble to enforce a right or supposed right within the terms of s. 141 of the Penal Code, but to defend a right, and that such action did not make the assembly an unlawful one. *Held* that they were members of an assembly, the common object of which was, by show of criminal force, and by criminal force, if necessary, to enforce the right to keep the river channel clear by preventing the construction of the *bund*, and by demolishing it so far as it was constructed, and that the case came within s. 141, para. 4. *Queen* v. *Mitto Sing* (3 W. R. Cr. 41), *Shunker Singh* v. *Burmah Mahto* (23 W. R. Cr. 25), and *Birjoo Singh* v. *Khub Lall* (19 W. R. Cr. 66), referred to and commented on.—GANOURI LALL DAS *v.* QUEEN-EMPRESS, I. L. R., 16 Cal. 206. [Pigot and Macpherson, JJ. Jan. 14, 1889.]

**Before apprehension of danger to property commences, the owner of property is not called upon to apply for protection to public authorities.**—The third clause of s. 99 of the Indian Penal Code must be read with the first clause of s. 105. The right of private defence of property commences when a reasonable apprehension of danger to the property commences. Before such apprehension commences, the owner of the property is not called upon to apply for protection to the public authorities. The apprehension which justifies a recourse to the authorities ought to be based on some information of a definite kind as to the time and place of the danger actually threatened. The accused No. 1 received information one evening that the complainants intended to go on his land on the following day, and uproot the *juvari* seed sown in it. At about 3 o'clock next morning, he was informed that the complainants had entered on his land, and were ploughing up the seed. Thereupon he at once proceeded to the spot, followed by the other accused, and remonstrated with the complainants. The complainants, without paying any attention to his remonstrances, commenced an attack on the accused. In the fight which ensued, both sides received serious injuries, and the leader of the complainants' party was killed. The accused were thereupon charged and convicted, under ss. 304, 114, 325, and 323, of the Indian Penal Code, of culpable homicide not amounting to murder, of voluntarily causing grievous hurt, and of causing hurt. *Held*, reversing the convictions, that, the complainants being the aggressors, the accused had, under the circumstances, the right of private defence, both of person and of property, and that, in the exercise of this right, they did not inflict more harm than was necessary. *Held*, also, that the accused were not bound to act on the information received on the previous evening, and seek the protection of the public authorities, as they had no reason to apprehend a night-attack on their property.—QUEEN-EMPRESS *v.* NARSANG PATHABHAI, I. L. R., 14 Bom. 441. [Birdwood and Jardine, JJ. Jan. 8, 13, 1890.]

**106.** If, in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Right of private defence against deadly assault when there is risk of harm to innocent person.

*Illustration.*

**A is attacked by a mob who attempts to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if, by so firing, he harms any of the children.**

## CHAPTER V.*

### OF ABETMENT.

**Abetment of a thing.**

**107.** A person abets the doing of a thing who—

*First.*—Instigates any person to do that thing; or,

*Secondly.*—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or,

*Thirdly.*—Intentionally aids, by any act or illegal omission, the doing of that thing.

*Explanation 1.*—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

*Illustration.*

**A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact, and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.**

*Explanation 2.*—Whoever, either prior to, or at the time of, the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

**Grievous hurt: Abetment of.**—The prisoners having abetted an assault, and murder having been committed, *held*, under the peculiar circumstances of the case, that they were guilty of abetment of grievous hurt, and not abetment of murder.—QUEEN *v.* GOLUCK CHUNG, 5 W. R. 75. [Campbell and Macpherson, JJ. April 28, 1866.]

**Grievous hurt: Abetment of.**—Where A ordered B and C to seize and forcibly take D in the contemplation of an assault upon D, and D was so beaten and tortured as to have died in consequence: *Held* that A was guilty at least of abetting the commission of voluntarily causing grievous hurt.—QUEEN *v.* DOORGESSUR SURMAH, 17 W. R. (97) 61. [Hobhouse, J. April 30, 1867.]

**Grievous hurt: Abetment of.**—Held that, where A gave a dao to B, who had given out his intention to coerce the party against whom he was acting and who inflicted grievous hurt on such party with the dao, A was guilty of abetment within the second

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* Ch. V. applies to offences punishable under ss. 121A, 124A, 225A, 225B, 294A, and 304A.—See the Indian Penal Code Amendment Act (XXVII. of 1870), s. 13, as amended by the Repealing and Amending Act (XII. of 1891).

The definition of "abet" here given applies in the case of all Acts of the Governor-General in Council and Regulations under "the Government of India Act, 1870" (33 Vict., c. 3) s. 1, made after the 14th January 1887.—See the General Clauses Act (X. of 1897), ss. 3 (*1*), 4 (*2*).

As to the application of ss. 109, 110, 112, 114 to 117, to offences under special or local laws see s. 40, *supra*.

The abetment of certain offences is compoundable.—See the new Code of Criminal Procedure (Act V. of 1898), Sch. II.

head of the third clause of s. 107 of the Penal Code.—QUEEN v. ESHAN MEAH, 12 W. R. 52. [Glover and Mitter, JJ. Sep. 3, 1869]

**Suttee : Abetment of.**—Persons present, and abetting a boy to set fire to the pile upon which a widow voluntarily burnt herself, were guilty themselves of culpable homicide. One who took no active part in causing the death, but induced the widow to return to the pile, was guilty of abetment of suicide.—1 R. J. P. J. 174.

**Suttee : Abetment of.**—The conviction of certain persons as abettors of culpable homicide in having looked on passively at a suttee was upheld on appeal. Campbell, J., in passing judgment in the case, made the following remarks: "The more important question remains behind—whether all persons in the position of the appellants are not, by the mere act of going to a suttee, and giving it, by their presence, their countenance and support, guilty of abetment of suttee, even though nothing more active can be proved against them. It would seem to be very dangerous to let it be supposed that, so long as it cannot be proved that a man brought the faggots or the fire, he may give the utmost moral and actual support to a suttee with impunity. Practically, I believe, spectators are most powerful abettors . . . . I am inclined to think that every man of education or intelligence who goes to a suttee, and stands an unopposing and passively supporting spectator, does, by every step towards the suttee commit an act of abetment."—QUEEN v. JHOTEE SINGH, 1 R. J. P. J. 246. The above ruling is contrary to the remarks of the Indian Law Commissioners on the Penal Code and to the following cases: *Queen* v. *Gora Chand Gope* (5 W. R 45), *Queen* v. *Goburdhun Bera* (6 W. R. 80), *Gopal Chunder Sirdar* v. *Foolmoni Bewa* (I. L. R., 8 Cal. 728, s.c., 11 C. L. R. 223).

**Suttee: Abetment of.**—In the case of *Queen* v. *Jhotee Singh* (1 R. J. P. J. 246), it was held by Campbell and Kemp that persons who looked on passively at a suttee were rightly convicted of abetment of culpable homicide. But from the following remarks of Sir Barnes Peacock in another case it will be seen that a contrary and more sensible opinion was entertained: "If the object and design of those who seized Amoordee was merely to take him to the thana on a charge of theft, and it was not part of the common design to beat him, they would not all be liable for the consequence of the beating, merely because they were present. It is laid down that, when several persons are in company together engaged in one common purpose lawful or unlawful, and one of them, without the knowledge or consent of the others, commits any offence, the others will not be involved in the guilt unless the act done was in some manner in furtherance of the common intention. It is also said that, although a man is present when a felony is committed, if he take no part in it, and do not act in concert with those who committed it, he will not be a felon, merely because he did not attempt to prevent it, or to apprehend the felon. But if several persons go out together for the purpose of apprehending a man, and taking him to the thana on a charge of theft, and some of the party, in the presence of the others, beat and ill-treat the man in a cruel and violent manner, and the others stand by and look on, without endeavouring to dissuade them from their cruel and violent conduct, it appears to me that those who have to deal with the facts might very properly infer that they were all assenting parties, and acting in concert, and that the beating was in furtherance of a common design. I do not know what the evidence was. All I wish to point out is that all who are present do not necessarily assist by their presence every act that is done in their presence, nor are consequently liable to be punished as principals."—QUEEN v. GORA CHAND GOPE, 5 W. R. 45; B. L. R Sup. Vol. 443; 1 Ind. Jur. N. S. 177; 1 Wyman's Rev., Civ., and Crim. Rep. 43. [Peacock, C.J., and Trevor and Norman, JJ. Mar. 3, 1866]

**Suttee · Abetment of.**—Evidence that a woman prepared herself to commit suicide in the presence of the accused, that they followed her to the pyre, and stood by her, her step sons crying, "Ram, Ram," and one of the accused admitting that he told the woman to say, "Ram, Ram," and she would become "suttee," proves active connivance and unequivocal countenance of the suicide by the accused, and justifies the inference that they had engaged with her in a conspiracy for the commission of the suttee.—REG. v. MOHIT PANDEY, 3 N.-W. P. 316. [Pearson, J Sep. 6, 1871.]

**False evidence : Abetment of.**—The prisoner asked a witness to suppress certain facts in giving his evidence against the prisoner before the Deputy Magistrate on a charge of defamation. *Held* that this was abetment of giving false evidence in a stage of a judicial proceeding, and was triable before a Court of Session only.—*In re* ANDY CHETTY, 2 Mad. H. C. R. 438. [Frere and Innes, JJ. Aug. 12, 1865.]

**False evidence : Abetment of.**—Where C falsely represented himself to be U, and the writer of a document signed by U and T, knowing that C was not U, and had not written such document, adduced C as U, and as the writer of that document, *held* that T

ought to have been convicted on a charge of abetting the giving of false evidence.—QUEEN v. CHUNDI CHURN NATH, 8 W. R. 5. [Jackson and Hobhouse, JJ. June 4, 1867.]

**False evidence: Abetment of.**—The lower Criminal Courts cannot punish, as abettors, persons who gave evidence in support of false charges, or rather charges found by such Courts to be false. S. 108 of the Penal Code does not contemplate any acts of subsequent abetment, or provide for the punishment of such offences, except when they are such as are defined in ss 212 to 218.—QUEEN v. PAUN PUNDAH, 18 W. R. 28; 9 B. L. R. App. 16. [Kemp and Glover, JJ. July 11, 1872.]

**False evidence: Abetment of.**—In order to convict a person of abetting the commission of a crime, it is not only necessary to prove that he has taken part in those steps of the transaction which are innocent, but in some way or other it is absolutely necessary to connect him with those steps of the transaction which are criminal. There can be no offence of the abetment of giving false evidence unless the person charged with abetment intended, not only that the statement should be made, but intended that the statement should be made falsely.—QUEEN v. NIM CHAND MOOKERJEE, 20 W. R. 41. [Markby and Birch, JJ. June 27, 1873.]

**False evidence: Abetment of.**—The Magistrate convicted accused of abetting the giving of false evidence in a judicial case proceeding before himself. *Held* that, as by the proceedings of 24th March 1873 the Magistrate could not have tried the person who gave false evidence, he could not try the abettor.—PRO., Nov. 6, 1873; 7 Mad. H. C. R. App 28.

**Theft: Abetment of.**—A person can be convicted of abetment of theft under the 1st explanation of s. 107 of the Penal Code only if he either procures, or attempts to procure, the commission of the theft. Mere subsequent knowledge of the offence is insufficient.—QUEEN v. SHUMEERUDDEEN, 2 W. R. 40. [Kemp and Glover, JJ. Mar. 14, 1865.]

**Theft: Abetment of.**—A prisoner who consented to form one of a party who committed theft, and resiled from his agreement, but was present at the commission of theft, does not come within cl. 2, s. 107, Penal Code, and ought not to have been convicted of the theft, but of the abetment thereof, under cl. 3, s. 107, and s. 109, Penal Code, read together.—QUEEN v. BOODHUN MOOSHUR, 8 W. R. 78. [Glover, J. Oct. 30, 1867.]

**Theft: Abetment of.**—The carrying off of certain buffaloes belonging to the complainant by order of the accused, and the retention of them in the custody of the latter's servant, were held to amount to an abetment of theft as defined in the Penal Code.—TARINEE PROSAUD BANERJEE, 18 W. R. 8. [Kemp and Glover, JJ. June 14, 1872.]

**Theft: Abetment of.**—A Hindu, intending to separate himself from his family, emigrated to Demerara as a coolie. After an absence of thirty years he returned to his family, bringing with him money and other moveable property which he had acquired in Demerara by manual labour as a coolie. On his return to his family he lived in commensality with it, but he did not treat such property as joint family-property, but as his own property. *Held* that such property was his sole property, and his brother was not a joint owner of it, and could properly be convicted of theft in respect of it. It is irregular to convict and punish a person for abetment of theft, and at the same time to convict and punish him for receiving the stolen property.—EMPRESS v. SITA RAM RAI, I. L. R., 3 All. 181. [Straight, J. Aug. 16, 1880.]

**Forgery: Abetment of.**—Where a prisoner, who appealed to the Commissioner from an order of an assessor under Act XXI. of 1867, filed a stamp-paper for a copy of the assessor's decision after the period of appeal had elapsed, but on appeal averred that he filed the stamp-paper before the time for appealing had elapsed, and fraudulently obtained a certificate to that effect, which was antedated, it was held that he was guilty of having abetted the commission of a forgery of a document within s 463 and cl. 1, s 464 of the Penal Code. The evidence of a prisoner taken by a Collector cannot be used against him on his trial before a Magistrate.—QUEEN v. SOOKHMOY GHOSE, 10 W. R. 23. [Loch and Glover, JJ. July 25, 1868.]

**Forgery: Abetment of.**—To prepare, in conjunction with others, a copy of an intended false document, and to buy a stamped paper for the purpose of writing such false document, and to ask for information as to a fact to be inserted in such false document, do not constitute forgery nor an attempt to commit forgery under the Penal Code, but are facts which would support a conviction for abetment of forgery as being acts done to facilitate the commission of the offence.—REG v. PADALA VENKATASAMI, I. L. R., 3 Mad 4. [Turner, C.J., and Kindersley, J. Mar. 8, 1881.]

**Stamp offence: Abetment of.**—A executed to B on plain paper an instrument which should have been executed on a paper bearing a four-anna stamp. B filed a suit against A in the Civil Court, and produced the instrument in evidence. The Civil Court called upon A to pay the duty and penalty,

and, on B's refusal to pay, impounded the instrument, and sent it to the Collector. The Collector, concurring with the opinion of the Civil Court, sanctioned the prosecution, in the Criminal Court, of both A and B, but without requiring the payment of the duty and penalty. The prosecution resulted in the conviction of A under s. 61 of the Stamp Act (I. of 1879), and of B of abetment of A's offence. *Held* that the convictions were illegal, inasmuch as the Collector failed to allow an opportunity of paying the duty and penalty. *Held* further that mere receipt of an unstamped instrument did not constitute the offence of an abetment of the execution of such an instrument.—EMPRESS *v.* JANKI, I. L. R., 7 Bom. 82. [West and Pinhey, JJ. Nov. 2, 1882.]

**Stamp offence: Abetment of.**—A debtor, having paid a sum of money to his creditor, accepted from the latter an unstamped receipt, promising to affix a stamp thereto. *Held* that this did not constitute abetment, within the meaning of s. 107 of the Penal Code, of the offence of making an unstamped receipt. *Empress* v. *Bahadur Singh* (Weekly Notes, 1885, p. 30) distinguished *Empress* v. *Janki* (I. L. R., 7 Bom. 82) and *Empress* v. *Bhairon* (Weekly Notes, 1884, p. 37) referred to.—QUEEN-EMPRESS *v.* MITTHU LAL, I. L. R., 8 All. 18. [Petheram, C.J. Oct. 26, 1885.]

**How a charge of abetment should be framed.**—In drawing up a charge of abetment, the section of the principal offence, and the section of this chapter (v.) which the case covers, should be mentioned, with the circumstances which bring the offence under the particular section of this chapter.—1 W. R., Cr. L. 9; 2 W. R., Cr. L. 1, 8.

**Bigamy and abetment thereof: How a charge should be framed.**—Bigamy and abetment of bigamy to be charged separately.—5 W. R., Cr. L. 5.

**What persons may be charged jointly.**—When more persons than one are accused of the same offence, or of different offences committed in the same transaction, or when one person is accused of committing any offence, and another of abetment of, or attempt to commit, such offence, they may be charged and tried together or separately, as the Court thinks fit; and the provisions contained in the former part of this chapter shall apply to all such charges.—Crim. Pro. Code (Act V. of 1898), s. 239.

**Contents of bond.**—The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be; and, in the latter case, the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.—Crim. Pro. Code (Act V. of 1898), s. 121.

**Where a charge of abetment should be enquired into or tried.**—A charge of abetment may be enquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.—CRIM. PRO CODE (ACT V. OF 1898), s. 180, illus. *a*.

**False certificate of summons: Abetment of the issue of a.**—Abetment of the issue of a false certificate of summons. Although there was no chaukidar in the village of the name appearing on the receipt, acknowledging due service, the prisoner was acquitted in the absence of proof of guilty knowledge or belief, it being probable that he (an utter stranger in the village) was deceived by the villagers.—QUEEN *v.* HISSAMUDDEEN, 3 W. R. 37. [Kemp and Seton-Karr, JJ. June 27, 1863.]

**Murder: There can be no conviction for abetment of murder without proof of murder.**—There can be no conviction for abetment of murder without proof of murder. A husband, or those who aided him, cannot be convicted of kidnapping for taking away his own wife, but they are guilty of rioting if they carry out the husband's object of getting possession of his wife by force and violence, and in the darkness of night.—QUEEN *v.* ASKUR, W. R., Sp. 12. [Steer and Seton-Karr, JJ. Feb. 22, 1864.]

**Marriage: Abetment of an illegal.**—Proof of dishonest or fraudulent intent is necessary for a conviction under s. 496 of the Penal Code of falsely going through the ceremony of marriage. The mere act of allowing the marriage to take place at one's house does not amount to the abetment of an illegal marriage.—QUEEN *v.* KUDUM, W. R., Sp. 13. [Steer and Morgan, JJ. Feb. 24, 1864.]

**Abduction of a woman: Abetment of.**—The prisoners having been sentenced for abetment of abduction of a woman under ss. 109 and 498 of the Penal Code, and for wrongful confinement of her under s. 343, *held* that both sentences could not stand, and that, as the essence of the case was abduction, the prisoners, as abettors therein, should be punished for it alone.—QUEEN *v.* ISHWAR CHUNDER JOGI, W. R., Sp. 21. [Loch and Seton-Karr, JJ. April 12, 1864.]

**Murder: Abetment of.**—When two persons take an active part in a murder, they become principals in the first degree, though one of them only may have been the actual

killer. If one stood by whilst the crime was being committed, he would be an abettor.—QUEEN *v.* JAN MAHOMED, 1 W. R. 49. [Kemp and Glover, JJ. Dec. 26, 1864.]

**Murder: Conviction of a police-inspector for having abetted the bringing of a false charge of.**—The conviction of a police-inspector for having abetted the bringing of a false charge of murder quashed, because it was not distinctly shown that he preferred the charge *mala fide*.—QUEEN *v.* MUTHOORAPERSHAD PANDAY, 2 W. R. 9. [Kemp and Glover, JJ. Jan. 18, 1865.]

**When instigation amounts to abetment.**—The mere "voluntarily causing" a person to commit an offence is not sufficient to constitute abetment of that offence. It is the voluntarily causing by wilful misrepresentation, or by wilful concealment of a material fact which a person is bound to disclose, that constitutes such instigation as amounts to abetment.—3 W. R. Cr. L. 12, No. 632, July 6, 1865.

**When trial should not be adjourned because principal offenders not arrested.**—The attention of the Joint Magistrate should be drawn to s. 224 of the Code of Criminal Procedure. If the proceedings have been completed against a prisoner, the decision of the case should not be deferred, because they are merely subordinate prisoners, and because the principal offenders have not been apprehended. A trial should be adjourned only when there is a probability of obtaining additional evidence against an accused.—3 W. R. Cr. L. 21, No. 795, Aug. 10, 1865.

**Dacoity: When concealment of certain facts does not amount to abetment of.**—Knowing of a design to commit a dacoity, and voluntarily concealing the existence of that design with the knowledge that such concealment would facilitate the commission of dacoity, does not amount to an abetment of the dacoity.—QUEEN *v.* JHUGROO, 4 W. R. 2. [Seton-Karr and Jackson, JJ. Sep. 4, 1865.]

**Cheating or extortion: Issue of a hukumnama (to correct statistical information) by police-officer is not abetment of.**—To amount to the offence of extortion, property must be obtained by intentionally putting a person in fear of injury to that person, and thereby dishonestly inducing him to part with his property. The mere issue of a hukumnama (to correct statistical information) by a police-officer is no legal ground for a conviction of abetment of cheating or of extortion.—QUEEN *v.* MEAJAN, 4 W. R. 5. [Kemp and Seton-Karr, JJ. Sep. 9, 1865.]

**Abetment: Principals punished as such cannot also be punished for.**—Persons punished as principals cannot also be punished for abetment of the same offence.—QUEEN *v.* JEETOO CHOWDHRY, 4 W. R. 23. [Loch and Glover, JJ. Nov. 8, 1865.]

**Grievous hurt and abetment of riot: Prisoners who have, as principals, been convicted of grievous hurt and riot cannot also be convicted of abetment of the same offences.**—Held that the prisoners could not be convicted of abetment of grievous hurt and of abetment of riot after having been convicted of both charges as principals. As, however, the evidence credited by the jury was held by the High Court to support a conviction of culpable homicide, and as the prisoners, even on their conviction on the lesser charge of grievous hurt, might have been sentenced to a much heavier punishment than had been passed on them, their punishment was not reduced.—QUEEN *v.* RAMNARAIN JOSH, 4 W. R. 37. [Kemp and Seton-Karr, JJ. Dec. 21, 1865.]

**Bribe: Abetment of.**—Where a constable and others enter a house, and apprehend certain persons as gamblers, and afterwards release them on payment of a sum of money by the latter, the offence committed is not house-trespass and extortion, but taking a bribe as regards the constable, and abetment of that offence as regards the others.—GOVT. *v.* MAHOMED HOSSEIN, 5 W. R. 49. [Norman and Campbell, JJ. Mar. 5, 1866.]

**Extortion: Abetment of.**—Held that it is not necessary in a case of extortion under the Penal Code that the threat should be used, and the property received, by one and the same individual, nor that the receiver should be charged with abetment, although that might be done.—REG. *v.* SHANKAR BHAGVAT, 2 Bom. H. C. R. 394. [Couch, C.J., and Warden, J. July 12, 1866.]

**Wrongful act of servant: When master not criminally responsible for.**—A master is not criminally responsible for the wrongful act of a servant, unless he can be shown to have expressly authorized it.—SUFFER ALLY KHAN *v.* GOLAM HYDER KHAN, 6 W. R. 60. [Norman and Seton-Karr, JJ. Aug. 27, 1866.]

**Suicide: Abetment of.**—Held that the prisoners, having abetted the suicide, were rightly convicted by the Judge for that offence. The sentence was mitigated under the circumstances.—GOVT. *v.* GOPAUL SING 1 Agra H. C. R. 21. [Pearson and Turner, JJ., and Spankie, Offg J. Sep 10, 1866.]

**Murder: Where a master, who is present at the commission of murder by his servant, is held guilty as principal.**—A person

may be convicted of murder on his own confession. Where a master accompanies a servant, knowing the latter's intention to commit murder, and is present at the commission of the murder, although he struck no blow, still he is guilty as a principal, the only reasonable presumption being that both were acting with a common intent.—QUEEN *v.* HYDER JOLAHA, 6 W. R. 83. [Kemp and Markby, JJ. Sep. 21, 1866.]

**Murder: Prisoner convicted not of abetment of murder, but of causing disappearance of evidence.**—Prisoner was present at a murder without being aware that such an act was to be committed. Through fear he not only did not interfere to prevent the commission of the crime, but joined the murderers in concealing the body. *Held* that he was guilty, not of abetment of murder, but causing the disappearance of evidence of a crime under s. 201 of the Penal Code. —QUEEN *v.* GOBURDHUN BERA, 6 W. R. 80. [Loch and Pundit, JJ. Oct. 4, 1866.]

**Torture: Prisoners treated not as abettors, but as principals.**—Where several prisoners were all concerned in a case of torture, and were prosecuting a common object, each was held guilty as a principal, and not as an abettor of others.—QUEEN *v.* TARINEE CHURN CHUTTOPADHYA, 7 W. R. 3. [Kemp and Markby, JJ. Jan 3, 1867.]

**Dacoity: Unlawful assembly living on the proceeds of.**—Case of an unlawful assembly, the members of which were held guilty of an offence under s. 402 of the Penal Code on their own admission that they not only knew that the assembly was an assembly for the purpose of committing dacoity, but also that all the persons (including themselves) constituting the assembly lived on the proceeds of dacoity, and had no other means of living.—QUEEN *v.* KENDRA KAMAR, 7 W. R. 61. [Hobhouse, J. April 30, 1867.]

**Registration Act: Abetment of false personation under the.**—Three persons, who put up a fourth to personate one whose authority was required to complete a conveyance of immoveable property, were held guilty under s. 94 of the Registration Act (XX. of 1866).—QUEEN *v.* SOLEEMODDEEN, 7 W. R. 63. [Seton-Karr, J. May 6, 1867.]

**Registration Act: Abettor may be punished more severely than principal.**—Under s. 94, Act XX. of 1866, an abettor may be punished more severely than his principal can be.—QUEEN *v.* GOPAL PROSAD SEIN, 8 W. R. 16. [Seton-Karr and Macpherson, JJ. June 15, 1867.]

**Registration Act: Abetment of offence under.** — Where A intended to register a deed, but was too ill to do so, and B, who was known to A, personated A, and had the deed registered in her name, it was held that in the absence of anything to prove that it was intended to defraud anybody, A was not guilty of cheating by personation under s. 419 of the Penal Code, but of an offence under s. 93 of the Registration Act (XX. of 1866). C and D, who abetted A, were convicted of an offence under s. 94 of the said Act XX.—LOOTHY BEWA, 11 W. R. 24; 2 B. L. R. A. Cr. 25. [Norman and Jackson, JJ. Mar. 31, 1869.]

**Assault: Abetment of.** — Where, of several persons constituting an unlawful assembly, some only are armed with sticks, and A, one of them, is not so armed, but picks up a stick and uses it, B (the master of A), who gave a general order to beat, is guilty of abetting the assault made by A.—QUEEN *v.* RASSOKOOLLAH, 12 W. R. 51. [Glover and Mitter, JJ. Sep. 2. 1869.]

**Servant: When a master can be held criminally responsible for an offence committed by a.**—To make a master criminally responsible for an offence committed by his servants, it must be shown that there has been some act or illegal omission on the part of the master whereby he abetted the offence, or some prior instigation or conspiracy. Evidence not admissible cannot be received as corroborative proof.—CROWN PROSECUTOR *v.* SHAMSUNDER, 1 N.-W. P. 310. [Pearson and Turner, JJ. Sep. 3, 1869.]

**Information: When it is not an offence to omit to give information of commission of crime.**—An omission to give information that a crime has been committed does not, under s. 107 of the Penal Code, amount to abetment, unless such omission involves a breach of a legal obligation. [See ss. 44 and 45 of the Criminal Procedure Code (Act X. of 1882)]. — QUEEN *v.* KHADIM SHEIK, 4 B. L. R. A. Cr. 7. [Loch and Glover, JJ. Nov. 23, 1869.]

**Ship: Destroying a ship on the high seas: Abetment in British India of such offence when committed at a greater distance than three miles from the coast.**— The substantive law applicable to a British-born subject tried in the High Court of Judicature at Bombay for destroying a British ship on the high seas, at a distance of more than three miles from the shores of British India, is the English law, and not the Penal Code, notwithstanding the provisions of Stat. 30 and 31 Vict., c. 124, s. 11. The same substantive law is applicable to prisoners who conspire together in Bombay to destroy such ship on the high seas, and such ship is so destroyed in consequence. The procedure

applicable in such cases is the ordinary criminal procedure of the High Court. The question whether the Indian Legislature has power to legislate with reference to offences committed on the high seas considered. There is not any Act of the Indian Legislature now in force which provides for the offence of destroying a ship when committed at a greater distance than three miles from the coast, or for the abetment in British India of such an offence so committed.—REG. *v.* ELMSTONE, WHITWELL, *et al.*, 7 Bom. H. C. R. 89. [Westropp, C.J., and Bayley and Green, JJ. July 22, 30, 1870.]

**Waging war: Abetment of.**—The Sessions Court at Patna was held to have jurisdiction to try the offence of abetment of waging war against the Queen, though the waging of war did not take place in Patna, the rule of law as to abetment being that, where parties concert together and have a common object, the act of one of the parties, done in furtherance of the common object, and in pursuance of the concerted plan, is the act of the whole. The jurisdiction of the Sessions Court at Patna was not affected by the erroneous statement in the charge of the abetment having taken place at Calcutta, when the evidence was sufficient to show the abetment at Patna, such erroneous statement being an error or defect in the charge which is cured by s. 537 of the Code of Criminal Procedure, 1882.—QUEEN *v.* AMEER KHAN, 17 W. R. 15; 9 B. L. R. 36. [Couch, C.J., and Jackson and Macpherson, JJ. Dec. 12, 1871.]

**Abetment: Act need not be committed.**—It is not necessary to constitute the offence of abetment that the act abetted should be committed.—DINONATH BUROOA, 18 W. R. 32. [Kemp and Glover, JJ. July 24, 1872.]

**Abetment: Confession of principal not admissible against abettor even when both tried jointly.**—S. 30 of the Evidence Act (I. of 1872) ought to be considered with great strictness, and the confession of one person is not admissible in evidence against another, although the two are jointly tried, if one is tried for the abetment of the offence for which the other is on his trial.—QUEEN *v.* JAFFER ALI, 19 W. R. 57. [Kemp and Glover, JJ. April 17, 1873.]

**Abetment: Foreign subject, resident in foreign territory, abetting commission of offence committed in British territory.**—Where a foreign subject, resident in foreign territory, instigated the commission of an offence which, in consequence, was committed in British territory, *held* that the instigation not having taken place in any district created by the Code of Criminal Procedure, the instigator was not amenable to the jurisdiction of a British Court established under that Code, s. 66.—REG. *v.* PIRTAI, 10 Bom. H. C R. 356. [Melvill and West, JJ. July 19, 1873.]

**Abetment: Instigation depends upon the act actually done.**—The offence of abetment by instigation depends upon the act which is actually done by the person whom he abets.—QUEEN *v.* IMAMDI BHOOYAH, 21 W. R. 8. [Phear and Morris, JJ. Dec. 1, 1873.]

**Torture: Abetment of.**—Where a head-constable, who knew that certain persons were likely to be tortured for the purpose of extorting confession, purposely kept out of the way, it was held that he was guilty of abetment under the words of s. 107 of the Penal Code, expl. 2.—QUEEN *v.* KALEE CHURN GANGOOLY, 21 W. R. 11. [Markby and Birch, JJ. Dec. 4. 1873.]

**Incorrect record: Abetment of false preparation of.**—S was charged with the preparation of a certain record, and was in the habit of preparing it from certain abstracts made and read to him by D. D made and read false abstracts, whereby an incorrect record was prepared. The Court was of opinion that D could not strictly be held to have committed the offence described in s. 218 of the Penal Code He was guilty, however, of abetment of the offence described in that section, and not the less so, that S had no guilty knowledge or intention in the matter.—QUEEN *v.* BRIJ MOHAN LAL, 7 N.-W. P. 134. [Pearson, J. Jan. 25, 1875.]

**Illegal omission: Abetment by.**—If a number of persons, assembled for any lawful purpose, suddenly quarrel with an intruder without any previous intention or design, they do not commit "riot" in the legal sense of the word. To prove abetment under s. 107, Penal Code, by "illegal omission," it would be necessary to show that the accused intentionally aided the commission of the offence by his non-interference.—KHAJAH NOORUL HOSSEIN *alias* KHAJA WAHED JAN *v.* FABRE-TONNERRE, 24 W. R. 26. [Glover and Mitter, JJ. July 12, 1875.]

**Abetment: Conviction of abettor not dependent on conviction of principal.**—The offence of abetment under the Penal Code is a substantive offence. The conviction of an abettor is, therefore, in no way dependent on the conviction of the principal.—REG *v.* MARUTI DADA, I. L. R., 1 Bom. 15. [West and Nanabhai Haridas, JJ. Oct 12, 1875.]

**Fabricating false evidence: Abetment of.**—M instigated Z to personate C, and to purchase in C's name certain stamped

paper, in consequence of which the vendor of the stamped paper endorsed C's name on such paper as the purchaser of it. M acted with the intention that such endorsement might be used against C in a judicial proceeding. *Held* that the offence of fabricating false evidence had been actually committed, and that M was properly convicted of abetting the commission of such offence. *Queen v. Ramsaran Chowbey* (4 N.-W. P. 46) distinguished and observed on.—EMPRESS *v.* MULA, I. L. R., 2 All. 105. [Turner, J. Jan. 24, 1879.]

**Food: When the supplying of, amounts to abetment.**—The supplying of food to a person about to commit a crime is not necessarily an abetment of the crime; but if food were supplied in order that the criminal might go on a journey to the intended scene of the crime, or conceal himself while waiting for an opportunity to commit the crime, the supply of food would be in order to facilitate the commission of the crime, and might facilitate it.—*In re* LINGAM RAMANNA, I. L. R., 2 Mad 137. [Turner, C.J., and Muttusami Ayyar, J. May 3, 1880.]

**When a person cannot be convicted of abetting the offence of instituting a false charge**—There being no abetment of an offence after it has been committed, a person cannot be convicted of abetting the offence of instituting a false charge, on evidence which shows only that he gave evidence in support of a charge found to be false.—IN THE MATTER OF JUGUT MOHINI DASSI AND MADHU SUDHAN DUTT, 10 C. L. R 4. [McDonell and Tottenham, JJ. Dec. 13, 1881.]

**Extortion: When village-chaukidar not liable as abettor of.**—The mere fact that the offence of extortion under s. 384 of the Penal Code is committed in the presence of the village-chaukidar, without eliciting any disapproval on his part, will not render him liable as an abettor of the offence.—IN THE MATTER OF THE PETITION OF GOPAL CHUNDER SIRDAR: GOPAL CHUNDER SIRDAR *v.* FOOLMONI BEWA, I. L. R., 8 Cal. 728, 11 C. L. R. 223. [McDonell and Field, JJ. April 20, 1882.]

**Negligent act likely to spread infection of disease dangerous to life: Abetment of.**—K, knowing that he was suffering from cholera, entered a train as a passenger without informing the Railway Company's servants of his condition. M, knowing of K's condition, bought K's ticket, and travelled with him. *Held* that K was properly convicted under s. 269 of the Penal Code of negligently doing an act which was, and which he had reason to believe was, likely to spread infection of a disease dangerous to life, and M of abetment of K's offence.—QUEEN-EMPRESS *v.* KRISHNAPPA, I. L. R., 7 Mad. 276. [Turner, C.J., and Kernan, J. Dec. 14, 1883.]

**Bigamy: Abetment of.**—A was baptized in infancy into the Roman Catholic Church, but subsequently relapsed, with the rest of her family, into Hinduism, and was married to a Hindu. Her Hindu husband since discarded her, and alleged that he would not have married her if he had known that she had been baptized. A was subsequently readmitted into the Roman Catholic Church, and married by B, a priest, to a Roman Catholic during the lifetime of her Hindu husband. *Held* that A's marriage with the Hindu was subsisting and valid at the time of her Christian marriage; that she was guilty of the offence of bigamy; and that B was guilty of abetting that offence. *Lopes* v. *Lopes* (I. L. R., 12 Cal. 709) discussed.—*In re* MILLARD, I. L. R., 10 Mad. 218. [Collins, C.J., and Parker, J. April 1, 1887.]

**Illegal omission.**—Mere non-feasance will not generally amount to an illegal omission (1. Russ. 91); but circumstances may exist where mere non-feasance towards a child of tender years amounts to an illegal omission. So a refusal or neglect to provide sufficient food or other necessaries for an infant of tender years, unable to provide for or take care of itself, by a party obliged by duty or contract to provide for it, amounts to an illegal omission.—1 RUSS. 80.

**Abetment in British India by British subject of offence committed in foreign territory.**—An abetment in British India by a British subject of an offence committed in foreign territory is not an offence punishable under the Indian Penal Code (Act XLV. of 1860), and cannot, therefore, be tried by a Court in British India. *Regina* v. *Elmstone* (7 Bom. H. C. R. 89) and *Empress* v. *Moorga Chetty* (I. L. R, 5 Bom. 338, 347), followed. — QUEEN-EMPRESS *v.* GANPATRAO RAMCHANDRA, I. L. R., 19 Bom. 105. [Jardine and Ranade, JJ. Mar. 8, 1894.] But now see s. 108A, *infra*.

**Letter: Instigating another to the commission of an offence by means of a**—Where one person instigates another to the commission of an offence by means of a letter sent through the post, the offence of abetment by instigation is completed so soon as the contents of such letter become known to the addressee, and such offence is triable at the place where such letter is received.—QUEEN-EMPRESS *v.* SHEO DIAL MAL, I. L. R., 16 All. 389. [Edge, C.J., and Tyrrell, J. May 25, 1894.]

**Abetment by policeman who stands by and acquiesced in an assault by another policeman to extort confession.**—A policeman who stands by, acquiescing in an assault on a prisoner committed by another policeman for the purpose of extorting a confession, is guilty of abetment of an offence under s. 330 of the Indian Penal Code.—QUEEN-EMPRESS *v.* LATIFKHAN, I. L. R., 20 Bom. 394. [Jardine and Ranade, JJ. Mar. 12, 1895.]

**Accessory after the fact.**—Under the Indian Law no one is liable for being an accessory after the fact.—RAKHAL NIKARI *v.* QUEEN-EMPRESS, 2 C. W. N. 81. [Ghose and Rampini, JJ. Aug. 24, 1897, and Trevelyan, J. Sep. 1, 1897.]

**108.** A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence, with the same intention or knowledge as that of the abettor.

Abettor.

*Explanation 1.*—The abetment of the illegal omission of an act may amount to an offence, although the abettor may not himself be bound to do that act.

*Explanation 2.*—To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

*Illustrations.*

(*a.*) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(*b.*) A instigates B to murder D. B, in pursuance of the instigation, stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

*Explanation 3.*—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

*Illustrations.*

(*a.*) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(*b.*) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A, and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is, therefore, subject to the punishment of death.

(*c.*) A instigates B to set fire to a dwelling-house B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(*d.*) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

*Explanation 4.*—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

*Illustration.*

**A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.**

*Explanation 5.*—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.

*Illustration.*

**A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison. Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has, therefore, committed the offence defined in this section, and is liable to the punishment for murder.**

**There being no intention to cause death, the offence committed may be grievous hurt, and not murder, &c.**—The offences of murder and of culpable homicide not amounting to murder, each supposes an intention or knowledge of likelihood of the causing of death. In the absence of such intention or knowledge, the offence committed may be the offence of causing grievous hurt.—QUEEN *v.* BHADOO PORAMANICK, 4 W. R. 23. [Loch and Glover, JJ. Nov 10, 1865.]

**Abetment of grievous hurt, and not abetment of murder.**—The prisoners having abetted an assault, and murder having been committed, *held*, under the peculiar circumstances of the case, that they were guilty of abetment of grievous hurt, and not abetment of murder.—QUEEN *v.* GOLUCK CHUNG, 5 W. R. 75 [Campbell and Macpherson, JJ. April 28, 1866.]

**Acts of subsequent abetment.**—S. 108 of the Penal Code does not contemplate any acts of subsequent abetment, or provide for the punishment of such offences, except when they are such as are defined in ss. 212 to 218.—QUEEN *v.* PAUN PUNDAH, 18 W. R. 28; 9 B. L. R. App. 16. [Kemp and Glover, JJ. July 11, 1872.]

**Abetment by instigation.**—The offence of abetment by instigation depends upon the intention of the person who abets, and not upon the act which is actually done by the person whom he abets.—QUEEN *v.* IMAMDI BHOOYAH, 21 W. R. 8. Phear and Morris, JJ. Dec. 1, 1873.

**Abetment by conspiracy.**—Under expl. 5, s. 108 of the Penal Code, it is not necessary to the commission of the offence of abetment by conspiracy that the abettor shall concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.—QUEEN *v.* GOBIND DOBEY, 21 W. R. 35. [Kemp and Glover, JJ. Jan. 27, 1874.]

**Theft · Abetment of theft with the knowledge and consent of owner.**—A sought the aid of B with the intention of committing a theft of the property of B's master. B, with the knowledge and consent of his master, and for the purpose of procuring A's punishment, aided A in carrying out his object. On the prosecution of A for theft, *held* that, as the property removed was so taken with the knowledge of the owner, the offence of theft had not been committed; *held*, further, that it is not necessary to an indictment for the abetment of an abetment of an offence to show that such offence was actually committed.—EMPRESS *v.* TROYLUCKHO NATH CHOWDHRY, I. L. R., 4 Cal. 366 : 3 C. L. R. 525. [Jackson and White, JJ. Nov. 12, 1878.]

**108A*** A person abets an offence within the meaning of this Code who, in British India, abets the commission of any act without and beyond British India which would constitute an offence if committed in British India.

**Abetment in British India of offences outside it.**

* S. 108A has been added by the Indian Penal Code Amendment Act (IV. of 1898), s 3. As to the authority for instituting prosecutions under s. 108A, see the new Code of Criminal Procedure (Act V of 1898), s. 196.

*Illustration.*

**A, in British India, instigates B, a foreigner in Goa, to commit a murder in Goa. A is guilty of abetting murder.**

**Selling minor for prostitution: when the act does not amount to principal offence, or an attempt or abetment thereof.**—A minor girl under the age of sixteen years was taken by accused No. 1, under the direction of accused No. 2, from Sholapur to Tuljapur (in the Nizam's territory), and there dedicated to the goddess Amba, with intent or knowing it to be likely that the minor would be used for purposes of prostitution. The District Magistrate of Sholapur convicted accused No. 1 of an offence under s 372 and accused No. 2 of abetment of the offence under ss. 372 and 108A of the Indian Penal Code, and sentenced them each to six months' rigorous imprisonment. *Held* that, as the offence of the disposal of the minor took place out of British India, the Magistrate had no jurisdiction to try the offence, in the absence of a certificate of the Political Agent or the sanction of the Local Government as required by s. 188 of the Code of Criminal Procedure (Act V. of 1898). *Held*, also, that accused No. 2 was not guilty of abetment, and s. 108A of the Indian Penal Code had no application to the present case. Mere intention not followed by any act cannot constitute any offence, and an indirect preparation which does not amount to an act which amounts to a commencement of the offence does not constitute either a principal offence or an attempt or abetment of the same. The intention of either of the accused while they were staying at Sholapur did not constitute any offence, and their removal with the girl at Tuljapur did not by itself constitute an abetment.—QUEEN-EMPRESS *v.* BAKU, I. L. R., 24 Bom. 287. [Ranade and Crowe, JJ. Oct. 9, 1899.]

Punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment.

**109.*** Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Court by which offence abetted is triable.
Cog. if offence abetted cog.
According as warrant or summons may issue for offence abetted.
According as offence abetted is bailable or not.
According a offence abetted is compoundable or not.

*Explanation.*—An act or offence is said to be committed in consequence of abetment when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

*Illustrations.*

**(*a*.) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.**

**(*b*.) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.**

**(*c*.) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison, and delivers it to B, in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence, and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.**

**S. 109 contemplates that the act abetted has been committed in consequence of the abetment.**—S. 109 of the Penal Code contemplates that the act abetted should be committed in consequence of the abetment. The term "fabrication" in s. 193 refers to the fabrication of false documentary evidence to be used in a suit, so that, to convict under this section, it is essential to aver and to prove that the fabricated documents were intended for that purpose. The illegal concealment, by act or omission, contemplated by s. 120 of the Code, has reference to the existence of a design on the part of third persons to

* Special provisions have been made for the punishment of abetment of certain offences by ss. 121, 121A, 125, and 164 of this Code. Sections 131-135, 138, 236, 305, and 306, provide punishment for the abetment of acts which are themselves not punishable under the Code.

fabricate evidence.—QUEEN v. RAJCOOMAR BANERJEE, 1 Ind. Jur. O. S. 105. [Trevor and Seton-Karr, JJ. Sep. 27, 1862.]

**Abetment of issue of a false certificate of summons.**—Abetment of the issue of a false certificate of summons. Although there was no chaukidar in the village of the name appearing on the receipt acknowledging due service, the prisoner was acquitted in the absence of proof of guilty knowledge or belief, it being probable that he (an utter stranger in the village) was deceived by the villagers. —QUEEN v. HISSAMUDDEEN, 3 W. R. 37. [Kemp and Seton-Karr, JJ. June 27, 1863.]

**Abetment of abduction: Wrongful confinement: Sentences for both offences set aside: Sentence for abetment only upheld.**—The prisoners having been sentenced for abetment of abduction of a woman under ss. 109 and 498 of the Penal Code, and for wrongful confinement of her under s. 343, *held* that both sentences could not stand, and that, as the essence of the case was abduction, the prisoners, as abettors therein, should be punished for it alone.—QUEEN v. ISHWAR CHUNDER JOGI, W. R. Sp., 21. [Loch and Seton-Karr, JJ. April 12, 1864.]

**How charges of abetment should be framed.**—As the offences with abetting which the prisoners were severally charged were distinct, the abetment of each should have formed separate heads of the charge in accordance with the provisions of s. 240 of the Code of Criminal Procedure; while to render s. 109 of the Indian Penal Code applicable, it should have been stated in the charge and proved in evidence that the act abetted was committed in consequence of the abetment of the accused.—2 W. R. Cr. L. 8, No. 58, Jan. 17, 1865. (See also 1 W. R. Cr. L. 9, No. 1093, Dec. 20, 1864.)

**Where the act with the abetment of which the prisoner was charged, was not committed, the fact should be mentioned in the charge.**—That the act, with the abetment of which the prisoner was charged, was not committed in consequence of the abetment, should have been specified in the charge, in order to bring it within the terms of s. 116 of the Penal Code.—2 W. R. Cr. L. 1, No. 12, Jan. 6, 1865.

**How a charge of abetment of miscarriage should be framed.**—In order to render Ramchand Doss subject to the full punishment for the offence abetted, by the application of s. 109 of the Penal Code, the charge against him should have stated the act abetted [*i.e.*, causing the miscarriage of Chund Kaiburtin] was committed in consequence of the abetment of the accused Ramchand Doss, no express provision being made for the punishment of such abetment. —3 W. R. Cr. L. 5, No. 478, May 19, 1865.

**Abetment by keeping watch while a murder was being committed: Charge should be under s. 114, if not under s 109.**—If the abetment charged was committed by keeping watch at the door when the murder was being committed, the prisoner should have been charged under s. 114 of the Penal Code, not under s. 109, for it could hardly be said that the murder took place in consequence of such abetment.—6 W. R. Cr. L. 4, No. 1410, Oct. 9, 1866.

**Abetment of cheating by personation.**—Where a person represented a girl to be the daughter of one woman when she was within his knowledge the daughter of another woman, *held* that he was guilty of cheating by personation under s. 416 of the Penal Code, and that it was unnecessary to bring in s. 109 relating to abetment.—QUEEN v. DHANPUT OJHAH, 7 W. R. 51. [Glover, J. April 5, 1867.]

**Abetment under Registration Act.**—Act XIV. of 1866 does not provide for the punishment of abetting an offence under that Act. Under s. 109 of the Penal Code, the abetment must be of an offence punishable under that Act, and not of an offence punishable under a distinct and special law. —QUEEN v. RAMLUGUN LALL MOONSHEE, 7 W. R. 54. [Kemp and Glover, JJ. April 8, 1867.] [But the law has now been altered. See definition of "offence" in s. 40, *supra*, which includes abetment of offences committed under special or Local Acts.]

**Abetment of grievous hurt.**—Where A ordered B and C to seize and forcibly take D in the contemplation of an assault upon D, and D was so beaten and tortured as to have died in consequence, *held* that A was guilty at least of abetting the commission of voluntarily causing grievous hurt.—QUEEN v. DOORGESSUR SURMAH, 7 W. R. 61. [Hobhouse, J. April 30, 1867.]

**Abetment of giving false evidence.**—Where C falsely represented himself to be U, and the writer of a document signed by U and T, knowing that C was not U, and had not written such document, adduced C as U and as the writer of that document. *Held* that T ought to have been convicted on a charge of abetting the giving of false evidence.—QUEEN v. CHUNDI CHURN NAUTH, 8 W. R. 5. [Jackson and Hobhouse, JJ. June 4, 1867.]

**Under the Registration Act (XX. of 1866) an abettor may be punished more severely than the principal.**—Under s. 94, Act XX. of 1866, an abettor may be punished more severely than his principal can be.—

QUEEN v. GOPAL PROSAD SEIN, 8 W. R. 16. [Seton-Karr and Macpherson, JJ. June 15. 1867.]

**Abetment of theft.**—A prisoner who consented to form one of a party who committed theft, and resiled from his agreement, but was present at the commission of theft, does not come within cl. 2, s. 107, Penal Code, and ought not to have been convicted of the theft, but of the abetment thereof under cl. 3, s. 107, and s. 109, Penal Code, read together. —QUEEN v. BOODHUN MOOSHUR, 8 W. R. 78. Glover, J. Oct. 30, 1867.]

**Where abettor should be tried** —"The abetment may be enquired into or determined in any district within which the abettor has done anything for abetting the commission of the offence." — QUEEN v. AMEER KHAN, 17 W. R. 15; 9 B. L. R. 36. [Couch, C.J., and Jackson, and Macpherson, JJ. Dec. 21, 1871.]

**Abetment of theft.**—The carrying-off of certain buffaloes belonging to the complainant by order of the accused, and the retention of them in the custody of the latter's servant, were held to amount to an abetment of theft as defined in the Penal Code.—TARINEE PROSAD BANERJEE, 18 W. R. 8. [Kemp and Glover, JJ. June 14, 1872.]

**What constitutes abetment.**—It is not necessary to constitute the offence of abetment that the act abetted should be committed.—DINONATH BUROOA, 18 W. R. 32. [Kemp and Glover, JJ. July 24, 1872.]

**Abetment of bigamy.**—The elder paternal uncle of a Mahomedan girl, a minor, disposed of her in marriage after he knew she had previously been given in lawful marriage by his younger brother. *Held* that the act did not, *per se*, constitute a criminal offence, even though the second marriage were valid, it appearing that the accused was the only person concerned in the second marriage who knew of the first, and that the girl was not present. A and B were indicted under ss. 109 and 495 of the Penal Code—A for giving his niece (a minor) in marriage, she being then married, and B for aiding therein. The girl was not present at the marriage, and there was no evidence to show that A had conspired with any person but B, whom the jury acquitted. *Held* that the acquittal of B involved the acquittal of A.—IN THE MATTER OF ABDOOL KURREEM v. EMPRESS, 3 C. L. R. 81: I L. R., 4 Cal. 10. [White and Prinsep, JJ. July 19, 1878.]

**Abetment of fabrication of false evidence.**—M instigated Z to personate C, and to purchase in C's name certain stamped paper, in consequence of which the vendor of the stamped paper endorsed C's name on such paper as the purchaser of it. M acted with the intention that such endorsement might be used against C in a judicial proceeding. *Held* that the offence of fabricating false evidence had been actually committed, and that M was properly convicted of abetting the commission of such offence. *Queen v. Ramsaran Chowbey* (4 N.-W. P. 46) distinguished and observed on.—EMPRESS v. MULA, I. L. R., 2 All. 150. [Turner, J. Jan. 24, 1879.]

**Abetment of bigamy.**—A member of the caste of Ajanya Rajput Guzars, residing in Khandesh, executed a deed of divorce to his wife. The Court held on the evidence that the deed was proved, and that in this caste a husband was, for a sufficient reason, such as incontinence, allowed to divorce his wife; that the deed in the present case had not been executed for a sufficient reason, and that, consequently, the parties entering into a second marriage were guilty of an offence under s. 494 of the Penal Code; and that the priest who officiated at that marriage was an abettor under ss. 494 and 109. Mere consent of persons to be present at an illegal marriage, or their presence in pursuance of such consent, or the grant of accommodation in a house for the marriage, does not necessarily constitute abetment of such marriage.—EMPRESS v. UMI, I. L. R., 6 Bom. 126. [Melvill and Kemball, JJ. Jan. 11, 1882.]

**Abetment of kidnapping.**—A mother cannot have a right to the custody of her legitimate children adversely to the father. Ordinarily the custody of the mother is the custody of the father, and any removal of the children from place to place by the mother ought to be taken to be consistent with the right of the father as guardian, and not as a taking out of his keeping. But where a Hindu woman left her husband's house, taking with her her infant daughter, and went to the house of A, and on the same day the daughter was married to B, the brother of A, without the father's consent, it was held that A was rightly convicted under ss 109 and 363 of the Penal Code of abetting the offence of kidnapping.—IN THE MATTER OF THE PETITION OF PRAN KRISHNA SURMA: EMPRESS v. PRAN KRISHNA SURMA, I. L. R., 8 Cal. 969; 10 C. L. R. 6. [Wilson and Macpherson, JJ. June 20, 1882.]

**Abetment of committing public nuisance.**—The lessee of a house, who permitted disorderly people to use it for gambling, and thereby caused annoyance to the public, was convicted of an offence under the Penal Code, s. 290. It appeared, however, that the accused had not engaged the house with the object of letting it out as a gaming-

house. *Held* that the conviction was right —QUEEN-EMPRESS *v.* THANDAVARAYUDU, I. L. R., 14 Mad. 364. [Muttusami Ayyar and Wilkinson, JJ. Jan. 28, 1891.]

**An abetment in British India by a British subject of an offence committed in foreign territory.**—An abetment in British India by a British subject of an offence committed in foreign territory is not an offence punishable under the Penal Code, and cannot, therefore, be tried by a Court in British India *Regina* v *Elmstone* (7 Bom. H. C. Rep. 89, Cr. Ca.) and *Empress* v. *Moorga Chetty* (I. L. R., 5 Mad. 338) followed. The accused, a Native Indian subject of Her Majesty, was committed to the Court of Session for abetting the commission of murder or of rioting under ss. 302 and 147 of the Penal Code. The alleged abetment consisted of words spoken in British territory by the accused, inciting certain Portuguese subjects to kill one Bhana if he attempted to remove the produce of certain lands situate in the Portuguese territory of Daman. A disturbance afterwards occurred at Daman in connection with this matter in which one man was killed, and another wounded. Thereupon the Governor-General of Portuguese India moved the Government of Bombay to bring the accused to justice as the instigator of the murder The Government of Bombay, being of opinion that s. 188 of the Code of Criminal Procedure was applicable to the case, passed a Resolution in the Political Department directing the District Magistrate to take the necessary action in the matter. The District Magistrate thereupon committed the accused to the Court of Session on a charge of abetment of murder or of rioting. *Held*, quashing the commitment, that the alleged abetment was not an offence punishable under the Penal Code, and that, therefore, the Sessions Court had no jurisdiction to try the accused. *Held*, also, that s. 188 of the Code of Criminal Procedure had no application to the present case, the alleged offence of abetment not having been committed outside British India.—QUEEN-EMPRERS *v.* GANPATRAO RAMCHANDRA, I. L. R., 19 Bom. 105. [Jardine and Ranade, JJ. March 8, 1894.]

**Abetment of an offence: Sanction to prosecute.**—Though sanction to prosecute is necessary in cases falling under the sections of the Penal Code set forth in s. 195, Criminal Procedure Code, no such sanction is required previous to the prosecution of a person charged with the abetment of such offences.—QUEEN-EMPRESS *v.* ABDUL KADAR SHERIFF SAHEB, I. L. R., 20 Mad. 8. [Subramania Ayyar and Davies, JJ. Sep. 14, 1896.]

**Abetment of forgery by writing out the deed.**—The accused was not only the writer, but also took an active part in the preparation, of a document the alleged executant of which was dead before the date of the document, and the person who really had an interest under the document was convicted under s. 82 of the Registration Act (III. of 1877). But evidence was wanting to show that the accused took any part in the forgery of the name of the alleged executant. *Held* that the accused could not be convicted of the offence of forgery under s. 467 of the Penal Code. There being nothing on the record to show that the accused was a party to, or took any part in, the actual forgery of the document, or that he was present on the occasion when it was forged, the proper section to convict him under would be s. 467 read with s. 109, that is, of abetment of forgery, and not s. 467 read with s. 114 An unregistered document, though it may not be a valuable security until the registration is completed, still "purports" to be a valuable security within the meaning of s. 467 of the Penal Code. *Queen-Empress* v. *Ramasami* (I. L. R., 12 Mad 148) approved of.—KASHI NATH NAEK *v.* QUEEN-EMPRESS, I. L. R., 25 Cal. 207. [Ghose and Wilkins, JJ. July 6, 1897.]

The following note equally applies to ss. 110 and 111: Court by which offence abetted is triable. Cog. if offence abetted cog. According as warrant or summons may issue for offence abetted. According as offence abetted is bailable or not. According as offence abetted is compoundable or not.

**110.*** Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

Punishment of abetment if person abetted does act with different intention from that of abettor.

**111.** When an act is abetted, and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it:

Liability of abettor when one act abetted, and different act done.

* As to the application of s. 110 to offences under special or local laws, see s. 40, *supra*.

Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid, or in pursuance of the conspiracy which constituted the abetment.

Proviso.

*Illustrations.*

(*a*.) A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake, puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation, and the act done was, under the circumstances, a probable consequence of the abetment, A is liable in the same manner, and to the same extent, as if he had instigated the child to put the poison into the food of Y.

(*b*.) A instigates B to burn Z's house. B sets fire to the house, and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft; for the theft was a distinct act, and not a probable consequence of the burning.

(*c*.) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and, being resisted by Z, one of the inmates, murder Z. Here, if the murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

**Abetment of assault: Murder resulted Conviction for grievous hurt.**—The prisoners having abetted an assault, and murder having been committed, it was held, under the peculiar circumstances of the case, that they were guilty of grievous hurt, but not of abetment of murder.—QUEEN *v.* GOLUCK CHUNG, 5 W. R 75. [Campbell and Macpherson, JJ. April 28, 1866.]

**Abetment of grievous hurt.**—Where A ordered B and C to seize and forcibly take D in the contemplation of an assault upon D, and D was so beaten and tortured as to have died in consequence, *held* that A was guilty at least of abetting the commission of voluntarily causing grievous hurt.—QUEEN *v.* DOORGESSUR SURMAH, 7 W. R. 61. [Hobhouse, J. April 30, 1867.]

**Abetment of robbery**—M and C were proved to have connived at a robbery in which excessive violence was used, resulting in the death of the persons robbed. The Sessions Judge convicted M and C of abetment of murder, on the ground that the death was "a probable consequence of the intention known and abetted by them." *Held* that the test of guilt in charges of abetment must always be whether, having regard to the immediate object of the instigation or conspiracy, the act done by the principal is one which, according to ordinary experience and common sense, the abettor must have foreseen as probable, and that, having regard both to the strictness of the tests which should be applied to the interpretation of a penal statute, and especially of a section such as s 111 of the Penal Code, and also to the necessary difficulty of questions as to the state of a man's mind at a particular moment, it could not, in the present case, be said that, because the accused knew of, and connived at, the intended robbery, they must be presumed to have foreseen that such excessive violence as was used was probable.—EMPRESS *v.* MATHURA DAS, I. L. R., 6 All. 491. [Straight, Offg. C J. June 27, 1884.]

**112.*** If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

Abettor when liable to cumulative punishment for act abetted, and for act done.

*Illustration.*

A instigates B to resist by force a distress made by a public servant. B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting

* As to the application of s. 112 to offences under special or local laws, see s. 40, *supra*.

**the distress and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and, if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.**

**Abetment of house-trespass.**—A entered the house of B without the latter's permission, and committed adultery with B's wife. *Held* that A could be separately convicted of, and punished for, both the adultery and house-trespass, as they were distinct offences; but that, under the circumstances, B's wife was by law incapable of committing abetment of the house-trespass.—CROWN v. SHEIKH MUNGLI, Panj. Rec., No. 5 of 1871.

Court by which offence abetted is triable. Cog. if offence abetted cog. According as warrant or summons may issue for offence abetted. According as offence abetted is bailable or not. According as offence abetted is compoundable or not.

**118.** When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment causes a different effect from that intended by the abettor, the abettor is liable for the effect caused in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect; provided he knew that the act abetted was likely to cause that effect.

**Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.**

*Illustration.*

**A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.**

**Abetment of grievous hurt.**—Where A ordered B and C to seize and forcibly take D in the contemplation of an assault upon D, and D was so beaten and tortured that he died, it was held that A was guilty at least of abetting the commission of voluntarily causing grievous hurt.—QUEEN v. DOORGESSUR SURMAH, 7 W. R. 97. [Hobhouse, J. April 30, 1867.]

Court by which offence abetted is triable. Cog. if offence abetted cog. According as warrant or summons may issue for offence abetted. According as offence abetted is bailable or not. According as offence abetted is compoundable or not.

**114.*** Whenever any person, who, if absent, would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

**Abettor present when offence is committed.**

**Charge.**—"The charge should have set forth that, as the prisoner was present abetting the abduction of Mussamut Bhoola with intent that she might be compelled to marry ——against her will, he, under s. 114 of the Penal Code, committed the said abduction—an offence punishable under s. 366 of the Penal Code, and within," &c.—3 W. R., Cr. L. 9, No. 518 of 1865.

**Principals cannot also be punished as abettors.**—Persons punished as principals cannot also be punished for abetment of the same offence.—QUEEN v. JEETOO CHOWDHRY, 4 W. R. 23. [Loch and Glover, JJ. Nov. 8, 1865.]

**Abetment of grievous hurt, and abetment of riot, after conviction of both offences as principals.**—*Held* that the prisoners could not be convicted of abetment of grievous hurt, and of abetment of riot, after having been convicted of both charges as principals. As, however, the evidence credited by the jury was held by the High Court to support a conviction of culpable homicide, and as the prisoners, even on their conviction on the lesser charge of grievous hurt, might have been sentenced to a much heavier punishment than had been passed on them, their punishment was not reduced.—QUEEN v. RAMNARAIN JOSH, 4 W. R. 37. [Kemp and Seton-Karr, JJ. Dec 21, 1865.]

**Bigamy and abetment of bigamy.**—In a case of bigamy and abetment of bigamy, the High Court observed that the woman (who was the principal) and the two men (who were the abettors) should have been

* As to the application of ss. 114 and 115 to offences under special or local laws, see s. 40, *supra*.

charged in separate heads of the charge, since the former was charged actually with bigamy, and the latter as principals of the second degree by reason of their having been present, abetting the commission of that offence under s. 114 of the Penal Code.—5 W. R., Cr. L. 5, No. 243 of 1866.

**Abetment, while present, of forgery of valuable document.**—How a Judge should charge the jury in a case of abetment, while present, of the forgery of a valuable document.—QUEEN *v.* JEHAN BUKSH, 5 W. R. 68. [Kemp and Seton-Karr, JJ. April 16, 1866.]

**Disappearance of evidence of murder: Abetment of murder unsustainable.**—Prisoner was present at a murder without being aware that such an act was to be committed. Through fear, he not only did not interfere to prevent the commission of the crime, but joined the murderers in concealing the body. *Held* that he was guilty, not of abetment of murder, but of causing the disappearance of evidence of a crime under s. 201, Penal Code. —REG. *v.* GOBURDHUN BERA, 6 W. R. 80. Loch and Pundit, JJ. Oct. 4, 1866.

**Keeping a watch while murder was being committed.**—When a prisoner kept watch at a door while a murder was being committed inside, he should be charged under s. 114 (and not under s. 109) of the Penal Code, for it could hardly be said that the murder took place in consequence of such abetment.—6 W. R., Cr. L. 4, No. 1410 of 1866.

**Torture · Principal in, and not as abettor of.**—Where several prisoners were all concerned in a case of torture, and were prosecuting a common object, each was held guilty as a principal, and not as an abettor of others.—QUEEN *v.* TARINEE CHURN CHUTTOPADHYA, 7 W. R. 3. [Kemp and Markby, JJ. Jan. 3. 1867.]

**What to be made out where a prisoner is to be brought under s. 114.**—In order to bring a prisoner within s. 114 of the Penal Code, it is necessary first to make out the circumstances which constitute abetment, so that, "if absent," he would have been "liable to be punished as an abettor," and then to show that he was also present when the offence was committed.—QUEEN *v.* MUSSAMUT NIRUNI, 7 W. R. 49. [Jackson and Glover, JJ. Mar. 28, 1867.]

**Carrying off a crop: Offenders guilty of substantive offence under s. 378 —** Where a Court finds that parties came with a number of armed men, and carried off a crop, the finding amounts to that of a forcible carrying off without the consent of the owner. Even if they took no part in the actual taking, they must, with reference to s. 114, Penal Code, be considered guilty of the substantive offence under s. 378.—QUEEN *v.* SHIB CHUNDER MUNDLE, 8 W. R. 59. [Kemp and Glover, JJ. Aug. 5, 1867.]

**Abettor, if present, is to be admitted to have committed the offence, though another actually committed it.**—According to s. 114 of the Penal Code, if the nature of the act constitutes abetment, the abettor, if present, is to be deemed to have committed the offence, though in point of fact another actually committed it. S. 114 of the Penal Code simply provides for the punishment of what the English law calls principals in the second degree. A person present, abetting an offence, is to be *deemed* to have committed the offence, though he does not, in fact, do so any more than a principal in the second degree does. Hence, "all who are present aiding and assisting a man to commit a rape are principal offenders in the second degree, whether they be men or women" (1 Russ. 905); and hence Lord Audley (3 Howell's State Trials 401) was convicted as a principal of a rape on his own wife, because he aided another to ravish her. There are several modes of abetment defined in the Penal Code One is instigating another to commit an offence. If A instigates B to murder Z, he commits abetment, if absent, he is punishable as an abettor; and if the offence is committed, then under s. 109; if present, he is, by s. 114, to be *deemed* to have committed the offence, and is punishable as a principal. Another mode of abetment is by intentionally aiding, by any act or illegal omission, the doing of an offence. A aids B to murder Z; if absent, he is punishable as an abettor, and may be liable under s. 109; if present, then he is to be *deemed* as much to have committed the offence as if he had struck the fatal blow. The meaning of s. 114 is that, if the nature of the act done constitutes abetment, then, if present, the abettor is to be deemed to have committed the offence, though in point of fact another actually committed it.—PRO., Mar. 8, 1869, 4 Mad. H. C. R. Ap. 37.

**Abettor, if present, should be tried for the same offence as principal.**—A young Brahman widow was confined of a child. The chief constable of police acting, as he stated, on information that the accused was about to kill a baby, went to search her house with a number of men, and found her lying on the first floor, and discovered on the second floor a living new-born child wrapped up in a cloth with a cooking pot turned over it. The Sessions Judge convicted the accused of attempt to murder. The High Court on appeal reversed the conviction, on the ground that the evidence was insufficient to support it. It was also held in this case that the chief con-

stable's statement, that he "had information that the accused was about to kill the baby," was *most* improperly admitted as evidence against the accused. Action of the police censured. When a person abets the commission of an offence, and is present at the time when it is committed, he should be tried, under s. 114 of the Penal Code, for the same offence as the principal.—REG. *v.* CHIMA, 8 Bom. H. C. R. 164. [Gibbs and West, JJ. July 6, 1871.]

**Abettor when present should be tried under s. 114.**—When a person abets the commission of an offence, and is present at the time when it is committed, he should be tried, under s. 114 of the Indian Penal Code, for the same offence as the principal.—REG. *v.* CHIMA, 8 Bom. H. C. R. 164. [Gibbs and West, JJ. July 6, 1871.]

**Abettor present when mischief by fire committed.**—S. 114 (and not s. 149) was held to apply to a case where, upon a charge of mischief by fire, the prisoner admitted that he was an abettor, and that he was present at the time the offence was committed.—QUEEN *v.* PEER MAHOMED, 17 W. R. 52. [Couch, C.J., and Ainslie, J. April 17, 1872.]

**Abetment of hook-swinging.**—Where, by direction of Government, the Magistrate promulgated an order under s. 144, Code of Criminal Procedure, 1882, directing all persons to abstain from hook-swinging, or other self-torture in public, and from the abetment thereof, and no such order was upon the record, the High Court annulled the conviction of the prisoners by the Deputy Magistrate under ss. 188, 114, Penal Code, for having knowingly disobeyed that order.—IN THE MATTER OF DWARICK MISSER, 18 W. R. 30. [Kemp and Glover, JJ. July 19, 1872.]

**Abetment must continue down to time of commission of offence.**—If an abettor of a crime is, on account of his presence at its commission, to be charged under s. 114 of the Penal Code as principal, his abetment must continue down to the time of the commission of the offence. If he distinctly withdraws at any moment before the final act is done, the offence is not committed with his continuing abetment.—REG. *v.* AMIRTA GOVINDA, 10 Bom. H. C. R. 497. West and Nanabhai Haridas, JJ. Dec. 17, 1873.]

**Abetment of bigamy.**—A was baptized in infancy into the Roman Catholic Church, but subsequently relapsed with the rest of her family into Hinduism, and was married to a Hindu. Her Hindu husband since discarded her, and alleged that he would not have married her if he had known that she had been baptized. A was subsequently re-admitted into the Roman Catholic Church, and married by B, a priest, to a Roman Catholic during the lifetime of her Hindu husband. *Held* that A's marriage with the Hindu was subsisting and valid at the time of her Christian marriage; that she was guilty of the offence of bigamy; and that B was guilty of abetting that offence. *Lopes* v. *Lopes* (I. L. R., 12 Cal. 706) discussed.—*In re* MILLARD, I. L. R., 10 Mad. 218. [Collins, C.J., and Parker, J. April 1, 1887.]

**Abetment of forgery by writing out the deed.**—The accused was not only the writer, but also took an active part in the preparation, of a document the alleged executant of which was dead before the date of the document, and the person who really had an interest under the document was convicted under s. 82 of the Registration Act (III. of 1877). But evidence was wanting to show that the accused took any part in the forgery of the name of the alleged executant. *Held* that the accused could not be convicted of the offence of forgery under s. 467 of the Penal Code. There being nothing on the record to show that the accused was a party to, or took any part in, the actual forgery of the document, or that he was present on the occasion when it was forged, the proper section to convict him under would be s. 467 read with s. 109, that is, of abetment of forgery, and not s. 467 read with s. 114. An unregistered document, though it may not be a valuable security until the registration is completed, still "purports" to be a valuable security within the meaning of s. 467 of the Penal Code. *Queen-Empress* v. *Ramasami* (I. L. R., 12 Mad. 148) approved of.—KASHI NATH NAEK *v.* QUEEN-EMPRESS, I. L. R., 25 Cal. 207. [Ghose and Wilkins, JJ. July 6, 1897.]

**What would constitute a charge under s. 114.**—Where the accused persons have been acquitted of rioting, they cannot be properly convicted of grievous hurt under section 325 by the application of s. 119 of the Penal Code, where it has not been found that these persons or any of them were members of an unlawful assembly in prosecution of the common object, of which grievous hurt was caused by any other member of the same assembly, or that the offence was such as each member of the assembly knew to be likely to be committed in prosecution of that object. The mere presence as an abettor of any person would not, under the terms of s. 114 of the Penal Code, render him liable for the offence committed. *Empress* v. *Chatradhari Goala* (2 Cal. W. N. 49) explained. In order to bring a person within s. 114 of the Penal Code, it is necessary first to make out the circumstances which constitute abet-

ment, so that, if absent, he would have been liable to be punished as an abettor, and then to show that he was also present when the offence was committed. *Queen* v. *Mussamut Nirumi* (7 W. R. Cr. 49) relied on.—ABHI MISSER *v.* LACHMI NARAIN, I. L. R., 27 Cal. 566. [Prinsep and Stanley, JJ. Mar. 6, 1900.]

**115.*** Whoever abets the commission of an offence punishable with death or transportation for life shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

Abetment of offence punishable with death or transportation for life— if offence not committed;

Court by which offence abetted is triable. Cog. if offence abetted cog. According as warrant or summons may issue for offence abetted. Not bailable. According as offence abetted is compoundable or not.

and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

if act causing harm be done in consequence.

*Illustration.*

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or transportation for life. Therefore A is liable to imprisonment for a term which may extend to seven years, and also to a fine; and if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

**116.*** Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence, or with such fine as is provided for that offence, or with both;

Abetment of offence punishable with imprisonment— if offence be not committed;

Court by which offence abetted is triable. Cog. if offence abetted cog. According as warrant or summons may issue for offence abetted. According as offence abetted is bailable or not. According as offence abetted is compoundable or not.

and, if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

if abettor or person abetted be a public servant whose duty it is to prevent offence.

*Illustrations.*

(*a*.) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.

(*b*.) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(*c*.) A, a police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(*d*.) B abets the commission of a robbery by A, a police-officer whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

* As to the application of ss. 115 and 116 to offences under special or local laws, see s. 40, *supra*.

**Case of offering a bribe to a juryman.**—Although what passed between the prisoner and the juryman might not have amounted to an offer of a bribe to the latter, yet it was held to be so when taken in connection with what passed between the prisoner and the juryman's brother.—QUEEN *v.* BAWOOL CHUNDER BISWAS, 1 W. R. 36 [Kemp and Glover, JJ. Dec. 7, 1864.]

**Abetment under s. 116.**—The conviction of a procuress changed from abduction to enticing, the woman alleged to have been abducted having been of mature age and a free agent. The conviction of the other prisoners also changed from abetting wrongful concealment under s. 368 of the Penal Code to abetment under s. 116.—QUEEN *v.* SRIMOTEE PODDEE, 1 W. R. 45. [Kemp and Glover, JJ. Dec. 16, 1864.]

**Abetment of giving false evidence.**—The prisoner asked a witness to suppress certain facts in giving his evidence against the prisoner before the Deputy Magistrate on a charge of defamation. *Held* that this was abetment of giving false evidence in a stage of a judicial proceeding, and was triable before a Court of Session only.—*In re* ANDY CHETTY, 2 Mad. H. C. R. 438. [Frere and Innes, JJ. Aug. 12, 1865.]

**Abetment of taking bribe**—Where a constable and others enter a house, and apprehend certain persons as gamblers, and afterwards release them on payment of a sum of money by the latter, the offence committed is not house-trespass and extortion, but taking a bribe as regards the constable, and abetment of that offence as regards the others—GOVT. *v.* MAHOMED HOSSEIN, 5 W. R. 49 [Norman and Campbell, JJ. Mar 5, 1866.]

**Abetment under s. 116.**—A Police Magistrate has power to convict summarily, under Act IV. of 1866 (B.C.), s. 26, for an offence punishable under s. 116 of the Penal Code—QUEEN *v.* MAHBUB KHAN, 1 B. L. R. O. Cr. 39. [Norman, J. Aug. 12, 1868.]

**Abetment of taking bribe.**—Where the accused was charged under s. 116, Penal Code, with having abetted the commission of an offence punishable under s. 161 of that Code, the person abetted having been a Civil Surgeon of a Sadr Station, it was held that the enhanced imprisonment prescribed by the latter part of s. 116 could not be awarded, as the Civil Surgeon was not a public servant within the words of the section, "whose duty it is to prevent the commission of such offence."—QUEEN *v.* RAMNATH SURMA BISWAS, 21 W. R. 9. [Phear and Morris, JJ. Nov. 18, 1873.]

**Abetment of kidnapping.**—Accused was convicted by the Magistrate of abetting the kidnapping of a minor accused, knowing that the minor had left home without the consent of his parents, and at the instigation of one Komaren, the actual kidnapper, undertook to convey the minor to Kandy in Ceylon and was arrested on the way thither. The Sessions Judge reversed the conviction on the ground that there was no concert between the accused and Komaren previous to the completion of the kidnapping by the latter. *Held* by the High Court that, so long as the process of taking the minor out of the keeping of his lawful guardian continued, the offence of kidnapping might be abetted; and that, in the present case, the conviction should be of an offence punishable under ss. 363 and 116 of the Penal Code.—REG. *v.* SAMIA KAUNDAN, I. L. R., 1 Mad. 173. [Morgan, C.J., and Innes, J. Dec. 5, 1876.]

**Abetment of an offence under the Legal Practitioners' Act.**—A vakil of the High Court signed and sent a letter to another vakil of that Court who practised in District Courts subordinate thereto. The purport of this, which was one of several printed forms prepared for circulation to vakils practising in districts, was to the effect that the vakil, to whom it was addressed, "could easily send his clients' cases, both civil and criminal," to the writer, who would conduct them in that Court. And,—"as a remuneration"—the fees paid by the clients would be shared between the writer and the vakil who had sent the cases. The Judicial Committee concurred substantially in the conclusions of the High Court that this was an incitement within s. 116 (abetment) of the Indian Penal Code to commit an offence made penal by s. 36 (which was a special law within s. 41 of that Code) of Act XVIII of 1879, the Legal Practitioners' Act. This misconduct had been aggravated by the appellant's having denied to the Vakils' Association, North-Western Provinces, and caused evidence to be called to negative his having signed the printed letter, which he had signed. Thus, there was "reasonable cause" within s. 8 of the Letters Patent of March 17th 1866, establishing the High Court, for his suspension, to which, for four years from the date of that Court's order, his punishment was reduced.—IN THE MATTER OF PARBATI CHARAN CHATTERJI, I. L. R., 17 All. 498. [Watson, Morris, and Couch, JJ. June 20, 1895.]

**Abetment: Instigating person to give false evidence.**—B, without having obtained sanction under s. 195 of the Criminal Procedure Code, charged C before the Chief Presidency Magistrate with instigating her to give false evidence in a certain divorce suit in which C was co-respondent. *Held*

that the Chief Presidency Magistrate had no jurisdiction to try the case without the sanction of the Court before which the divorce proceedings were pending, as the offence charged was alleged to have been committed in relation to those proceedings.—CHANDRA MOHAN BANERJEE *v.* BALFOUR, I. L. R., 26 Cal. 359. [Prinsep and Stanley, JJ. Feb. 22, 1899.]

**Abetment of dacoity.**—The accused was committed for trial before a Sessions Court on a charge of abetment of dacoity under s. 116 of the Penal Code. In the course of the trial the Assistant Sessions Judge added an alternative charge under s. 511 of the Code, and sentenced the accused under ss. 395, 116, and 511 of the Penal Code. In appeal the Sessions Judge held that the evidence disclosed the offence of an attempt to commit the offence of collecting arms, &c., with intention of waging war against the Queen, under s. 122, and as no charge under that section could be framed for want of sanction of Government under s. 196 of the Criminal Procedure Code (Act V. of 1898), the accused could not be brought to trial at all. He, therefore, reversed the conviction and acquitted the accused. *Held* (reversing the order of acquittal) that the mere fact that no charge for the graver offence under s. 122 of the Penal Code could be framed for want of Government sanction, did not render the trial for the minor offence of attempting or abetting dacoity either irregular or illegal. Per Fulton, J.—According to the 2nd clause of s. 235 of the Criminal Procedure Code (Act V. of 1898), if the accused abetted an offence under s. 122 of the Penal Code, and by the same speech also attempted or abetted the offence of dacoity, he could be tried for each of these offences; but as that section is controlled, as regards the offence against the State, by the provisions of s. 196 of the Criminal Procedure Code, its operation in this case is restricted to the minor offence for which the accused could legally be charged and tried. *Queen-Empress* v. *Karigowda* (I. L. R., 19 Bom. 51) and *In re Nagarji* (I. L. R., 19 Bom. 340) distinguished.—QUEEN-EMPRESS *v* ANANT PURANIK, I. L. R., 25 Bom. 90. [Ranade and Fulton, JJ. July 19, 1900.]

**117.*** Whoever abets the commission of any offence by the public generally, or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Abetting commission of an offence by the public, or by more than ten persons.

Court by which offence abetted is triable.

Cog. if offence abetted cog.

According as warrant or summons may issue for offence abetted.

According as offence abetted is bailable or *not*.

According as offence abetted is compoundable or not.

*Illustration.*

A affixes in a public place a placard, instigating a sect, consisting of more than ten members, to meet at a certain time and place for the purpose of attacking the members of an adverse sect while engaged in a procession. A has committed the offence defined in this section.

**Abetment of breach of contract.**—In a reference to the High Court the question was whether an abetment of breach of contract by more than 10 persons was an abetment of the nature meant in s. 114 of the Penal Code. The reply of the High Court was as follows: "The prisoners in this case appear to have abetted 12 coolies in breaking their several contracts; and the Court's opinion is requested whether, inasmuch as 12 exceeds 10, this is an abetment under s. 117, which, it is presumed, is the section intended, and not s. 114. The Court are of opinion that the offence described is not an abetment under s. 117, Penal Code. The offence abetted must have been committed by more than 10 persons; whereas in the case under reference each breach of contract is a separate offence under s. 492 by each coolie, so that an abetment of such breach cannot be punished under s. 117, notwithstanding that more than 10 coolies broke contracts in consequence of such abetment.—3 W. R. Cr. L. 24, No. 821 of 1865.

**Abetment to fight.**—In August 1893, a riot took place in Bombay between Hindus and Mussalmans. The excitement caused by the riot had not entirely subsided, when the accused composed and published a poem, giving an account of the outbreak, and incidentally extolling certain classes of the Hindu community, namely, the Ghatis and Kamatis, for the brave resistance which they

* As to the application of s. 117 to offences under special or local laws, see s. 40, *supra*.

had offered to the Mahomedan rioters. The poem extolled the Ghatis and Kamatis, and then followed these lines:—

May God give glory to you, confer joy on you night and day,
Fight again for your country's good.
Brave, brave are the Kamatis.
Why fear for dying, brother, why fear for dying?
Sooner or later, but only once, a man has to die.

The poem was written in Gujarati, a language not ordinarily spoken by the Ghatis and Kamatis, or even by the Mahomedans. It did not appear that any copies of the work were distributed among the people who had taken part in the riot. Nor did any fresh riot take place subsequently to the publication of the work. The accused were prosecuted and convicted under ss 117 and 153 of the Penal Code on the ground that the lines quoted above, especially the words 'Fight again," were a direct instigation to the Ghatis and Kamatis to renew the disturbances. *Held* that the meaning of the passages complained of was to be gathered from the whole poem. The general spirit of the poem was clearly in favour of peace and reconciliation. It consisted from beginning to end of a lamentation over the riots, and the destruction and death they had caused, and of repeated counsel to peace and harmony between Hindus and Mahomedans. And there was nothing to indicate that the author's intention was to instigate the Hindus or provoke the Mahomedans to renew the disturbances. The words, "Fight again," were, no doubt, objectionable, but it would not be a proper construction of the words to allow them to override the whole context of the work. The composition could not be regarded as an "illegal act," and its publication was not "malignant" or "wanton" within the meaning of s. 153 of the Penal Code.—QUEEN-EMPRESS *v.* KAHANJI, I. L. R., 18 Bom. 758. [Jardine and Ranade, JJ. Dec. 11, 1893.]

Concealing design to commit offence punishable with death or transportation for life—

**118.** Whoever, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence punishable with death or transportation for life,

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

shall, if that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years; or, if the offence be not committed, with imprisonment of either description for a term which may extend to three years; and in either case shall also be liable to fine.

Court by which offence abetted is triable
Cog. if offence abetted cog.
According as warrant or summons may issue for offence abetted.
Not bailable.
According as *offence abetted* is compoundable or not.

if offence be committed;

if offence be not committed.

*Illustration.*

**A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section.**

**What does not amount to abetment of dacoity.**—Knowing of a design to commit a dacoity, and voluntarily concealing the existence of that design with the knowledge that such concealment would facilitate the commission of dacoity, does not amount to an abetment of the dacoity.—QUEEN *v.* GHUGROO 4 W. R. 2. [Seton-Karr and Jackson, JJ. Sep. 4, 1865.]

**Omission to report robbery.**—Held that the prisoner could not be punished under s. 118, as there was no omission of an act which he was bound to perform which facilitated the commission of an offence, but that he should be convicted under s 176, Penal Code, as he was bound to report under s. 44, Code of Criminal Procedure, 1882, after he was informed of the robbery.—GOVT. *v.* KESREE, 1 Agra H. C. R. 37. [Turner, J., and Spankie, Offg. J. Dec. 21, 1866.]

**No knowledge of design to murder.**—In Madras four prisoners were indicted for, and convicted of, murder; and the fifth prisoner, who was the wife of the murdered

man, was tried for, and convicted of, an offence under s. 118 of the Penal Code. The High Court upheld the conviction, as there was evidence to shew that the woman knew of the design to murder her husband, and concealed it from him.—Referred Case. 30 of 1868.

**119.** Whoever, being a public servant, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence, which it is his duty as such public servant to prevent,

Public servant concealing design to commit offence which it is his duty to prevent—

Court by which offence abetted is triable. Cog. if offence abetted cog. According as warrant or summons may issue for offence abetted. According as offence abetted is bailable or not. According as offence abetted is compoundable or not.

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

shall, if the offence be committed, be punished with imprisonment of any description provided for the offence for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both;

if offence be committed;

or, if the offence be punishable with death or transportation for life, with imprisonment of either description for a term which may extend to ten years;*

if offence be punishable with death, &c.;

or, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.†

if offence be not committed.

*Illustration.*

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information with intent to facilitate the commission of that offence. Here A has by an illegal omission, concealed the existence of B's design, and is liable to punishment according to the provision of this section.

**120.** Whoever, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence punishable with imprisonment,

Concealing design to commit offence punishable with imprisonment—

Ditto.

voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design,

shall, if the offence be committed, be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth, and, if the offence be not committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

if offence be committed;

if offence be not committed.

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* Court by which offence abetted is triable. Cog. if offence abetted cog. According as warrant or summons may issue for offence abetted. Not bailable. According as offence abetted is compoundable or not

† Court by which offence abetted is triable. Cog. if offence abetted cog. According as warrant or summons may issue for offence abetted. According as offence abetted is bailable or not. According as offence abetted is compoundable or not.

**S. 109 contemplates that the act abetted should be committed in consequence of the abetment.**—S. 109 of the Penal Code contemplates that the act abetted should be committed in consequence of the abetment. The term "fabrication" in s. 193 refers to the fabrication of false documentary evidence to be used in a suit, so that to convict under this section it is essential to aver and to prove that the fabricated documents were intended for that purpose. The illegal concealment, by act or omission, contemplated by s. 120 of the Code has reference to the existence of a design on the part of third persons to fabricate evidence.—QUEEN *v.* RAJ COOMAR BANERJEE, 1 Ind. Jur. O. S. 105. [Trevor and Seton-Karr, JJ. Sep. 27, 1862.]

## CHAPTER VI.*

### OF OFFENCES AGAINST THE STATE.

Ct. of Ses., Uncog. Warrant. Not bailable. Not comp. Sanction.

**121.** Whoever wages war against the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished *with death or transportation for life, and shall forfeit* all his property.

**Waging or attempting to wage war, or abetting waging of war against the Queen.**

*Illustrations.*

**(*a*.) A joins an insurrection against the Queen. A has committed the offence defined in this section.**

**(*b*.) A in India abets an insurrection against the Queen's Government of Ceylon by sending arms to the insurgents. A is guilty of abetting the waging of war against the Queen.**

**Jurisdiction to try.**—A person who is admittedly a subject of the British Government is liable to be tried by the Courts of this country for acts done by him, whether wholly within or wholly without, or partly within and partly without, the British territories in India, provided they amount together to an offence under the Penal Code.—QUEEN *v.* MOGULVIE AHMUDOOLLAH. 2 W. R. 60. [Trevor and Loch, JJ. April 13, 1865.]

**Confiscation of property.**—Where N and M were convicted of rebellion under Act XI. of 1857, s. 3, and sentenced, the former to be transported for life and to have all his property confiscated, and the latter to have all his property confiscated. The sentence of confiscation held to be absolute, and not to depend upon the amount of punishment, and the fact of the punishment being remitted by the Governor-General does not restore the property. The Government having left the property of the convicts in the hands of the Administrator-General as administrator to the state of the convict's father whence it was derived, in whose hands it was allowed to accumulate pending a separate litigation in respect of that estate, while it asserted its right by virtue of the confiscation to other property of the convicts the title to which was undisputed, it was held that the Government had sufficiently declared and acted upon its intention to enforce the confiscation. The Queen's proclamation of amnesty (Nov. 1858) coming after the conviction, and confiscation has not the effect of revesting in the convict the property confiscated. *Held* also that the property in question being Government Paper was liable to confiscation, and lastly that N's widow was not entitled to maintenance out of the property confiscated by the State.—GUNGA BAEE *v.* CHARLES SWINTON HOGG, 2 Ind. Jur. 124. [Phear, J. Jan. 31 and Feb. 18, 1867.] See also the decisions of the Civil Cases:—***Ramphul Tiwari*** **v.** ***Badri Nath,*** I. L. R., 13 All. 108, and ***Bijai Bahadur Singh*** **v.** ***Bhupindar Bahadur Singh,*** I. L. R., 17 All. 456.

**Abetting the waging of war.** — Although the Code of Criminal Procedure does not expressly provide for a summing up of the evidence in trials with the aid of

* All persons are bound to give information of offences punishable under ss. 121 to 126 (inclusive), and s. 130 of this chapter.—See Criminal Procedure Code (Act V. of 1898), s. 44.

As to authority for instituting prosecutions under Ch. VI. (except s. 127), see Criminal Procedure Code (Act V. of 1898), s. 196.

assessors, there is nothing in the Code to prevent a Judge from summing up the evidence, which is, in fact, only a mode of going through and discussing it with the assessors. The real object of appointing assessors is to assist the Court, and the discussion and statement of points by a Judge sitting with assessors cannot be said to be otherwise than in furtherance of the object of getting the best assistance for the proper adjudication of the case. The special limitation of the period for prosecution (three years) in cases of treason and misprision of treason under Stat. 7 Wm. III., c. 3, s. 5, is an exception to the general rule in criminal cases; and, in enacting s. 121 of the Penal Code, the Legislature has not thought fit to limit in any way the period within which a prosecution for an offence against that enactment may be commenced, and consequently such limitation does not form part of the Penal Code. In a case in which the accused was charged with abetting the waging of war against the Queen under s. 121 of the Penal Code, it was held that the *Calcutta Gazette* and the *Gazette of India* were admissible in evidence, under s. 8 of Act II. of 1855, to prove the proclamation and official communications of the Government relating to the war. A printed official letter from the Secretary of the Government of the Punjab to the Secretary of the Government of India was held to be admissible in evidence under s. 6, Act II of 1855. S. 200 relates only to the oral evidence of witnesses. As to documentary evidence, although a prisoner has a right to have all or any part of any document used on his trial translated or interpreted to him, yet where a document is put in for the purpose of merely giving formal proof of that which is an incontestable fact, it is not necessary to interpret it at length. It would be sufficient if the prisoner was made to understand what the document was, and for what purpose it was used. *Quære*, whether, with reference to s. 28 of Act II. of 1855, a prisoner charged with treason can be convicted on the evidence of a single witness?—QUEEN *v.* AMEEROODDEEN, 15 W. R 25: 7 B. L. R 63. [Norman, Offg. C.J., and Bayley, J. Feb. 25, 1871.]

**Abetting the waging of war.** — The special limitation of the period for prosecution (three years) in cases of treason and misprision of treason under Stat. 7 Wm. III., c. 3, s. 5, is an exception to the general rule in criminal cases: and, in enacting s. 121 of the Penal Code, the Legislature has not thought fit to limit in any way the period within which a prosecution for an offence against that enactment may be commenced, and consequently such limitation does not form part of the Penal Code. In a case in which the accused was charged with abetting the waging of war against the Queen under s. 121 of the Penal Code, it was held that the *Calcutta Gazette* and the *Gazette of India* were admissible in evidence, under s. 8 of Act II. of 1855, to prove the proclamation and official communications of the Government relating to the war. A printed official letter from the Secretary to the Government of the Panjab to the Secretary to the Government of India was held to be admissible in evidence under s. 6, Act II. of 1855. S. 200 relates only to the oral evidence of witnesses. As to documentary evidence, although a prisoner has a right to have all or any part of any document used on his trial translated or interpreted to him, yet, where a document is put in for the purpose of merely giving formal proof of that which is an incontestable fact, it is not necessary to interpret it at length. It would be sufficient if the prisoner was made to understand what the document was, and for what purpose it was used. *Quære*, whether, with reference to s. 28 of Act II. of 1855, a prisoner charged with treason can be convicted on the evidence of a single witness?—QUEEN *v.* AMEEROODDEEN, 15 W. R. 25; 7 B. L. R. 63 [Norman, Offg. C.J., and Bayley, J. Feb. 25, 1871.]

**Jurisdiction to try the offence of abetment of waging war.**—The proceedings before a Magistrate preliminary to commitment are not impeachable for irregularity, because some of the depositions were taken before the accused persons were brought before him. The Sessions Court at Patna was held to have jurisdiction to try the offence of abetment of waging war against the Queen, though the waging of war did not take place in Patna, the rule of law as to abetment being that where parties concert together, and have a common object, the act of one of the parties done in furtherance of the common object, and in pursuance of the concerted plan, is the act of the whole. The jurisdiction of the Sessions Court at Patna was not affected by the erroneous statement in the charge of the abetment having taken place at Calcutta, when the evidence was sufficient to show the abetment at Patna; such erroneous statement being an error or defect in the charge which is cured by s. 426 of the Code of Criminal Procedure. The issue of a warrant of commitment by the Governor-General in Council, under Reg. III. of 1818, cannot be treated in the nature of a conviction of the person so placed under personal restraint, so as to give immunity to the person so committed, and

afterwards discharged from all political offences committed before that period, on the ground that he has already been tried, convicted, and punished. The rule of evidence that letters found in the house of a person after his arrest, and whilst in custody, cannot be used in evidence, is subject to the exception that the existence of the letters found may be established either by direct proof or by strong presumptive evidence.—QUEEN v. AMBER KHAN, 17 W. R. 15: 9 B. L. R. 36. [Couch, C.J., and Jackson and Macpherson, JJ. Dec. 21, 1871.]

**Charge.**—That you, on or about the day of , at , waged war against Her Majesty the Queen-Empress of India, and thereby committed an offence punishable under s. 121 of the Indian Penal Code, and within the cognizance of the Court of Session [*when the charge is framed by a Presidency Magistrate, for* Court of Session *substitute* High Court]. And I hereby direct that you be tried by the said Court on the said charge.

**Public to give information of certain offences: Under s. 44 of the Code of Criminal Procedure (Act V. of 1898) it is the duty of the public to give information to the nearest Magistrate or police-officer of the commission a intention to commit certain offences:—**

"(*1*). Every person, whether within or without the presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under the following sections of the Indian Penal Code (namely), 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 143, 144, 145, 147, 148, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459, and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police-officer of such commission or intention.

"(*2*) For the purposes of this section the term 'offence' includes any act committed at any place out of British India which would constitute an offence if committed in British India."

Ct. of Ses. Uncog. Warrant. Not bailable. Not comp. Sanction.

**121A.**† Whoever, within or without British India, conspires to commit any of the offences punishable by section 121, or to deprive the Queen of the sovereignty of British India or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local Government, shall be punished with transportation for life or any shorter term, or with imprisonment of either description which may extend to ten years.

Conspiracy to commit offences punishable by section 121.

*Explanation.*—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof

Ditto.

**122.** Whoever collects men, arms, or ammunition, or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Queen, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall forfeit all his property.

Collecting arms, &c., with the intention of waging war against the Queen.

**Abetment of an offence under the Legal Practitioners' Act.**- A vakil of the High Court signed and sent a letter to another vakil of that Court, who practised in District Courts subordin te thereto. The purport of this, which was one of several printed forms prepared for circulation to vakils practising in distric s, was to the effect that the vakil, to whom it was addressed, "could easily send his clients' cases, both civil and criminal," to the writer, who would conduct them in that Court. And —"as a remuneration"—the fees paid by the clients would be shared between the writer and the vakil who had sent the cases. The Judicial Committee concurred substantially in the conclusions of the High Court that this was an incitement within s. 116 (abetment) of the Indian Penal

* S. 121A has been inserted by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 4. Chs. IV., V., and XXIII. of this Code apply to offences punishable under s. 121A.—See Act XXVII. of 1870, s. 13.

Code to commit an offence made penal by s. 36 (which was a special law within s. 41 of that Code) of Act XVIII of 1879, the Legal Practitioners' Act. This misconduct had been aggravated by the appellant's having denied to the Vakil's Association, North-Western Provinces, and caused evidence to be called to negative his having signed the printed letter, which he had signed. Thus, there was "reasonable cause" within s. 8 of the Letters Patent of March 17th, 1866, establishing the High Court, for his suspension, to which, for four years from the date of that Court's order, his punishment was reduced.—IN THE MATTER OF PARBATI CHARAN CHATTERJI, I. L. R., 17 All. 498. [Watson, Morris, and Couch, JJ. June 20, 1895.]

**123.** Whoever, by any act or by any illegal omission, conceals the existence of a design to wage war against the Queen, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Concealing with intent to facilitate design to wage war.**

Ct. of Ses. Uncog. Warrant. Not bailable. Not comp. Sanction.

**124.** Whoever, with the intention of inducing or compelling the Governor General of India, or the Governor of any presidency, or a Lieutenant-Governor, or a Member of the Council of the Governor-General of India, or of the Council of any presidency, to exercise or refrain from exercising in any manner any of the lawful powers of such Governor-General, Governor, Lieutenant-Governor, or Member of Council,

assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe, such Governor-General, Governor, Lieutenant-Governor, or Member of Council,

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Assaulting Governor-General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.**

Ditto.

**Charge.**—That you, on or about the day of , at with the intention of inducing the Honourable A. B., Member of the Council of the Governor-General of India, to refrain from exercising a lawful power as such Member, assaulted such Member and thereby committed an offence punishable under s. 124 of the Indian Penal Code, and within the cognizance of the Court of Session *or* High Court.—Crim. Pro. Code (Act V. of 1898), Sch. v., form XXVIII. (i).

**124A*** Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards Her Majesty or the Government established by law in British India, shall be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

**Sedition.**

Ct. of Ses., Chf. Presy. Mag., or Dt. Mag., or Mag. of 1st class specially empowered by Local Govt. in that behalf. Uncog. Warrant. Not bailable. Not comp. Sanction.

*Explanation 1.*—The expression "disaffection" includes disloyalty and all feelings of enmity.

*Explanation 2.*—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without

* S. 124A has been substituted by the Indian Penal Code Amendment Act (IV. of 1898), s. 4, for the original s. 124A as inserted in the Code by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 5. Chs. IV. and V. of this Code apply to offences punishable under s. 124A. See Act XXVII. of 1870, s. 13.

exciting or attempting to excite hatred, contempt, or disaffection, do not constitute an offence under this section.

*Explanation 3.*—Comments expressing disapprobation of the administrative or other action of the Government, without exciting or attempting to excite hatred, contempt, or disaffection, do not constitute an offence under this section.

**Disaffection and disapprobation.**—The terms "disaffection" and "disapprobation" (which were in the superseded section) explained, and the superseded section (124A) referred to, and explained to the jury.—QUEEN-EMPRESS *v.* JOGENDRA CHUNDER BOSE, I. L. R., 19 Cal. 35. [Petheram, C.J. Aug. 25, 1891.]

**Disaffection.**—The accused, who was the editor, proprietor, and publisher of the *Kesari* newspaper, was charged, under s. 124A of the Penal Code, with exciting and attempting to excite feelings of disaffection to Government by the publication of certain articles, &c., in the *Kesari* in its issue of the 15th June 1897. An order for the prosecution given by Government under s. 196 of the Criminal Procedure Code, 1882, in the following form was tendered in evidence: "Under the provisions of s. 196 of the Code of Criminal Procedure, Mirza Abas Ali Baig, Oriental translator to Government, is hereby ordered by His Excellency the Governor in Council to make a complaint against Mr. Bal Gangadhar Tilak, B.A., LL.B., of Poona, publisher, proprietor, and editor of the *Kesari*, a weekly vernacular newspaper of Poona, and against Mr. Hari Narayan Gokhale of Poona, printer of the said newspaper, in respect of certain articles appearing in the said newspaper, under s. 124A of the Indian Penal Code and any other section of the said Code which may be found to be applicable to the case." Counsel for the accused objected that the order was too vague, and should have specified the articles with reference to which the accused was to be charged. *Held* that the order was sufficient and was admissible, but that, if it were not sufficient, the commitment might be accepted, and the trial proceeded with under s 532 of the Code of Criminal Procedure. *Queen-Empress* v. *Morton* (I. L. R., 9 Bom. 288) followed. In order to show the intention of such publications, counsel for the prosecution tendered in evidence a certain letter signed "Ganesh" which appeared in the issue of the *Kesari* of May 4. 1897. Objection was taken that it was not admissible, inasmuch as letters to newspapers often express opinions which are not the opinions of the editor and publisher. *Held* that the letter was admissible to show intention and animus. The proceedings in the Legislative Council which result in the passing of an Act cannot be referred to as aids to the construction of that Act. *Administrator-General of Bengal* v. *Premlal Mullick* (L. R., 22 I A. 107) followed. S. 124A of the Penal Code explained—meaning of the word "disaffection." At the close of the Judge's charge to the jury, counsel for the first accused asked that the following points might be reserved for the decision of the Court under s. 434 of the Criminal Procedure Code, 1882, viz.: 1. Whether the order for prosecution was sufficient under s. 196 of the Criminal Procedure Code. 2. Whether the High Court had power, in the absence of a sufficient order, to accept the commitment of the accused under s. 532 of the Criminal Procedure Code, and to proceed with the trial. 3. Whether the meaning given to the term "disaffection" by the Judge in his charge to the jury was correct. The Judge declined to reserve the above points. The first accused, having been convicted, applied to a Full Bench under cl. 41 of the Amended Letters Patent, 1865, for a certificate that the case was a fit one for appeal to the Privy Council. The points upon which he desired to appeal were those which his counsel at the close of the trial asked the Judge to reserve as above stated. The Full Bench refused to grant the certificate.—QUEEN-EMPRESS *v.* BAL GANGADHAR TILAK, I. L. R., 22 Bom. 112. [Strachey, J. Sep. 8-11, 13, 14, 1897.]

**Appeal to Privy Council.**—The petitioner applied to the Privy Council for leave to appeal from a verdict finding him guilty on a charge under s. 124A of the Penal Code. *Held* that, consistently with the rules hitherto guiding the Judicial Committee in recommending the grant of leave to appeal from convictions in criminal cases, the petitioner's case was not one in which leave should be granted.—BAL GANGADHAR TILAK *v.* QUEEN-EMPRESS, I. L. R., 22 Bom. 528. [Chancellor, Hobhouse Davey, and Couch, JJ. Nov. 19, 1897.]

**Disaffection.**—The word "disaffection" in s. 124A of the Indian Penal Code is used in a special sense as meaning political alienation or discontent, a spirit of disloyalty to the Government or existing authority. An attempt to excite feelings of disaffection to

the Government is equivalent to an attempt to produce political hatred of Government as established by law, to excite political discontent, and alienate the people from their allegiance. This meaning of the word "disaffection" in the main portion of the section is not varied by the explanation. *Per* Parsons, J.: The word "disaffection" used in s. 124A of the Indian Penal Code cannot be construed as meaning an absence of or the contrary of affection or love, that is to say, dislike or hatred, but is used in its special sense as signifying political alienation or discontent, that is to say, a feeling of disloyalty to the existing Government, which tends to a disposition not to obey, but to resist and subvert the Government. *Per* Ranade, J.: "Disaffection" is not a mere absence or negation of love or good will, but a positive feeling of aversion which is akin to disloyalty, a defiant insubordination of authority, or when it is not defiant, it secretly seeks to alienate the people and weaken the bond of allegiance, and prepossesses the minds of the people with avowed or secret animosity to Government—a feeling which tends to bring the Government into hatred or contempt by imputing base and corrupt motives to it, and makes them indisposed to obey or support the laws of the realm, and which promotes discontent and public disorder.—QUEEN-EMPRESS *v.* RAMCHANDRA NARAYAN, I. L. R., 22 Bom. 152. [Farran, C.J. Parsons and Ranade, JJ. Nov. 23, 1897.]

**Disaffection.**—Any one who, by any of the means referred to in s. 124A of the Indian Pena Code, excites, or attempts to excite, feelings of hatred, dislike, ill-will, enmity, or hostility towards the Government established by law in British India, excites or attempts to excite, as the case may be, feelings of "disaffection" as that term is used in s. 124A. Such feelings are necessarily inconsistent with and incompatible with a disposition to render obedience to the lawful authority of Government, and to support that Government against unlawful attempts to subvert or resist it. The term "disaffection" may be taken as synonymous with "disloyalty." The ordinary meaning of the term "disaffection," as used in s. 124A, is not varied by the explanation appended to that section. When a person is charged with having committed the offence punishable under s. 124A of the Indian Penal Code, his intention may be inferred from one particular speech, article, or letter, or from that speech, article, or letter considered in conjunction with what such person has said, written, or published on another or other occasions. Where it is ascertained that the intention of such person was to excite feelings of disaffection to the Government established by law in British India, it is immaterial whether or not the words spoken, written, or published, could have the effect of exciting such feelings of disaffection, and it is immaterial whether the words were true or were false, and, except on the question of punishment, or in a case in which the speaker, writer, or publisher, is charged with having excited such feelings of disaffection, it is immaterial whether or not the words did in fact excite such feelings of disaffection. *Queen-Empress* v. *Jogendra Chunder Bose* (I. L. R., 19 Cal 35), *In re the Petition of Bal Gangadhar Tilak* (14 Times Law Reports 50) referred to.—QUEEN-EMPRESS *v.* AMBA PRASAD, I. L. R., 20 All. 55. [Edge, C J. Blair and Burkitt, JJ. Dec. 14. 1897.]

**125.** Whoever wages war against the Government of any Asiatic Power in alliance or at peace with the Queen, or attempts to wage such war or abets the waging of such war, shall be punished with transportation for life, to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.*

Ct. of Ses. Uncog. Warrant. Not bailable. Not comp. Sanction.

**Waging war against any Asiatic Power in alliance with the Queen.**

**Punishment for waging war with an Asiatic Power in alliance with the Queen.**—In this case the prisoner has been convicted of waging war against the Munipore Rajah, an Asiatic Sovereign in alliance with the Queen; and under s. 125 of the Penal Code has been sentenced to ten years' transportation. The High Court considered the sentence illegal. The punishment for the offence in the Penal Code is transportation for life, or imprisonment of either description, which may extend to seven years. Transportation for ten years, consequently, cannot be inflicted. The sentence must be either transportation for the prisoner's whole life, or imprisonment not beyond seven years commutable to transportation for the same period. Accordingly the prisoner was sun-

* See also the Foreign Enlistment Act, 1870 (33 & 34 Vict., c. 90), which applies to the whole of Her Majesty's dominions.

tenced to seven years' rigorous imprisonment, commutable under s. 59 to transportation for a like period.—QUEEN *v.* KEIFA SINGH, 3 W. R. 16. [Jackson and Glover, JJ. May 19, 1865.]

**To whom application for pardon or mitigation should be made.**—Application for pardon or mitigation of punishment for a political offence (*e.g.*, waging war against a Power in alliance with the Queen) should be made to the Executive Government.—QUEEN *v.* SAJOWPA, 7 W. R. 64. [Seton-Karr, J. May 6, 1867.]

Ct. of Ses. Uncog. Warrant. Not bailable. Not comp. Sanction.

Committing depredation on territories of Power at peace with the Queen.

**126.** Whoever commits depredation, or makes preparations to commit depredation, on the territories of any Power in alliance or at peace with the Queen, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and to forfeiture of any property used, or intended to be used, in committing such depredation, or acquired by such depredation.*

Ct. of Ses. Uncog. Warrant. Not bailable. Not comp.

Receiving property taken by war or depredation mentioned in sections 125 and 126.

**127.** Whoever receives any property, knowing the same to have been taken in the commission of any of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and to forfeiture of the property so received.

Ct. of Ses. Uncog. Warrant. Not bailable. Not comp. Sanction.

Public servant voluntarily allowing prisoner of State or war to escape.

**128.** Whoever, being a public servant, and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with transportation for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp. Sanction.

Public servant negligently suffering such prisoner to escape.

**129.** Whoever, being a public servant, and having the custody of any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

Ct. of Ses. Uncog. Warrant. Not bailable. Not comp. Sanction.

Aiding escape of, rescuing, or harbouring, such prisoner.

**130.** Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers, or attempts to offer, any resistance to the recapture of such prisoner, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Explanation.*—A State prisoner or prisoner of war who is permitted to be at large on his parole within certain limits in British India is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

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* See also the Foreign Enlistment Act, 1870 (33 & 34 Vict., c. 90), which applies to the whole of Her Majesty's dominions.

## CHAPTER VII.

### OF OFFENCES RELATING TO THE ARMY AND NAVY.*

**131.** Whoever abets the committing of mutiny by an officer, soldier, or sailor in the army or navy of the Queen, or attempts to seduce any such officer, soldier, or sailor from his allegiance or his duty, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

**Abetting mutiny, or attempting to seduce a soldier or sailor from his duty.**

*Explanation.*—In the section the words "officer" and "soldier" include any person subject to the Articles of War† for the better government of Her Majesty's army, or to the Articles of War contained in Act No. V. of 1869 ‡

**132.** Whoever abets the committing of mutiny by an officer, soldier, or sailor in the army or navy of the Queen, shall, if mutiny be committed in consequence of that abetment, be punished with death or with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Ditto.

**Abetment of mutiny, if mutiny is committed in consequence thereof.**

**133.** Whoever abets an assault by an officer, soldier, or sailor in the army or navy of the Queen on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp.

**Abetment of assault by soldier or sailor on his superior officer when in execution of his office.**

**134.** Whoever abets an assault by an officer, soldier, or sailor in the army or navy of the Queen on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Ct of Ses. Cognizable. Warrant. Not bailable. Not comp.

**Abetment of such assault, if the assault is committed.**

**135.** Whoever abets the desertion of any officer, soldier, or sailor in the army or navy of the Queen, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

**Abetment of desertion of soldier or sailor.**

**136.** Whoever, except as hereinafter excepted, knowing, or having reason to believe, that an officer, soldier, or sailor in the army or navy of the Queen has deserted, harbours such officer, soldier, or sailor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Ditto.

**Harbouring deserter.**

*Exception.*—This provision does not extend to the case in which the harbour is given by a wife to her husband.

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* Also the Indian Marine Service.—See s. 138A, *infra*.

† See now the Army Act, 1881 (44 & 45 Vict., c. 58).

‡ In s. 131 the explanation has been added by Act XXVII. of 1870, s. 6.

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

**137.** The master or person in charge of a merchant-vessel, on board of which any deserter from the army or navy of the Queen is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred rupees, if he might have known of such concealment, but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

Deserter concealed on board merchant-vessel through negligence of master.

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

**138.** Whoever abets what he knows to be an act of insubordination by an officer, soldier, or sailor in the army or navy of the Queen, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Abetment of act of insubordination by soldier or sailor.

**138A** * The foregoing sections of this chapter shall apply as if Her Majesty's Indian Marine Service were comprised in the navy of the Queen.

Application of foregoing sections to the Indian Marine Service.

**139.** No person subject to any Articles of War for the army or navy of the Queen, or for any part of such army or navy, is subject to punishment under this Code for any of the offences defined in this chapter.

Persons subject to Articles of War.

Any Mag. Cognizable. Summons. Bailable. Not comp.

**140.** Whoever, not being a soldier in the military or naval service of the Queen, wears any garb or carries any token resembling any garb or token used by such a soldier, with the intention that it may be believed that he is such a soldier, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both †

Wearing garb or carrying token used by soldier.

## CHAPTER VIII.‡

### OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

**141.** An assembly of five or more persons is designated an "unlawful assembly," if the common object of the persons composing that assembly is—

Unlawful assembly.

*First.*—To overawe, by criminal force or show of criminal force, the Legislative or Executive Government of India, or the Government of any presidency, or any Lieutenant-Governor, or any public servant in the exercise of the lawful power of such public servant; or

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* S. 138A has been inserted by the Indian Marine Act (XIV. of 1887), s. 79.

† The offence of purchasing, &c. arms, ammunition, cloth, Military accoutrements, forage, &c, from a soldier, is punishable by the Annual Mutiny Act.

‡ As to duty to give information of offences punishable under s. 143, 144, 145, 147, or 148, see the new Code of Criminal Procedure (Act V. of 1898) ss. 44 and 45.

In s. 141 the word offence has the same meaning when the thing punishable under the special or local law as defined in ss. 41 and 42 is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—See s. 40, *supra*.

As to punishment for an offence under s. 148, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s 14.

As to dispersion of unlawful assemblies, see the new Code of Criminal Procedure (Act V. of 1898), Ch. IX.

*Second*—To resist the execution of any law or of any legal process; or,

*Third*—To commit any mischief or criminal trespass or other offence; or,

*Fourth*—By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water, or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or,

*Fifth*—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

*Explanation.*—An assembly which was not unlawful when it assembled may subsequently become an unlawful assembly.

THERE cannot be a conviction both of "*rioting*" and of "*being members of an illegal assembly.*" The greater charge includes the less, and to punish under both sections of the Penal Code would be cumulative and illegal. Were both original sentences legal, the appeal would lie to the Sessions Judge. — MUELAN KHALIFA *v.* DWARKA NATH GOOPTO, 1 W R 7 [Kemp and Glover, JJ. Aug. 17, 1864.]

ON the acquittal of an accused person on the ground of insanity, the Court should proceed under s. 394 of the Code of Criminal Procedure (Act XXV. of 1861); and report the case to Government.—QUEEN *v.* SHEIKH MUSTAFA, 1 W. R. 15. [Kemp and Glover, JJ. Sep. 23, 1864.]

AN assembly, lawful in its inception, may become unlawful by its acts. If force is used, the higher offence of rioting has been committed.—QUEEN *v.* KHEMEE SINGH, 1 W. R. 18. Kemp, J. Sep. 26, 1864.

TO convict a prisoner of being a member of an unlawful assembly and of culpable homicide not amounting to murder, it must be shewn that he had an illegal object in common with, and took part in the illegal act done by, the others.—FOIZ ALI *alias* IMDAD ALI, 1 W. R. 20 [Loch and Glover, JJ. Nov. 4, 1864.]

IN an affray respecting land one of the aggressive party was killed. The prisoners, who were exercising the right of private defence of property, were acquitted by the jury of culpable homicide, but convicted of rioting. *Held* that the prisoners, not being legally guilty of culpable homicide, were not legally guilty of any other offence coupled with rioting, and not being rioters, or members of an unlawful assembly, could claim the benefit of s. 104, Penal Code.—QUEEN *v.* MITTO SINGH, 3 W. R. 41. [Seton-Karr and Campbell, JJ. July 11, 1865.]

THE common object of the assembly should *always be mentioned in the charge.*—4 W. R., Cr. L., 9, 10, NOS. 1137 and 1150 of 1865.

THE prisoner was convicted and sentenced separately for culpable homicide not amounting to murder, and for being a member of an unlawful assembly. The two offences, however, being held to be one (the latter being only part of the evidence of the former), the conviction and sentence for the second offence were quashed.—QUEEN *v.* RUBBEEOOLAH, 7 W. R. 13. [Norman and Seton-Karr, JJ. Jan. 16, 1867.]

IN order to convict of the offence of being members of an unlawful assembly, it must be shown that the accused were actuated by a common object, and that the acts done by them were of such a nature as to make them guilty under s. 141 of the Penal Code.—QUEEN *v.* DINOBUNDO RAI, 9 W. R. 19. [Seton-Karr and Markby, JJ. Feb. 20, 1868.]

WHERE the defendants, raiyats of portion of a zamindari sold in execution of a decree of the Civil Court, reaped and carried away their crops despite the purchaser's people, and refused to allow the purchaser's people to seal and mark grain which had been reaped, and the raiyats were assembled in such numbers and so armed that nothing could be done against them, *held* by the High Court that the acts of the defendants did not amount to an offence under s. 141 of the Penal Code. —PRO., Aug. 10, 1869, 4 Mad. H C. R. Ap., 65.

WHERE, of several persons constituting an unlawful assembly, some only are armed with sticks, and A, one of them, is not so armed, but picks up a stick and uses it, B (the master of A), who gave a general order to beat, is guilty of abetting the assault made by A.—QUEEN *v.* RASOOKOOLLAH, 12 W. R 51. [Glover and Mitter, JJ. Sep. 2, 1869.]

THE act of the defendants in assembling and forcibly interrupting a procession was forbidden by cl. 4 of s. 141 of the Penal Code, although the defendants acted upon the ground that the procession was a nuisance or annoyance to them or their community.—PRO., Nov. 16, 1869, 5 Mad. H. C. R. Ap. 6.

HELD that the owner or occupier of land on which an unlawful assembly is held cannot be convicted under s. 154 of the Penal Code, unless there is a finding that the riot was premeditated. Where two opposite factions commit a riot, it is irregular to treat both parties as constituting one unlawful assembly, and to try them together, inasmuch as they do not have "one common object" within the meaning of s. 141 of the Penal Code. The right of an accused party to cross-examine witnesses is limited to a right to cross-examine the witness for the prosecutor or for the Crown called against him. If he wishes to avail himself of evidence which has been given, or which can be given by a witness called for another of the parties accused, he must call him as his own witness. —QUEEN *v.* SURROOP CHUNDER PAUL, 12 W. R. 75. [Norman and Kemp, JJ. Dec. 10, 1869.]

WHERE a police-officer duly appointed under Act V. of 1861 was engaged, in the discharge of his duty as such police-officer, at a time when an unlawful assembly took place, it was held that he was competent to apprehend any of the members of such unlawful assembly; and a person who rescued the party apprehended was convicted of rescuing from lawful custody within the meaning of s. 225 of the Penal Code —QUEEN *v.* ASSAM SHURRUFF, 13 W. R. 75 Phear and Mitter, JJ. 17 May, 1870.

PROCEDURE to be observed in the case of a charge under s. 154, Penal Code, against the owner of land on which an unlawful assembly is held, pointed out. The record of the original riot-case is no evidence in the case under s. 154.—IN THE MATTER OF C. G. D. BETTS AND MAHOMED ISMAIL CHOWDHRY, 15 W. R. 6, 6 B. L. R. Ap. 83. [Bayley and Mitter, JJ. Jan. 21, 1871.]

THERE is no ground for the distinction between an unlawful assembly as a premeditated act and an affray as a sudden one, for, according to s. 141 of the Penal Code, an assembly, which was not unlawful when it assembled, may subsequently become an unlawful assembly.—IN THE MATTER OF LOKENATH KAR, 18 W. R 2. [Bayley and Mitter, JJ. May 13, 1872.]

PROCEEDINGS in which certain villagers were accused of having committed a serious riot in order to stop a procession which they disapproved of, and believed had been rendered illegal as contrary to law. The rioters were acquitted by the Magistrate, because he thought they might have considered their act justified, because the procession was illegal by virtue of some orders, which did not appear, and which might have been efficacious in point of law. *Held* that the thinking a thing legal which is not so can be no defence to a man who violates a rule of law; that there was no evidence that the procession was illegal; and that, if it were, the accused were bound to invoke the aid of the tribunals charged with the enforcement of the law. Innes, J., adds: "The assembly was unlawful, because its object was to enforce a supposed right by a show of criminal force. In pursuance of the common object, force was used, and a serious riot took place."—PRO., Jan. 8, 1873, 7 Mad. H. C. R App. xxxv [Holloway and Innes, JJ Jan. 8, 1873.]

IT cannot be said that a person intentionally joins an unlawful assembly, or continues in it, when it appears from the evidence that he went to the place where the members of the unlawful assembly were gathered to prevent mischief being done to his own property which he had a right to protect.—BIRJOO SINGH *v.* KHUB LALL, 19 W. R. 66. [Couch, C.J., and Glover, J. April 16, 1873.]

IN this case, in which the prisoners were convicted of being members of an unlawful assembly under s. 141 of the Penal Code, the Court held that the evidence was insufficient to warrant a conviction, there being nothing to show what was the specific unlawful object within the scope of cls. 3 and 4, of the persons composing the assembly.—IN THE MATTER OF KOYLASH CHUNDER DASS, 20 W. R. 78. [Phear and Morris, JJ Nov. 18, 1873.]

NO charge of being members of an unlawful assembly under s. 141, Penal Code, can be sustained where the intention of the parties was not to enforce a right or supposed right, but to maintain undisturbed the actual subsisting enjoyment of a right which was at that time being exercised.—SHUNKER SINGH *v.* BURMAH MAHTO, 23 W. R. 25 [Phear and Morris, JJ. Jan. 22, 1875.]

IF a number of persons, assembled for any lawful purpose, suddenly quarrel with an intruder without any previous intention or design, they do not commit "riot" in the legal sense of the word.—KHAJA NOORUL HOSSEIN *alias* KHAJAH WAHEED JAN *v.* FABRE-TONNERRE, 24 W. R. 26. Glover and Mitter, JJ. July 12, 1875.]

A, a joint-owner of a parcel of land, erected on it an edifice without the consent

and against the will of B, another joint-owner. A dispute having arisen in consequence, the Magistrate held an inquiry, and made an order under s. 530 of the Criminal Procedure Code, awarding to A exclusive possession of the part of the land on which the edifice had been erected. ***Held per*** Jackson, J., that such order was erroneous, as the matter was not one to which s. 530 could apply. B subsequently brought a suit in the Civil Court to establish his title to joint-possession of the whole parcel, and for a declaration that A was not entitled to erect any edifice thereon; and he further prayed that such edifice should be removed. B obtained a decree, whereupon his servants went on the land, and pulled it down. They were charged before the Deputy Magistrate with having committed mischief, and on this convicted and fined. ***Held per*** Jackson, J., that, as there had been no causing of wrongful loss, the accused had not been guilty of mischief. On the 8th October, the accused, who were the servants of B, found that the men in the employ of A were again putting up this erection, a nawbut-khana, and accordingly protested against its erection, pulled down the bamboos, and thrust aside the servants of A, throwing to the ground one man who was clinging to the bamboos. On the 9th October 1877, these servants were charged before the Magistrate with rioting, and, being called upon for their defence, named several witnesses, and summonses on the following morning were issued for their appearance: but they were not found. The accused then applied for further time for the appearance of the witnesses. This the Magistrate refused to grant, and convicted the accused on 12th October 1877. ***Held per*** Jackson, J., that, this being a warrant-case, it was the duty of the Magistrate to summon the witnesses that might be offered by the accused, and that he might, at his discretion, have adjourned the case. ***Held***, further, ***per*** Jackson, J., that the meaning of s. 359 of the Criminal Procedure Code is, that, if, among the persons named by the accused as witnesses, the Magistrate considers that any witness is included for the purpose of vexation and delay, he is to exercise his judgment, and enquire whether such witness is material; but that the section is not intended to enable the Magistrate to inquire into what the defence of the accused person is to be, and to consider whether, on learning the nature of the defence, he is absolutely to abstain from summoning the whole of the witnesses cited by the accused; and further that, in the present case, there was not any purpose of vexation or delay, and that, by the refusal to grant further time, the accused had been probably prejudiced in their defence. ***Held*** further, ***per*** Jackson, J., that, as the accused were not on the land in question as members of an unlawful assembly, nor for any unlawful purpose, the conviction, as well as the procedure, was illegal. ***Held***, ***per*** Cunningham, J., that the accused were merely exercising the remedy of abating a private nuisance, and were exercising a legal right of self-defence. ***Held*** further, ***per*** Cunningham, J., that the acts of the complainants in erecting the nawbut-khana amounted to mischief, and came within the purview of s. 425 of the Penal Code. ***Held***, further, ***per*** Ainslie and McDonell, JJ., that the High Court, in the exercise of its powers of extraordinary jurisdiction, cannot, in criminal matters, interfere, unless all other remedies provided by law have been previously exhausted. Therefore, where parties who had been convicted of riot by a Magistrate, and who, having a right of appeal to the Sessions Court, instead of doing so, moved the High Court under cl. 15 of the Charter, the Court would not interfere until that remedy had been resorted to — DENONATH GHATTACK *v.* RAJCOOMAR SINGH, I. L. R., 3 Cal 573. [Jackson and Cunningham, JJ., Mar. 25—27, 1878.]

A PARTY of persons, consisting of some five peadas and a number of coolies sufficient for the work to be done, went to a spot on a river flowing through the lands of M for the purposes of either repairing or erecting a ***bund*** across it to cause the water to flow down a channel on the lands of their master T. The river at the time was almost dry, and the party did not go armed ready to fight or use force, and they did not, during the subsequent occurrence, use force. Having arrived at the spot about 10 A.M., they proceeded to work at the ***bund*** until the afternoon. At about 4 P.M., a body of men, consisting of about 1,200 in all, many of them armed with ***lathis***, and headed by the prisoners, who were servants of M, which had been seen collecting together during the day, proceeded to the spot, and about 25 or 30 of them attacked T's men, some five of whom were more or less severely wounded with the ***lathis***. The occurrence resulted in the conviction of some of M's servants for rioting under s. 147 of the Penal Code. M's people wholly denied any right on the part of T to construct or repair the ***bund***, and had previously denied the existence of such right, and refused permission to T to exercise it. It was contended that the assembly of M's people was not an "unlawful assembly;" that the interference by T's people with the channel of the river justified them in coming to stop the work and the show and use of force in compelling them to do so. ***Held*** that the prisoners had been

rightly convicted. ***Held***, further, that as no right of private defence of property is conferred by a Penal Code, except as against the perpetrators of offences under the Penal Code, and that as, upon the facts of the case as found, no offence had been committed by T's people, their acts amounting merely to a civil trespass, and that, as there was no pressing or immediate necessity of a kind showing that there was not time to have recourse to the protection of the public authorities, no question as to the right of private defence arose in the case. It was further contended that M's people did not assemble to enforce a right, or supposed right, within the terms of s. 141 of the Penal Code, but to defend a right, and that such action did not make the assembly an unlawful one. ***Held*** that they were members of an assembly, the common object of which was, by show of criminal force, and by criminal force, if necessary, to enforce the right to keep the river channel clear by preventing the construction of the ***bund***, and by demolishing it so far as it was constructed, and that the case came within s. 141, para. 4. ***Queen*** v. ***Mitto Sing*** (3 W. R. Cr. 41), ***Shunker Singh*** v. ***Burmah Mahto*** (23 W. R. Cr. 25), and ***Birjoo Singh*** v. ***Khub Lall*** (19 W. R. Cr. 66), referred to and commented on.—GANOURI LAL DAS v. QUEEN-EMPRESS, I. L. R., 16 Cal. 206 [Pigot and Macpherson, JJ. Jan. 14. 1889.]

ONE of two village-factions objected to the other passing in procession over a vacant piece of ground in the main street of the village. An injunction prohibiting the procession was obtained in the Court of the District Munsif on 20th March. On 11th May a procession was formed, and approached the ground in question. Forty-six members of the first-named faction were assembled there to prevent the procession by force, the police ordered them to disperse; this order having been neglected, the police prevailed on the other faction to abandon the procession. ***Held*** that the persons who did not disperse on being ordered to do so were guilty of the offence of being members of an unlawful assembly.—QUEEN-EMPRESS v. TIRA KADU, I. L. R., 14 Mad. 126. [Muttusami Ayyar and Best, JJ. Oct. 3, 1890.]

IN a case where an Excise Sub-Inspector attemped to search a house for ***gurjat-ganga***, a "foreign exciseable article," under the Excise Act (Ben. Act VII. of 1878), and resistance was offered, ***held*** that ***gurjat-ganga*** being a "foreign exciseable article" under s. 4 of the Act as amended by Ben. Act IV. of 1881, the excise officer had no legal authority to enter and search the house under s. 40 of the Act; he had authority only to enter and search for any "exciseable article" as defined in s. 4 of the Act: and that no offence either under s. 141 or s. 353 of the Penal Code was committed. ***Held*** also that s. 75 of the Act does not apply to a "foreign exciseable article."—JAGARNATH MANDHATA v. QUEEN-EMPRESS, I. L. R., 24 Cal 324. [Ghose and Gordon, JJ. Jan. 19, 1897.]

WHEN a body of men are determined to vindicate their rights or supposed rights by unlawful force, and when they engage in a fight with men who, on the other hand, are equally determined to vindicate by unlawful force their rights or supposed rights, no question of self-defence arises. In the Code of Criminal Procedure there is no apparent distinction between the right of appeal against an acquittal and a right of appeal against a conviction. ***Queen-Empress*** v. ***Gayadin*** (I. L. R., 4 All 148) and ***Queen-Empress*** v. ***Gobardhan*** (I. L. R, 9 All. 528) referred to.—QUEEN-EMPRESS v. PRAG DAT, I. L. R., 20 All. 459. [Kershaw, C.J., and Knox, J. June 13. 1898.]

**142.** Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

Being member of unlawful assembly.

A LARGE body of men belonging to one faction waylaid another body of men belonging to a second faction, and a fight ensued, in the course of which a member of the first-mentioned faction was wounded, and retired to the side of the road, taking no further active part in the affray. After his retirement a member of the second faction was killed. ***Held*** by Norman, J. (whose opinion prevailed), that the wounded man had ceased to be a member of the unlawful assembly when he retired wounded, and that he could not, under s. 149 of the Penal Code, be made liable for the subsequent murder. ***Held*** by E. Jackson, J., that he remained a member of the unlawful assembly. In delivering judgment, Norman, J., made the following important remarks: "The evidence shows that, on the retreat of the Kazis, and before the renewal of the combat in which Baber Ali Mira was killed, the prisoner Wahid Ali had separated himself from his faction, and sat down apart from them. He probably no longer had the same common object as the members of the unlawful assembly from which he had separated himself. It does not

appear that he had continued to urge on the others. He was apparently solely occupied by his own suffering. He cannot be convicted under s. 149, unless he was a member of the unlawful assembly at the time of the committing the offence. We think the fair inference from the facts is that he had ceased to be so when the fatal wound was inflicted on Baber Ali Mira; and therefore that he cannot be convicted or punished for an act committed by a member of that assembly under s. 149. It is plain that he was no longer co-operating with the others, and he had not the power to prevent or check the violence of the others as he might have had if he continued with them." — QUEEN *v.* KABIL KAZI, 3 B. L. R. A. Cr. 1. [Norman and Jackson, JJ. April 8, 1869.]

IT cannot be said that a person intentionally joins an unlawful assembly, or continues in it, when it appears from the evidence that he went to the place where the members of the unlawful assembly were gathered to prevent mischief being done to his own property, which he had a right to protect.—BIRJOO SINGH *v.* KHUB LALL, 19 W. R. 66. [Couch, C.J., and Glover, J. April 16, 1873.]

**143.*** Whoever is a member of an unlawful assembly shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Any Mag. Cognizable. Summons. Bailable. Not comp.

**Punishment.**

THE common object of the assembly should always be mentioned in the charge.—4 W. R. Cr. L. 9, 10, Nos. 1137 and 1150 of 1865.

THERE cannot be a conviction both of "rioting" and of "being members of an illegal assembly." The greater charge includes the less, and to punish under both sections of the Penal Code would be cumulative and illegal. Were both original sentences legal, the appeal would lie to the Sessions Judge. —MEHLAN KHALIFA *v.* DWARKA NATH GOOPTO, 1 W R 7. [Kemp and Glover, JJ. Aug. 17, 1864.]

AN assembly, lawful in its inception, may become unlawful by its acts. If force is used, the higher offence of rioting has been committed.—QUEEN *v.* KHEMER SINGH, 1 W. R. 18. [Kemp, J. Sep. 26, 1864.]

TO convict a prisoner of being a member of an unlawful assembly and of culpable homicide not amounting to murder, it must be shown that he had an illegal object in common with, and took part in the illegal act done by, the others.—FAIZ ALI *alias* IMDAD ALI, 1 W. R. 20. [Loch and Glover, JJ. Nov. 4, 1864.]

IN an affray respecting land, one of the aggressive party was killed. The prisoners who were exercising the right of private defence of property, were acquitted by the jury of culpable homicide, but convicted of rioting. *Held* that the prisoners, not being legally guilty of culpable homicide, were not legally guilty of any other offence coupled with rioting, and, not being rioters, or members of an unlawful assembly, could claim the benefit of s. 104, Penal Code.—QUEEN *v.* MITTO SINGH, 3 W. R. 41. [Seton-Karr and Campbell, JJ. July 11, 1865.]

HOUSE-TRESPASS and mischief not being separate offences, but being included in the graver offence of being members of an unlawful assembly armed with deadly weapons, no separate convictions and sentences were deemed to be requisite.—QUEEN *v.* SURROOP NAPIT, 3 W. R. 54. [Kemp and Seton-Karr, JJ. July 15, 1865.]

HELD by the majority that where two members of an unlawful assembly use spears, and deliberately pierce another man through the chest and abdomen with the knowledge that death is likely to ensue, although without proof of any intention to cause death, all the members of the unlawful assembly are jointly guilty of murder.—QUEEN *v.* NAZOO FAKIR, 4 W. R. 26 [Kemp, Seton-Karr, and Campbell, JJ. Nov. 27, 1865.]

A SUBORDINATE Magistrate of the first class has no power, under s. 45 of the Code of Criminal Procedure, to award any greater sentence of imprisonment in default of a payment of fine than six weeks in the case of persons convicted of being members of an unlawful assembly.—PHOOLMAN TEWARY *v.* SATRAM OJHA, 6 W. R 51. [Norman and Seton-Karr, JJ. July 30, 1866.]

THE prisoner was convicted and sentenced separately for culpable homicide not amounting to murder, and for being a member of an unlawful assembly. The two offences, however, being held to be one (the latter

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* As to the duty to give information of offences punishable under ss. 143, 144, and 145, see the new Code of Criminal Procedure (Act V. of 1898), ss. 44 and 45.

being only part of the evidence of the former), the conviction and sentence for the second offence were quashed.—QUEEN *v.* RUBBEE-OOLLAH, 7 W. R. 13. [Norman and Seton-Karr, JJ. Jan. 16, 1867.] See *contra*, *Queen* v. *Hurgobind*, 3 N.-W. P. 174, *infra*.

WHERE persons join an unlawful assembly for the purpose of committing an assault, and, instead of preventing those armed from using their weapons, encourage them to do so, they are in the same position as those members of the unlawful assembly who struck the blows.—QUEEN *v.* DUSHRUTH ROY, 7 W. R. 58. [Glover, J. April 18, 1867.]

CASE of an unlawful assembly the members of which were held guilty of an offence under s. 402 of the Penal Code on their own admission, that they not only knew that the assembly was an assembly for the purpose of committing dacoity, but also that all the persons (including themselves) constituting the assembly lived on the proceeds of dacoity, and had no other means of living.—QUEEN *v.* KENDRA KAMAR, 7 W. R. 61 [Hobhouse, J. April 30, 1867.]

IN a case of riot, in which a man was killed, the whole of the members of the unlawful assembly, as well the victorious as the worsted, were held equally guilty of culpable homicide not amounting to murder.—QUEEN *v.* MANA SINGH, 7 W. R 67. Kemp and Glover, JJ. May 7, 1867.]

IN order to convict of the offence of being members of an unlawful assembly, it must be shown that the accused were actuated by a common object, and that the acts done by them were of such a nature as to make them guilty under s. 141 of the Penal Code.—QUEEN *v.* DINOBUNDO RAI, 9 W. R 19 [Seton-Karr and Markby, JJ. Feb. 20, 1868.]

A LARGE body of men belonging to one faction waylaid another body of men belonging to a second faction, and a fight ensued, in the course of which a member of the first-mentioned faction was wounded, and retired to the side of the road, taking no further active part in the affray After his retirement a member of the second faction was killed. *Held* by Norman, J., (whose opinion prevailed), that the wounded man had ceased to be a member of the unlawful assembly when he retired wounded, and that he could not, under s. 149 of the Penal Code, be made liable for the subsequent murder. *Held* by E. Jackson, J., that he remained a member of the unlawful assembly. In delivering judgment, Norman, J., made the following important remarks: "The evidence shows that, on the retreat of the Kazis, and before the renewal of the combat in which Baber Ali Mira was killed, the prisoner Wahid Ali had separated himself from his faction, and sat down apart from them. He probably no longer had the same common object as the members of the unlawful assembly from which he had separated himself. It does not appear that he had continued to urge on the others. He was apparently solely occupied by his own suffering. He cannot be convicted under s. 149, unless he was a member of the unlawful assembly at the time of the committing of the offence. We think the fair inference from the facts is that he had ceased to be so when the fatal wound was inflicted on Baber Ali Mira, and therefore that he cannot be convicted or punished for an act committed by a member of that assembly under s. 149. It is plain that he was no longer co-operating with the others, and he had not the power to prevent or check the violence of the others as he might have had if he continued with them."—QUEEN *v.* KABIL KAZI, 3 B. L. R. A. Cr. 1. [Norman and Jackson, JJ. April 8, 1869.]

WHERE land in the possession of A was encroached on by the servants of B, who committed mischief on the land, and the servants of A assembled and resisted the encroachments, the High Court declined to interfere with the Magistrate's order convicting the servants of A of unlawful assembly, as there was no error in law in the order of the Magistrate, who found as a fact that the right of private defence of property had ceased under cl. 4, s. 105 of the Penal Code.—QUEEN *v.* RAJKRISTO DOSS, 12 W. R. 43. [Kemp and Markby, JJ. Aug. 3, 1869.]

WHERE the defendants, raiyats of portion of a zemindari sold in execution of a decree of the Civil Court, reaped and carried away their crops despite the purchaser's people, and refused to allow the purchaser's people to seal and mark grain which had been reaped, and the raiyats were assembled in such numbers, and so armed that nothing could be done against them, *held* by the High Court that the acts of the defendants did not amount to an offence under s. 141 of the Penal Code.—PRO., Aug. 10, 1869, 4 Mad. H. C. R. Ap. 65.

WHERE, of several persons constituting an unlawful assembly, some only are armed with sticks, and A, one of them, is not so armed, but picks up a stick and uses it, B (the master of A), who gave a general order to beat, is guilty of abetting the assault made by A.—QUEEN *v.* RASOOKOOLA, 12 W. R 51. [Glover and Mitter, JJ. Sep. 2, 1869.]

THE act of the defendants in assembling and forcibly interrupting a procession was forbidden by cl. 4 of s. 141, although the defendants acted upon the ground that the pro-

cession was a nuisance or annoyance to them or their community.—PRO., Nov. 11, 1869, 5 Mad. H. C. R. Ap. 4.

WHERE the evidence in a case failed to establish anything like an unlawful assembly, the conviction was reduced from rioting and being members of an unlawful assembly to one for affray, although grievous hurt from which death resulted was caused to one of the persons. The insufficiency of the punishment allowed by the law in cases of affray pointed out.—QUEEN *v.* PHOOLEE MISSER, 12 W. R. 72. [Jackson and Markby, JJ. Nov. 30, 1869.]

HELD that the owner or occupier of land on which an unlawful assembly is held cannot be convicted under s. 154 of the Penal Code, unless there is a finding that the riot was premeditated. Where two opposite factions commit a riot, it is irregular to treat both parties as constituting one unlawful assembly, and to try them together, inasmuch as they do not have "one common object" within the meaning of s. 141 of the Penal Code. The right of an accused party to cross-examine witnesses is limited to a right to cross-examine the witnesses for the prosecutor or for the Crown called against him. If he wishes to avail himself of evidence which has been given, or which can be given by a witness called for another of the parties accused, he must call him as his own witness. —QUEEN *v.* SURKOOP CHUNDER PAUL, 12 W. R. 75. [Norman and Kemp, JJ. Dec 10, 1869.]

WHERE a number of persons, members of an unlawful assembly, went to abduct A, and one of them killed B in the attempt to abduct A, *held* that all the persons concerned in the attempt at abduction were guilty (looking to s. 149 of the Penal Code) of causing the death of B.—QUEEN *v.* GOLAM ARFIN, 13 W. R. 33, 4 B. L. R. A. Cr. 47. [Loch and Hobhouse, JJ. Feb. 19, 1870.]

WHERE a police-officer, duly appointed under Act V. of 1861, was engaged in the discharge of his duty as such police-officer at a time when an unlawful assembly took place, it was held that he was competent to apprehend any of the members of such unlawful assembly; and a person who rescued the party apprehended was convicted of rescuing from lawful custody within the meaning of s. 225 of the Penal Code.—QUEEN *v.* ASSAM SHURRUFF, 13 W. R. 75. [Phear and Mitter, JJ. May 17, 1870.]

PROCEDURE to be observed in the case of a charge under s. 154, Penal Code, against the owner of land on which an unlawful assembly is held, pointed out. The record of the original riot case is no evidence in the case under s. 154.—IN THE MATTER OF C. G. D. BETTS AND MAHOMED ISMAIL CHOWDHRY, 15 W. R. 6; 6 B. L. R. Ap. 83. [Bayley and Mitter, JJ. Jan. 21, 1871.]

A CUMULATIVE sentence under s 143 of the Penal Code (being a member of an unlawful assembly) and under s. 353 (using criminal force against a public servant) was upheld by the High Court in this case.—GOVIND CHUNDER ROY, 16 W. R. 60 Bayley and Paul, JJ. Nov. 25, 1871.]

THERE is no ground for the distinction between an unlawful assembly as a premeditated act and an affray as a sudden one, for, according to s. 141 of the Penal Code, an assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.—LOKENATH KAR, 18 W. R 2 Bayley and Mitter, JJ. May 13, 1872.]

IT cannot be said that a person intentionally joins an unlawful assembly, or continues in it, when it appears from the evidence that he went to the place where the members of the unlawful assembly were gathered, to prevent mischief being done to his own property, which he had a right to protect.—BIRJOO SINGH *v.* KHUB LALL, 19 W. R. 66. [Couch, C J., and Glover, J. April 16, 1873

HELD (Ainslie, J., dissenting) that s. 149 of the Penal Code is not intended to subject a member of an unlawful assembly to punishment for every offence which is committed by one of its members during the time they are engaged in the prosecution of the common object In order to bring a case within s 40, the act must be done with a view to accomplish the common object of the unlawful assembly, or it must be proved that the offence, though committed in prosecution of the common object of the unlawful assembly, is one which the accused knew would be likely to be committed in prosecution of the common object.—*Per* Jackson, J.—Any offence done by a member of an unlawful assembly in prosecution of the particular one or more of the five objects mentioned in s 141, which is or are brought home to the unlawful assembly to which a prisoner belongs, is an offence within the meaning of the first part of s. 149. Where a certain number of persons, members of an unlawful assembly (party A), attacked another party (B), who were in occupation of land, with the view to drive them off the land by force, and one of the members in party A fired a gun at and killed one of the persons in party B, in consequence of a sudden and unexpected resistance which was offered by party B, it was held (Ainslie, J., dissenting), on a consideration of the evidence, that the persons com-

posing party A, other than the person who fired the gun, could not be convicted of murder under s. 149, Penal Code. The conviction was altered under the circumstances to one of rioting armed with a deadly weapon under s. 148 of the Penal Code.—QUEEN *v.* SABID ALI, 20 W. R. 5; 11 B. L. R. 347. [Couch, C.J., and Jackson, Phear, Ainslie, and Pontifex, JJ. April 21, 1873.]

IN this case, in which the prisoners were convicted of being members of an unlawful assembly under s. 141 of the Penal Code, the Court held that the evidence was insufficient to warrant a conviction, there being nothing to show what was the specific unlawful object, within the scope of cls. 3 and 4, of the persons composing the assembly.—KOYLASH CHUNDER DASS, 20 W. R. 78. [Phear and Morris, JJ. Nov. 18, 1873.]

IN a case in which the accused were charged with unlawful assembly and trespass, the Magistrate acquitted the accused, but eventually ordered the parties to execute bonds, and furnish security, refusing to take further evidence, and relying on the evidence which had been given before him in the original case in the presence of the accused. *Held* that the proceedings were irregular. The order was accordingly set aside.—DILOO SINGH *v.* OOTIM SINGH, 22 W. R. 9. [Kemp and Birch, JJ. April 25, 1874.]

No charge of being members of an unlawful assembly under s. 141, Penal Code, can be sustained, where the intention of the parties was not to enforce a right or supposed right, but to maintain undisturbed the actual subsisting enjoyment of a right which was at that time being exercised.—SHUNKER SINGH (the Panchgachia party), Petitioners: BURMA MAHTO (the Amba party), Petitioners, 23 W. R 25. [Phear and Morris, JJ. Jan. 22, 1875.]

WHERE the officer in charge of a police-station required the officer in charge of another police-station to cause a search to be made in a house within the limits of his station, and such officer, on being required, deputed two officers subordinate to him to make the search without delivering to them the order in writing required by s 379 of Act X. of 1872, it was held that the persons resisting the search attempted could not be lawfully convicted under ss. 353 and 143 of the Penal Code.—QUEEN *v.* NARAIN, 7 N.-W. P. 209. [Turner, J. April 13, 1875.]

IN a case in which the accused was bound down to keep the peace, the Assistant Magistrate admitted as evidence the depositions of witnesses in certain cases in which the accused was tried on charges of being a member of an unlawful assembly and of rioting, and was acquitted. *Held* that the Assistant Magistrate ought not to have admitted this evidence.—QUEEN *v.* DINA BUNDHOO ROY, 24 W. R. 4. [Markby and Morris, JJ. May 10, 1875.]

WHERE a charge under the Penal Code, s. 342 (wrongful confinement), was substantiated against certain prisoners, the Joint-Magistrate was held not to have been justified in treating the case as one of unlawful assembly (s. 143), and disposing of it summarily under the Code of Criminal Procedure, s. 222.—HARAN SHEIKH *v.* RAMDHUN BISWAS, 24 W. R. 21. [Glover and Mitter, JJ. June 28, 1875.]

IF a number of persons, assembled for any lawful purpose, suddenly quarrel with an intruder without any previous intention or design, they do not commit "riot" in the legal sense of the word.—KHAJA NOORUL HOSSEIN *alias* KHAJAH WAHED JAN *v.* FABRE-TONNERRE, 24 W. R. 26. [Glover and Mitter, JJ. July 12, 1875.]

WHERE, after the object of an unlawful assembly had been accomplished, and the opposite party driven away, one of the members entered into an altercation with another, and wounded him with a fish-spear, it was held that the act was not one done with a view to accomplish the common object of the assembly, or one which the rest knew would be likely to be committed in the prosecution of that object.—IN THE MATTER OF BINOD, 24 W. R. 66. [Kemp and Glover, JJ Nov. 17, 1875.]

THE offence of rioting consists in the use of violence by an unlawful assembly, or by any member thereof, in the prosecution of the common object. But as in this case there were never five persons assembled together to constitute an unlawful assembly, and the intention to use force does not appear to have been carried out, no offence under the Penal Code is established against the accused.—IN THE MATTER OF RAMADEEN DOOBAY, 26 W. R. 6. [Markby and Mitter, JJ. Aug. 17, 1876.]

IF a body of men armed with *lathis*, and under the leadership of one who, to the knowledge of the rest, is armed with a gun, assemble for the purpose of forcibly carrying off another man's property, and if, in effecting that purpose, any one of the party, taking the gun, shoots and kills a person who is making a lawful resistance, the whole party may properly be convicted of murder under s. 149 of the Penal Code.—HARI SING *v.* EMPRESS, 3 C. L. R. 49. [Jackson, Mitter, and Maclean, JJ. June 4, 1878.]

TO constitute an offence under s. 157 of the Penal Code, it must be proved that the accused

has hired, or engaged, or employed other persons for the purpose of an unlawful assembly, and it is not sufficient to show that some of the accused's servants have been taken from a district where men have a well-known character as *lathials*, and had been in his service some time before the riot was perpetrated. A non-resident partner or sharer, who has taken no active part in the management of the estate, cannot, like a resident sharer, be convicted under ss 154 and 155 of the Penal Code.—IN THE MATTER OF RADHANATH CHOWDHRY, 7 C. L. R. 289. [Mitter and Maclean, JJ. Sep. 9, 1880.]

A DISTURBANCE having been created with reference to the possession of certain chur land, the Sessions Judge, on appeal, found that certain persons had unlawfully trespassed thereupon, and that the accused had been justified in resisting the trespassers by force. Inasmuch, however, as he considered the accused had exceeded their right of private defence of their property, he convicted them of rioting under s. 148 of the Penal Code. *Held* that, on the findings of the Judge, the conviction could not be supported, inasmuch as on such findings the persons convicted were not members of an unlawful assembly.—IN THE MATTER OF KALEE MUNDLE, 10 C. L. R. 278 [Mitter and Maclean, JJ. Feb 21, 1882]

WHERE the object of only three persons was to draw a crowd and their action was such as was calculated to, and did, draw a crowd of fifty or sixty persons likely to cause a disturbance of the public peace. *Held* that the gathering constituted an assembly of five or more persons within the meaning of s. 151 of the Penal Code, and that a refusal to disperse after being lawfully commanded to disperse rendered every member of the gathering liable to conviction under the said section.—EMPRESS *v.* TUCKER, I. L. R., 7 Bom. 42. [Kemball and Pinhey, JJ. Sep. 28, 1882.]

ON the trial of certain persons charged with being members of an unlawful assembly, it was proved that there was a dispute of long standing between the accused and certain other parties regarding the possession of certain land; that neither of the parties was in undisturbed possession of the land; that the accused went to sow the land with indigo, accompanied by a body of men armed with *lathis*; that they were prepared to use force, if necessary, and that the *lathials* kept off the opposite party by brandishing their weapons while the land was sowed. *Held* that the accused were rightly convicted of being members of an unlawful assembly under s. 143 of the Penal Code. *Sunker Singh* v. *Burmah Mahto* (23 W. R. 25) distinguished.—IN THE MATTER OF PEARY MOHUN SIRCAR *v.* EMPRESS, I. L. R., 9 Cal. 639; 13 C. L. R. 80. [Wilson and Maclean, JJ. Mar. 1, 1883.]

A MEMBER of an unlawful assembly, some members of which have caused grievous hurt, cannot lawfully be punished for the offence of rioting as well as for the offence of causing grievous hurt.—EMPRESS *v.* RAM PARTAB, I. L. R., 6 All. 121. [Straight, J. Dec. 5, 1883.] Dissented from in *Queen-Empress* v. *Dungar Singh*, I L. R., 7 All. 29, *infra*.

FOUR persons were charged with being members of an unlawful assembly consisting of themselves and others, the common object of which assembly was resisting the execution of a legal process, namely, the arrest of a judgment-debtor by a Civil Court peon, who went with his warrant for his arrest accompanied by other persons, A and B, for the purpose of identifying him, and with using force or violence in prosecution of the common object, such force or violence consisting of an assault on the Civil Court peon and another by means of a dangerous weapon on A. The Deputy Magistrate convicted all the accused of offences under ss. 147 and 353 of the Penal Code, and sentenced them to six months' rigorous imprisonment under the former section, and two months' rigorous imprisonment under the latter. He further convicted one of the accused of an offence under s 324 in respect of the assault on A, and sentenced him to one month's rigorous imprisonment in respect of that offence, and directed that the sentences were to take effect one on the expiry of the other. *Held* that the offence of rioting was completed by the assault on A, and that the assault on the peon was a further offence under the first sub-section of s. 235 of the Code of Criminal Procedure. *Held*, further, that, even if A had not been assaulted, the conviction and sentences passed for rioting and the assault on the peon were legal, inasmuch as the acts of the accused taken separately, constituted offences under ss. 143 and 353 of the Penal Code, and, combined, an offence under s. 147; and under s. 235, sub-s. 3 of the Code of Criminal Procedure, the accused might be charged with, and tried at one trial for, the offence under s. 147, and those under ss. 143 and 353, and therefore also separately convicted and sentenced for each such offence, provided the punishment did not exceed the limit imposed by s. 71 of the Penal Code as amended by s. 4 of Act. VIII. of 1882, which limit had not been exceeded in the present case.—IN THE MATTER OF CHANDRA KANT BHATTACHARJEE, CHANDRA KANT BHATTACHARJEE *v.* QUEEN-EMPRESS, I. L. R., 12 Cal. 495. [Mitter and Beverley, JJ. Dec. 11, 1885.]

FISH in a public river cannot be said to be property in the possession of the person who may have the fishery-right, and the infringement of that right is not *theft* under s. 378 of the Penal Code. The accused were charged with unlawfully taking fish along with some eleven others in a public river, the right of fishing in which had been let out by the Government to the complainant; and the lower Court, amongst other offences, convicted them of theft, criminal misappropriation, mischief, criminal trespass, and unlawful assembly. *Held* that the conviction was wrong, and that no offence had been committed.—BHAGIRAM DOME *v.* ABAR DOME, I. L. R., 15 Cal. 388. [Norris and Ghose, JJ. Jan. 24, 1888.]

ONE of two village-factions objected to the other passing in procession over a vacant piece of ground in the main street of the village. An injunction prohibiting the procession was obtained in the Court of the District Munsif on 20th March. On 11th May a procession was formed, and approached the ground in question. Forty-six members of the first-named faction were assembled there to prevent the procession by force; the police ordered them to disperse; this order having been neglected, the police prevailed on the other faction to abandon the procession. *Held* that the persons who did not disperse on being ordered to do so were guilty of the offence of being members of an unlawful assembly.—QUEEN-EMPRESS *v.* TIRA KADU, I. L. R., 14 Mad. 126. [Muttusami Ayyar and Best, JJ. Oct. 3, 1890.]

WHERE a District Magistrate issued a warrant for the arrest and production of a witness for the purpose of giving evidence at an investigation held by the police, and in attempting to execute such warrant, the police arrested the wrong person and were assaulted in the attempt, *held* that, apart from the fact that the attempt to arrest was made on the wrong person, a District Magistrate has no authority to issue a warrant for the production of a witness at an investigation by a police-officer, but only before his own Court under ss. 76, 81 of the Code of Criminal Procedure. *Held* also that, as the investigation was held by a police-officer under Ch. XIV. of the Criminal Procedure Code, the proper course was for the Sub-Inspector of Police to require the attendance of the witness under s. 160 of the Code of Criminal Procedure, and on failure by her to comply with such order, prosecute her under s. 174 of the Penal Code. *Held*, further, that the accused were justified in their resistance, and that no offence either under s. 143 or s. 186 of the Penal Code was committed, and that they should be acquitted.—QUEEN-EMPRESS *v.* JOGENDRA NATH MUKERJEE, I. L. R., 24 Cal. 320. [Ghose and Gordon, JJ. Jan. 19, 1897.]

CONVICTION of a person under s 143 of the Penal Code is not necessarily a ground for making an order against him under s. 106 of the Criminal Procedure Code. In order to bring his acts within the terms of the latter section, there must either be an express finding to the effect that his acts involved a breach of the peace, or an evident intention of committing the same, or the evidence must be so clear as to satisfy the Court (without an express finding) that such was the case.—JIB LAL GIR *v.* JOGMOHAN GIR, I. L. R., 26 Cal. 570. [Prinsep and Stevens, JJ. Mar. 22, 1899.]

AN offence under s. 143 of the Penal Code is not one of the offences specified in s. 106 of the Criminal Procedure Code, which would justify an order directing a person or persons to furnish security to keep the peace. There may be findings in the case which would justify such an order if such findings can be brought within the terms of s. 106. *Jib Lal Gir* v. *Jugmohun Gir* (I. L. R., 26 Cal. 576) referred to. Where the accused were convicted under s. 143 of the Penal Code, and ordered under s. 106 of the Criminal Procedure Code to furnish security to keep the peace, and it was alleged that the facts as proved showed that the accused came in a body, some of whom were armed with *lathis*, and some of whom used threats, and did other acts, showing an evident intention to commit breaches of the peace, *held* that there should have been an express finding to that effect, that if the accused or any of them acted in such a manner, they should have been convicted of criminal intimidation or other offence which would enable the Magistrate to bind them over to keep the peace; and that the order under s. 106 should be set aside.—SHEO BHAJAN SINGH *v.* MOSAWI, I. L. R., 27 Cal. 983. [Prinsep and Handley, JJ. June 5, 1900.]

Any Mag. Cognizable. Warrant. Bailable. Not comp.

**144.*** Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be

**Joining unlawful assembly armed with deadly weapon.**

* As to the duty to give information of an offence punishable under s. 144, see the new Code of Criminal Procedure (Act V. of 1898), ss. 44 and 45.

**punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**

THE common object of the assembly should always be mentioned in the charge.—4 W. R., Cr. L., 9, 10, Nos. 1137 and 1150 of 1865.]

HOUSE-TRESPASS and mischief not being separate offences, but being included in the graver offence of being members of an unlawful assembly armed with deadly weapons, no separate convictions and sentences were deemed to be requisite.—QUEEN v. SURKOOP NAPIT, 3 W. R. 54. [Kemp and Seton-Karr, JJ. July 15, 1865.]

IT is unnecessary to punish a prisoner under both s. 144 and s. 148 of the Penal Code, as the offence under s 144 is almost merged in the offence under s. 148. There is, however, nothing actually illegal in sentencing for both offences.—SREEKISSEN v. JUGLAL, 9 W. R., 5. [Kemp and Jackson, JJ. Jan. 13, 1868.]

SEPARATE sentences passed upon persons for the offences of rioting and grievous hurt are not legal, where it is found that such persons individually did not commit any act which amounted to voluntarily causing hurt, but were guilty of that offence under s. 149 of the Penal Code. *Empress* v. *Ram Partab* (I. L. R., 6 All. 121) approved. *Loke Nath Sirkar* v. *Queen-Empress* (I. L. R., 11 Cal. 349) overruled. — NILMONEY PODDAR v. QUEEN-EMPRESS, I. L. R., 16 Cal. 442. [Petheram, C.J., and Mitter, Prinsep, Wilson, and Tottenham, JJ. Mar. 21, 1889.]

Two persons were charged with being members of an unlawful assembly armed with deadly weapons for the purpose of committing dacoity. The facts proved were that a crowd of about 100 persons, including the accused, had assembled together, armed with bill-hooks and sticks, and that the crowd had dispersed at once on seeing the police. On these facts the Magistrate assumed that the intention of the members of the crowd was to use criminal force, and, having regard to the weapons with which they were armed, he convicted the accused under s. 144 of the Indian Penal Code. *Held* that the prosecution had failed to show that the common object of the crowd was such as would constitute it an unlawful assembly as defined by s. 141 of the Indian Penal Code, and that the accused were entitled to be acquitted.—QUEEN-EMPRESS v. PERUMUTHU TEVAN, I. L. R., 24 Mad. 124. [Benson and Moore, JJ. Sep. 14, 1900.]

**145*** Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Any Mag. Cognizable. Warrant. Bailable. Not comp.

**Joining or continuing in unlawful assembly, knowing it has been commanded to disperse.**

UNDER s. 127 of the Criminal Procedure Code (Act V. of 1898) any Magistrate or officer in charge of a police-station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

**146.** Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Ditto.

**Rioting.**

A SESSIONS JUDGE has no authority to interfere and direct a commitment in the case of a conviction for assault under s. 352, or of hurt under s. 323, of the Penal Code, both of them being offences triable by the Subordinate Court. When the result of a joint attack by several persons on one party is fracture of the arm of the party assaulted, the offence committed is grievous hurt, and not assault: and as the attack was made in furtherance of a common object, all are equally guilty of the same offence.—QUEEN v. RAM-

* As to the duty to give information of an offence punishable under s. 145, see the new Code of Criminal Procedure (Act V. of 1898), ss. 44 and 45.

TOHUL SING, 5 W. R. 12. [Kemp and Glover, JJ. Jan. 16, 1866.]

WHERE a man is grievously wounded in a riot, the police are bound to act without taking into consideration who was the aggressing party. In the discharge of their duties, and in the absence of any proof that they exceeded their duty, the police were held entitled to the protection of the Court. —QUEEN v. DAMOO SINGH, 8 W. R. 36. [Kemp and Glover, JJ. July 8, 1867.]

A MEMBER of an unlawful assembly, some members of which have caused grievous hurt, cannot lawfully be punished for the offence of rioting as well as for the offence of causing grievous hurt.—EMPRESS v. RAM PROTAB, I. L. R., 6 All. 121. [Straight, J. Dec. 5, 1883.] Dissented from in *Queen-Empress* v. *Dungar Singh*, I. L. R., 7 All. 29, *infra*.

PROCEEDINGS in which certain villagers were accused of having committed a serious riot in order to stop a procession which they disapproved of, and believed had been rendered illegal as contrary to law. The rioters were acquitted by the Magistrate, because he thought they might have considered their act justified because the procession was illegal by virtue of some orders, which did not appear, and which might have been efficacious in point of law. *Held* that the thinking a thing legal which is not so can be no defence to a man who violates a rule of law; that there was no evidence that the procession was illegal; and that, if it were, the accused were bound to invoke the aid of the tribunals charged with the enforcement of the law. Innes, J., adds: "The assembly was unlawful, because its object was to enforce a supposed right by a show of criminal force. In pursuance of the common object, force was used, and a serious riot took place." — PRO., Jan. 8, 1873, 7 Mad. H. C. R. App. 35. [Holloway and Innes, JJ. Jan. 8, 1873.]

A LANDLORD, who had not tendered to his tenant such a pottah as the latter was bound to accept under the Madras Rent Recovery Act, distrained his cattle for arrears of rent, the assistance of the police having been procured for the purpose. The tenant, with the assistance of eleven other persons, forcibly obstructed the removal of the cattle, which had already been actually seized and driven for some yards. They were charged with the offence of rioting, and convicted. *Held* that the conviction was right.—QUEEN-EMPRESS v. RAMAYYA, I. L. R., 13 Mad. 148. [Collins, C.J., and Parker, J. Oct. 2, 25 1889.]

Any Mag. Cognizable. Warrant. Bailable. Not comp.

**147.*** Whoever is guilty of rioting shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for rioting.

A HUSBAND, or those who aided him, cannot be convicted of kidnapping for taking away his own wife; but they are guilty of rioting if they carry out the husband's object of getting possession of his wife by force and violence and in the darkness of night.—QUEEN v. ASKUR, W. R. Gap. 1864, 12. [Steer and Seton-Karr, JJ. Feb. 22, 1864.]

THE prisoners, having been part of an assembly of more than five persons, whose common object, as apparent from their acts, was, by means of criminal force, to recover possession of their cattle seized for trespass (*whether properly pounded or not*), and who made use of such force and took away their cattle, were held guilty of rioting, and liable to conviction under s. 147 of the Penal Code, and not under s. 11, Act V. of 1857.—QUEEN v. BOKOO SHEIKH, W. R., Gap. 1864, 21. [Jackson, J. April 12, 1864.]

THERE cannot be a conviction both of "rioting" and of "being members of an illegal assembly." The greater charge includes the less, and to punish under both sections of the Penal Code would be cumulative and illegal. Were both original sentences legal the appeal would lie to the Sessions Judge.—MEELAN KHALIFA v. DWARKA NATH GOOPTO, 1 W. R. 7. [Kemp and Glover, JJ. Aug. 17, 1864.]

AN assembly, lawful in its inception, may become unlawful by its acts. If force is used the higher offence of rioting has been committed.—QUEEN v. KHEMEK SINGH, 1 W. R. 18. [Kemp, J. Sep. 26, 1864.]

IN an affray respecting land one of the aggressive party was killed. The prisoners, who were exercising the right of private defence of property, were acquitted by the jury of culpable homicide, but convicted of rioting. *Held* that the prisoners, not being legally guilty of culpable homicide, were not legally guilty of any other offence, coupled with rioting, and, not being rioters, or mem-

* As to the duty to give information of an offence punishable under s. 147, see the new Code of Criminal Procedure (Act V. of 1898), ss. 44 and 45.

bers of an unlawful assembly, could claim the benefit of s. 104, Penal Code.—QUEEN v. MITTO SINGH, 3 W. R. 41. [Seton-Karr and Campbell, JJ. July 11, 1865.]

HOUSE-TRESPASS and mischief not being separate offences, but being included in the graver offence of being members of an unlawful assembly armed with deadly weapons, no separate convictions and sentences were deemed to be requisite.—QUEEN v. SURROOP NAPIT, 3 W. R. 54. [Kemp and Seton-Karr, JJ. July 15, 1865.] Upheld by *Queen* v. *Kali Sanker Sandyal*, 3 B. L. R. A. Cr. 14; 12 W. R. 2. But see illus. (*g*) to s 235 of the Criminal Procedure Code (Act V. of 1898), which runs thus: "A. with six others, commits the offences of rioting, grievous hurt, and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under ss. 147, 325, and 152 of the Indian Penal Code.

DISPUTE between two parties (the Mullahs and Shikdars), in which the Shikdars attacked and killed one of the Mullahs when exercising the right of re-taking their own property, three of the Shikdars being also wounded. The Shikdars were convicted of culpable homicide not amounting to murder and rioting. As to the Mullahs, Loch, J., was of opinion that they were guilty of voluntarily causing grievous hurt: while the majority of the Court held that they were entitled to the protection conferred by s. 101, Penal Code, on those who, while exercising the right of private defence, caused their assailants any harm other than death.—QUEEN v. TANOO SHIKDAR, 3 W. R. 47. [Loch, Kemp, and Seton-Karr, JJ. July 17, 1865.

HELD by the majority of the Court (Seton-Karr, J., dissenting) that an attack made in the morning by an unlawful armed assembly, with the object of rescuing two thieves who had been captured during the night, and in which murder was committed, was a premeditated attack for which all concerned were liable to conviction for riot attended with murder.—QUEEN v. BHUNJUN PAURAY, 4 W. R. 8. [Kemp, Seton-Karr, and Glover, JJ. Sep. 12, 1865.]

A DISMISSAL by one Court of a charge of riot against A may be a bar to A's trial by another Court on the same charge, but it does not extend to other persons not then before the Court which ordered the dismissal. The dismissal by one Court of the charge of riot instituted by the police is no bar to the trial by another Court of a charge of criminal trespass instituted by a third person, although the two charges may substantially refer to the same occurrences. There is no right of appeal, because the united sentences in three separate cases amount to more than a month's imprisonment.—QUEEN v. MORLY SHEIKH, 6 W. R. 51. [Seton-Karr and Pundit, JJ. Aug. 6, 1866.]

WHERE an affray took place, both parties turning out armed with deadly weapons, it cannot be said that there was any right of private defence, as either party well knew beforehand what was likely to happen. Where land was already sown with corn, an indigo-factory had no right to attempt forcibly to sow indigo in it, although it was indigo-contract land; and villagers had no right to oppose such forcible sowing by force inasmuch as the police-station was close by.—QUEEN v. JEOLALL, 3 Wyman's Rev., Civ., and Crim. Reporter, 21; 2 Mad. Jur. 168. [Kemp and Glover, JJ. Feb. 18, 1867.]

WHERE persons join an unlawful assembly for the purpose of committing an assault, and, instead of preventing those armed from using their weapons, encourage them to do so, they are in the same position as those members of the unlawful assembly who struck the blows.—QUEEN v. DUSHRUTH ROY, 7 W. R. 58. [Glover, J. April 18, 1867.

IN a case of riot, in which a man was killed, the whole of the members of the unlawful assembly, as well the victorious as the worsted, were held equally guilty of culpable homicide not amounting to murder.—QUEEN v. MANA SINGH, 7 W. R. 67. [Kemp and Glover, JJ. May 7, 1867.

WHERE a man is grievously wounded in a riot, the police are bound to act without taking into consideration who was the aggressing party. In the discharge of their duties, and in the absence of any proof that they exceeded their duty, the police were held entitled to the protection of the Court.—QUEEN v. DAMOO SINGH, 8 W. R. 36. [Kemp and Glover, JJ. July 8, 1867.]

THERE had been a riot and fight between two factions, and some members of one party (A) were charged with the murder of the leader of the other party (B), and some members of the other party (B) were charged with causing grievous hurt to the leader of party (A). *Held* that the members of each party should have been committed for trial separately, and that the Magistrate was wrong in committing the members of party (A) and of party (B) for trial all together upon joint charges as if they had had one common object.—QUEEN v. SHEIK BAZU, 8 W. R. 47; B. L. R. Sup. Vol. 750. [Peacock, C.J., and Loch, Bayley, Kemp, Seton-Karr, Phear, and Macpherson, JJ. July 27, 1867.

WHERE prisoners are charged both with rioting, being armed with deadly weapons,

and with causing hurt by shooting, and their conviction of the latter offence rests solely on the fact of their belonging to a party by one of whom (not one of the prisoners) firearms were used, it is wrong to pass a cumulative sentence, and to punish the prisoners both for the rioting and for the causing hurt. The punishment should be for either one or other of those offences. A charge should be so framed as to refer to the section of the Penal Code under which the offence charged is punishable as required by ss. 234 and 237 of the Code of Criminal Procedure. Where there is a riot and fighting between two factions, the members of each party should be committed for trial separately, and not all together.—QUEEN *v.* DURZOOLLA, 9 W. R. 33. [Seton-Karr and Macpherson, JJ. Mar. 14, 1868.] See *contra*, *Queen* v. *Callachand*, 7 W. R. 60, *infra*.

A PARTY in possession of land is legally entitled to defend his possession against another party seeking to eject him by force. Therefore, where there was a charge against both parties of rioting under s. 147, and both were convicted and punished, the High Court quashed the conviction, holding that the party in possession was protected by s. 104, Penal Code.—QUEEN *v.* TOOLSEE SING, 2 B. L. R. Ap. Cr. 16; 10 W. R. 64. [Loch and Glover, JJ. Dec. 21, 1868.]

IN a trial arising out of an affray or faction-fight, the members of each faction should be tried separately. The statements of the members of each faction can then, if desired, be taken on solemn affirmation, and be made evidence against their opponents; but if they decline to give evidence on the ground of implicating themselves, they cannot be compelled to do so.—QUEEN *v.* MAHOMED HOSSEIN, 1 N.-W. P. 293. Pearson and Turner, JJ. April 2, 1869.

WHERE land in the possession of A was encroached on by the servants of B. who committed mischief on the land, and the servants of A assembled and resisted the encroachments, the High Court declined to interfere with the Magistrate's order convicting the servants of A of unlawful assembly, as there was no error in law in the order of the Magistrate, who found as a fact that the right of defence of private property had ceased under cl. 4, s. 105 of the Penal Code.—QUEEN *v.* RAJKRISTO DOSS, 12 W. R. 43. [Kemp and Markby, JJ. Aug. 3, 1869.]

THE act of the defendants in assembling and forcibly interrupting a procession was forbidden by cl. 4 of s. 141, although the defendants acted upon the ground that the procession was a nuisance or annoyance to them or their community.—PRO., Nov. 11, 1869, 5 Mad. H. C. R. Ap. 4.

WHERE the evidence in a case failed to establish anything like an unlawful assembly, the conviction was reduced from rioting and being members of an unlawful assembly to one for affray, although grievous hurt from which death resulted was caused to one of the persons. The insufficiency of the punishment allowed by the law in cases of affray pointed out.—QUEEN *v.* PHOOLEE MISSER, 12 W. R. 72. [Jackson and Markby, JJ. Nov. 30, 1869.]

WHERE two opposite factions commit a riot, it is irregular to treat both parties as constituting one unlawful assembly, and to try them together, inasmuch as they do not have "one common object" within the meaning of s. 141 of the Penal Code.—QUEEN *v.* SURROOP CHUNDER PAUL, 12 W. R. 75. [Norman and Kemp, JJ. Dec. 10, 1869.]

S. 62 of the Code of Criminal Procedure does not authorize a Magistrate summarily to direct a person to remove a wall erected on land alleged to belong to another person, in the absence of evidence showing that a riot or affray was likely to occur.—RADHAKISHORE *v.* GIRIDHAREE SAHEE, 13 W. R. 19. [Loch and Hobhouse, JJ. Feb. 7, 1870.]

PERSONS found guilty of rioting may, if the circumstances warrant it, be convicted of the several offences of rioting armed with deadly weapons, culpable homicide, and grievous hurt.—QUEEN *v.* HURGOBIND, 3 N.-W. P. 174. [Turner, J. July 7, 1872.] See *contra*, *Queen* v. *Rubbeeoollah*, 7 W. R. 13.

WHERE the accused were convicted under s. 147 of the Penal Code of rioting, and also under s. 353 of using criminal force to a constable who went to arrest them, the High Court set aside the conviction under the former section.—IN THE MATTER OF NILRUTTON SEIN, 16 W. R 45 [Kemp and Ainslie, JJ. Sep. 9, 1871.]

AN accused person cannot be punished first on a charge for rioting, and afterwards on a charge for hurt, when the latter is included in the former. *Per* D. N. Mitter, J.—An Appellate Court is bound precisely in the same way as the Court of first instance to test evidence extrinsically as well as intrinsically. *Per* Ainslie, J.—A Magistrate, as an executive officer, is not bound to attend to a Judge's extra-judicial observation not warranted by law.—IN THE MATTER OF GOOMANEE, 17 W. R. 59. [Mitter and Ainslie, JJ. May 8, 1872.]

IN a case of very serious riot, the rioters were acquitted by the Magistrate, because he thought they might have considered their act justified because the procession was illegal by virtue of some orders, which did not appear, which might have been efficacious in

point of law. *Held* that the thinking a thing legal which is not so can be no defence to a man who violates a rule of law; that there was no evidence that the procession was illegal; and that, if it were, the accused were bound to invoke the aid of the tribunals charged with the enforcement of the law.—PRO., Jan. 8, 1873, 7 Mad. H. C. R. Ap. 35.

Two parties were convicted of rioting. One party consisted of not less than five persons, who were all found to have been assembled together in the fight which took place; and it was also found that they, as well as their opponents, came armed with sticks, prepared to fight, and did fight. *Held* that they were not improperly convicted of rioting, their common object being to assault their opponents. The other party only consisted of four persons. It was not found what object they had in common with the first party. The fight did not occur in a public place. *Held* that they were not properly convicted of rioting. *Held*, also, that, had the fight occurred in a public place, it might have been held that the common object of both parties was to commit an affray.—QUEEN *v.* MUZHUR HOSSEIN, 5 N.-W. P. 208. [Pearson, J. July 5, 1873.

UNDER Act V. of 1861, a police-officer is bound to communicate information to his superior officer regarding the commission of a riot affecting the public peace, and to make an entry thereof in the diary which he is required by s. 44 of that Act to keep, and the omission to give such information brings him within the purview of s. 177 of the Penal Code.—IN THE MATTER OF SYED FUTTEH MAHOMED. 21 W. R. 30. [Kemp and Glover, JJ. Jan. 17, 1874.]

WHERE the only evidence for the prosecution was that of witnesses whom the Judicial Commissioner considered unworthy of belief, it was *held* that the prisoners, who were charged with rioting, ought not to have been convicted on the statements of the opposite party, who were also charged with rioting, such statements not being evidence against the accused in this case.—QUEEN *v.* KHUKREE OORAM, 21 W. R. 48. [Phear and Morris, JJ. Mar. 11, 1874.]

IT is necessary, before persons can be convicted of rioting, &c., under s. 147 or s. 149, Penal Code, to ascertain clearly that they have taken such a share in the transaction as will bring them within the criminal charge; and it must appear on the evidence that they had a common object, which common object they were going to carry out by unlawful means.—QUEEN *v.* GHOLAM MAHOMED, 22 W. R. 17. [Markby and Mitter, JJ. May 26, 1874.]

WHERE a charge of rioting was tried summarily by the Magistrate as one of mischief and unlawful assembly, the Sessions Judge, relying on a case cited, submitted, at the request of the accused, that the summary order may be set aside, and the accused may be tried for rioting under ch. 17 of the Criminal Procedure Code. The High Court declined to interfere at the instance of the accused persons, and distinguished this from the case cited by the Sessions Judge, as the reference there was made by the Magistrate in the interests of public justice.—QUEEN *v.* ABOO SHEIK, 23 W. R. 19. [Phear and Ainslie, JJ. Jan. 13, 1875.]

IN a case in which the accused was bound down to keep the peace, the Assistant Magistrate admitted as evidence the depositions of witnesses in certain cases in which the accused was tried on charges of being a member of an unlawful assembly and of rioting, and was acquitted. *Held* that the Assistant Magistrate ought not to have admitted this evidence.—QUEEN *v.* DINA BUNDOO ROY, 24 W. R. 4. [Markby and Morris, JJ. May 10, 1875.]

IF a number of persons, assembled for any lawful purpose, suddenly quarrel with an intruder without any previous intention or design, they do not commit "riot" in the legal sense of the word.—KHAJAH NOORUL HOSSEIN *alias* WAHEED JAN *v.* FABRE-TONNERRE, 24 W. R. 26. [Glover and Mitter, JJ. July 12, 1875.]

THE offence of rioting consists in the use of violence by an unlawful assembly or by any member thereof in the prosecution of the common object. But as in this case there were never five persons assembled together to constitute an unlawful assembly, and the intention to use force does not appear to have been carried out, no offence under the Penal Code is established against the accused.—IN THE MATTER OF RAMADEEN DOOBAY, 26 W. R. 6. [Markby and Mitter, JJ. Aug. 17, 1876.]

WHERE both parties were armed and prepared to fight, it is immaterial who is the first to attack, unless it is shown that the party was acting within the legal limits of the right of private defence.—IN THE MATTER OF KALEE BEPAREE, 1 C. L. R. 521. [Jackson and Cunningham, JJ. Mar. 5, 1878.]

A, a joint-owner of a parcel of land, erected on it an edifice without the consent and against the will of B, another joint-owner. A dispute having arisen in consequence, the Magistrate held an inquiry, and made an order under s. 530 of the Criminal Procedure Code, awarding to A exclusive possession of the part of the land on which

the edifice had been erected. *Held, per* Jackson, J., that such order was erroneous, as the matter was not one to which s. 530 could apply. B subsequently brought a suit in the Civil Court to establish his title to joint-possession of the whole parcel, and for a declaration that A was not entitled to erect any edifice thereon: and he further prayed that such edifice should be removed. B obtained a decree, whereupon his servants went on the land, and pulled it down. They were charged before the Deputy Magistrate with having committed mischief, and on this convicted and fined. *Held, per* Jackson, J., that, as there had been no causing of wrongful loss, the accused had not been guilty of mischief. On the 8th October, the accused, who were the servants of B, found that the men in the employ of A were again putting up this erection, a nawbut-khana, and accordingly protested against its erection, pulled down the bamboos, and thrust aside the servants of A, throwing to the ground one man who was clinging to the bamboos. On the 9th October 1877, these servants were charged before the Magistrate with rioting, and, being called upon for their defence, named several witnesses, and summonses on the following morning were issued for their appearance; but they were not found. The accused then applied for further time for the appearance of the witnesses. This the Magistrate refused to grant, and convicted the accused on 12th October 1877. *Held, per* Jackson, J., that, this being a warrant case, it was the duty of the Magistrate to summon the witnesses that might be offered by the accused, and that he might, at his discretion, have adjourned the case. *Held* further, *per* Jackson, J., that the meaning of s. 359 of the Criminal Procedure Code is, that, if, among the persons named by the accused as witnesses, the Magistrate considers that any witness is included for the purpose of vexation and delay, he is to exercise his judgment, and enquire whether such witness is material; but that the section is not intended to enable the Magistrate to inquire into what the defence of the accused person is to be, and to consider whether, on learning the nature of the defence, he is absolutely to abstain from summoning the whole of the witnesses cited by the accused: and further that, in the present case, there was not any purpose of vexation or delay, and that, by the refusal to grant further time, the accused had been probably prejudiced in their defence. *Held*, further, *per* Jackson, J., that, as the accused were not on the land in question as members of an unlawful assembly, nor for any unlawful purpose, the conviction, as well as the procedure, was illegal *Held per* Cunningham, J., that the accused were merely exercising the remedy of abating a private nuisance, and were exercising a legal right of self-defence. *Held*, further, *per* Cunningham, J., that the acts of the complainants in erecting the nawbut-khana amounted to mischief, and came within the purview of s. 425 of the Penal Code. *Held*, further, *per* Ainslie and McDonell, JJ., that the High Court, in the exercise of its powers of extraordinary jurisdiction, cannot, in criminal matters, interfere, unless all other remedies provided by law have been previously exhausted. Therefore, where parties who had been convicted of riot by a Magistrate, and who, having a right of appeal to the Sessions Court, instead of doing so, moved the High Court under cl. 15 of the Charter, the Court would not interfere until that remedy had been resorted to.—DESONATH GHATTACK *v.* RAJCOOMAR SINGH, I. L. R., 3 Cal. 573. Jackson and Cunningham, JJ. Mar. 25—27, 1878.]

RIOTING and hurt in the course of such rioting are distinct offences, and each offence is separately punishable.—EMPRESS *v* RAM ADHIN, I. L. R., 2 All 139. [Pearson, J. Feb. 5, 13, 1879.]

MEMBERS of two opposing parties in a riot were, under two distinct committals, sent up for trial before the Sessions Judge and a jury. After the close of the case for the prosecution in one of these cases, the Sessions Judge, with the consent of the pleaders representing the accused, postponed the taking of the evidence for the defence, and proceeded to examine the witnesses for the prosecution in the counter-case before the same jury The Court then took the evidence of the witnesses for the defence in the first and in the counter-case in the order named, and after hearing the addresses of the various pleaders for the defence and the reply of the Government Pleader, proceeded to sum up the facts in both cases to the jury, who returned a verdict in respect of all the accused. *Held* that the procedure resorted to by the Judge was a practical violation of the salutary rule which necessitated the keeping of trials in such cases distinctly separate, and that its adoption having materially prejudiced the interest of the accused, the convictions should be set aside. *Held* further [*Queen v. Shrik Basu* (B. L. R. Sup. Vol. 750; 8 W. R 47) distinguished] that the defect in the procedure could not be cured by the consent of the pleaders for the defence to the arrangement suggested by the Court.—HOSSEIN BUKSH *v* EMPRESS, I. L. R., 6 Cal. 96. [Morris and Prinsep, JJ June 24, 1880.]

To constitute an offence under s. 157 of the Penal Code, it must be proved that the accused has hired, or engaged, or employed other persons for the purpose of an unlawful

assembly, and it is not sufficient to show that some of the accused's servants have been taken from a district where men have a well-known character as *lathials*, and had been in his service some time before the riot was perpetrated. A non-resident partner or sharer, who has taken no active part in the management of the estate, cannot, like a resident sharer, be convicted under ss. 154 and 155 of the Penal Code.—IN THE MATTER OF RADHANATH CHOWDHRY, 7 C. L. R. 289. [Mitter and Maclean, JJ. Sep. 9, 1880.]

WHERE persons are charged with rioting and also with causing hurt, although they may be tried as for one offence under s. 454 of the Criminal Procedure Code, it is not illegal to try them for both offences separately.—IN THE MATTER OF THE PETITION OF AMIRUDDIN; AMIRUDDIN v. FARID SARKAR, I. L. R., 8 Cal. 481. [Mitter and Maclean, JJ. Mar. 10, 1882.]

WHERE the accused had been convicted of riot under s. 148, and of grievous hurt under s. 325 of the Penal Code, the Sessions Judge on appeal held that the complainants had themselves been the aggressors, and that the accused had merely exercised the right of private defence; but inasmuch as they had not set up the plea of private defence, he considered it was not competent to him to set aside the conviction. *Held* that, on the finding of the Sessions Judge, the accused were entitled to an acquittal.—IN THE MATTER OF KALI CHURN MOOKERJEE, 11 C. L. R. 232. [Prinsep and O'Kinealy, JJ. May 22, 1882.]

A PLEA of right to possession is no answer to a charge of rioting by making a forcible entry on land cultivated by a trespasser who is in possession, and opposes the entry.—APPAVU v. QUEEN, I. L. R., 6 Mad. 245. [Innes, J. Dec. 12, 19, 1882.]

WHERE a riot occurred, and complaints were lodged by both parties, the witnesses for the prosecution were in each case in turn examined-in-chief, then also in turn cross-examined, and in like manner re-examined, and the Court thereupon discharged the accused in one case, and called upon the accused on the other to go into his defence. *Held* that the procedure adopted was improper, and that there should be a new trial. *Empress* v. *Chandra Nath Sircar* (I. L. R., 7 Cal. 65; 8 C. L. R. 352) followed. The provisions of s. 439 of the Criminal Procedure Code in no way affect the powers of the High Court as a Court of Revision vested in it by the High Courts Act.—IN THE MATTER OF CHAKOWRI LALL, 13 C. L. R. 275. [Prinsep, J. Aug. 13, 1883.]

A MEMBER of an unlawful assembly, some members of which have caused grievous hurt, cannot lawfully be punished for the offence of rioting as well as for the offence of causing grievous hurt.—EMPRESS v. RAM PARTAB, I. L. R., 6 All. 121. [Straight, J. Dec. 5, 1883.] Dissented from in *Queen-Empress* v. *Dungar Singh*, I. L. R., 7 All. 29, *infra*.

THE offences of rioting, of voluntarily causing hurt, and of voluntarily causing grievous hurt, each of the two latter offences being committed against a different person, are all distinct offences within the meaning of s. 35 of the Criminal Procedure Code. Under the first paragraph of s. 235 of the Criminal Procedure Code, a person accused of rioting and of voluntarily causing grievous hurt may be charged with, and tried for, each offence at one trial, and, under s. 35, separate sentence may be passed in respect of each. *Queen-Empress* v. *Ram Partab* (I. L. R., 6 All. 121) dissented from.—QUEEN-EMPRESS v. DUNGAR SINGH, I. L. R., 7 All. 29. [Brodhurst, J. July 22, 1884.]

ON the 8th August 1884, a Magistrate of the second class began an inquiry in a case in which several persons were accused of rioting and voluntarily causing grievous hurt. On the 6th September, the powers of a Magistrate of the first class were conferred on the Magistrate by an order of Government, which was communicated to him on the 8th September. On the 9th September the case for the prosecution having closed, the Magistrate framed charges against each of the accused under ss. 323 and 325 of the Penal Code, recorded the statements of the accused and the evidence for the defence, and, on the 10th September, convicted the accused of all the charges, passing upon each of them, in respect of each charge, sentences which he could pass as a Magistrate of the first class, but could not have passed as a Magistrate of the second class. On appeal, the Sessions Judge, on the ground that the prisoners had committed the offence described in s. 148 of the Penal Code, *held* that the sentences passed by the Magistrate were illegal, as being inconsistent with the provisions of s. 71, paras. 2 and 4; and he accordingly reduced the sentences of imprisonment which the Magistrate had passed to the maximum of imprisonment which the Magistrate could have inflicted under s. 148. *Held* by the Full Bench (Petheram, C.J., and Brodhurst, J., dissenting) that the sentences passed by the Magistrate were legal. *Per* Oldfield, Mahmood, and Duthoit, JJ., that, with reference to the terms of s. 39 of the Criminal Procedure Code, a Magistrate of the second class, who has begun a trial as such, and continued it in the same capacity up to the passing of sentence, and who, prior to passing sentence has been invested with the powers of a Ma-

gistrate of the first class, is competent to pass sentence in the case as a Magistrate of the first class. *Per* Oldfield and Duthoit, JJ., that the provisions of s. 71 of the Penal Code had no application to the case, inasmuch as the offences of causing grievous hurt and hurt formed no part of the offence of rioting. *Per* Petheram, C.J., that a case must be taken to be tried upon the day the trial commences, that, for all the purposes of the trial, the Magistrate in this case retained the *status* of a Magistrate of the second class; and that he was therefore not competent to pass sentence as a Magistrate of the first class. Also *per* Petheram, C.J., that the Judge in this case had no power to alter the charge, or to frame a new charge in any way. *Per* Brodhurst, J., that the sentences passed by the Magistrate were, as a whole, illegal; that, if he had convicted the accused under s. 148 of the Penal Code, his order would, under the circumstances, have been legal; that a Court of Appeal is not competent to alter the finding of a Magistrate, so as to convict an accused person of an offence which the Court, of which the order is in appeal, was not competent to try; and that a member of an unlawful assembly, some members of which have caused grievous hurt, can be legally punished for the offence of rioting as well as for the offence of causing grievous hurt. *Empress* v. *Dungar Singh* (I. L. R., 7 All. 29) referred to.—QUEEN-EMPRESS *v.* PERSHAD, I. L. R., 7 All. 414. [Petheram, C.J., and Oldfield, Brodhurst, Mahmood, and Duthoit, JJ. Jan. 17, 1885.]

THREE persons who were convicted (i) of riot under s. 147 of the Penal Code, (ii) of causing grievous hurt in the course of such riot, were respectively sentenced to six months' rigorous imprisonment under s. 147, and three months' rigorous imprisonment under s. 325. *Held* by Petheram, C.J., and Straight and Tyrrel, JJ., that, inasmuch as the evidence upon the record showed that the three prisoners had committed individual acts of violence with their own hands, which constituted distinct offences of causing grievous hurt or hurt separate from, and independent of, the offence of riot, which was already completed, and the fact of the riot was not an essential portion of the evidence necessary to establish their legal responsibility under s. 325 of the Penal Code, the separate sentences passed under ss. 147 and 325 were not legal. *Queen-Empress* v *Ram Partab* (I. L. R., 6 All. 121), distinguished. *Per* Brodhurst, J., that the evidence showed that only one of the three prisoners had caused grievous hurt with his own hands, and that the others could only be properly convicted of that offence under the provisions of s. 149 of the Penal Code, but that the separate sentences passed under ss. 147 and 325 were not illegal. *Queen-Empress* v. *Dungar Singh* (I. L. R., 7 All. 29), followed. Also *per* Brodhurst, J.: Ill. (*g*) of s. 325 of the Criminal Procedure Code does not apply merely to the case of persons who, in addition to the offence of rioting, have, with their own hands, committed the further offences of voluntarily causing grievous hurt and of assaulting a public servant when engaged in suppressing a riot; and the convictions referred to in the illustration relate especially to convictions obtained under the provisions of s. 149 of the Penal Code.—QUEEN-EMPRESS *v.* RAM SARUP, I. L. R., 7 All. 757. [Petheram, C.J., and Straight, Brodhurst, and Tyrrell, JJ. May 12, 1885.]

FOUR persons were charged with being members of an unlawful assembly consisting of themselves and others, the common object of which assembly was resisting the execution of a legal process, namely, the arrest of a judgment-debtor by a Civil Court peon who went with a warrant for his arrest accompanied by other persons, A and B, for the purpose of identifying him, and with using force or violence in prosecution of the common object, such force or violence consisting of an assault on the Civil Court peon and another by means of a dangerous weapon on A. The Deputy Magistrate convicted all the accused of offences under ss. 147 and 353 of the Penal Code, and sentenced them to six months' rigorous imprisonment under the former section, and two months' rigorous imprisonment under the latter. He further convicted one of the accused of an offence under s. 324 in respect of the assault on A, and sentenced him to one month's rigorous imprisonment in respect of that offence, and directed that the sentences were to take effect one on the expiry of the other. *Held* that the offence of rioting was completed by the assault on A, and that the assault on the peon was a further offence under the first sub-section of s. 235 of the Code of Criminal Procedure. *Held* further that, even if A had not been assaulted, the conviction and sentences passed for rioting and the assault on the peon were legal, inasmuch as the acts of the accused, taken separately, constituted offences under ss. 143 and 353 of the Penal Code, and, combined, an offence under s. 147; and under s. 235, sub-s. 3, of the Code of Criminal Procedure, the accused might be charged with, and tried at one trial for, the offence under s. 147, and those under ss. 143 and 353; and therefore also separately convicted and sentenced for each such offence, provided the punishment did not exceed the limit imposed by s. 71 of the Penal Code as amended by

s. 4 of Act VIII. of 1882, which limit had not been exceeded in the present case.—IN THE MATTER OF CHANDRA KANT BHUTTACHARJEE; CHANDRA KANT BHUTTACHARJEE *v.* QUEEN-EMPRESS, I. L. R., 12 Cal. 495. [Mitter and Beverley, JJ. Dec. 11, 1885.]

S. 149 of the Penal Code creates no offence, but was intended to make it clear that an accused person whose case falls within its terms cannot put forward the defence, that he did not with his own hand commit the offence committed in prosecution of the common object of the unlawful assembly, or such as the members of the assembly knew to be likely to be committed in prosecution of that object. In prosecution of the common object of an unlawful assembly, M with his own hand caused grievous hurt. M and other members of the assembly, as to whom it did not appear whether or not any of them personally used force or violence, were convicted of rioting under s. 147, and grievous hurt under s. 325 of the Penal Code, and were each sentenced to separate terms of imprisonment for each offence. The highest aggregate punishment, which was M's, was six years' rigorous imprisonment, being one year for rioting, and five years for causing grievous hurt. *Held* that, assuming s. 71 of the Penal Code to be applicable, the sentences were not illegal, as the combined periods of imprisonment did not, in the case of any prisoner, exceed the maximum punishment of seven years' rigorous imprisonment which could have been awarded for the offence punishable under s. 325. *Held* also that the riot could not, in any of the cases, be considered a part of the offence under s. 325, that s. 71 did not apply, and that the sentences were legal. *Queen-Empress* v. *Ram Partab* (I. L. R. 6 All. 121) dissented from. *Queen-Empress* v *Dungar Singh* (I. L. R., 7 All. 29), *Queen-Empress* v. *Ram Sarup* (I. L. R., 7 All. 767), *Queen* v. *Rubbeeoollah* (7 W. R. 13), *Loke Nath Sarkar* v. *Queen-Empress* (I. L. R., 11 Cal. 349), *Queen-Empress* v *Pershad* (I. L. R., 7 All. 414), *Chandra Kant Bhuttacharjee* v. *Queen-Empress* (I. L. R., 12 Cal. 498), and *Reg.* v *Tukaya bin Tamana* (I. L. R., 1 Bom. 214), referred to.—QUEEN-EMPRESS *v.* BISHESHAR, I. L. R., 9 All. 645. Edge, C.J., and Brodhurst, J. May 16 1887.]

A, WITH six others, commits the offences of rioting, grievous hurt, and assaulting a public servant endeavouring, in the discharge of his duty as such, to suppress the riot. A may be separately charged with, and convicted of, offences under ss. 147, 325, and 152 of the Indian Penal Code.—Crim. Pro. Code (Act V. of 1898), s. 235, illus. (*g*).

A PARTY of persons, consisting of some five peadas and a number of coolies sufficient for the work to be done, went to a spot on a river flowing through the lands of M for the purpose of either repairing or erecting a *bund* across it to cause the water to flow down a channel on the lands of their master T. The river at the time was almost dry, and the party did not go armed ready to fight or use force, and they did not, during the subsequent occurrence, use force. Having arrived at the spot about 10 A.M., they proceeded to work at the *bund* until the afternoon. At about 4 P.M. a body of men, consisting of about 1,200 in all, many of them armed with *lathis*, and headed by the prisoners, who were servants of M, which had been seen collecting together during the day, proceeded to the spot, and about 25 or 30 of them attacked T's men, some five of whom were more or less severely wounded with the *lathis*. The occurrence resulted in the conviction of some of M's servants for rioting under s. 147 of the Penal Code. M's people wholly denied any right on the part of T to construct or repair the *bund*, and had previously denied the existence of such right, and refused permission to T to exercise it. It was contended that the assembly of M's people was not an "unlawful assembly," that the interference by T's people with the channel of the river justified them in coming to stop the work and the show and use of force in compelling them to do so. *Held* that the prisoners had been rightly convicted. *Held*, further, that as no right of private defence of property is conferred by the Penal Code, except as against the perpetrators of offences under the Penal Code, and that as, upon the facts of the case as found, no offence had been committed by T's people, their acts amounting merely to a civil trespass, and that, as there was no pressing or immediate necessity of a kind showing that there was not time to have recourse to the protection of the public authorities, no question as to the right of private defence arose in the case. It was further contended that M's people did not assemble to enforce a right, or supposed right, within the terms of s. 141 of the Penal Code, but to defend a right, and that such action did not make the assembly an unlawful one. *Held* that they were members of an assembly the common object of which was, by show of criminal force, and by criminal force if necessary, to enforce the right to keep the river channel clear by preventing the construction of the *bund*, and by demolishing it so far as it was constructed, and that the case came within s 141, para. 4. *Queen* v. *Mitto Sing* (3 W. R. Cr. 41), *Shunkur Singh* v. *Burmah Mahto* (23 W. R. Cr. 25), and *Birjoo Singh* v. *Khub Lall* (19 W. R. Cr. 66), referred to and commented on.—GANOURI LAL DAS *v.* QUEEN-EMPRESS, I. L. R., 16 Cal. 206. [Pigot and Macpherson, JJ. Jan. 14, 1889.]

SEPARATE sentences passed upon persons for the offences of rioting and grievous hurt are not legal, where it is found that such persons individually did not commit any act which amounted to voluntarily causing hurt, but were guilty of that offence under s. 149 of the Penal Code. *Empress* v. *Ram Partab* (I. L. R., 6 All. 121) approved. *Loke Nath Sarkar* v. *Queen-Empress* (I. L. R., 11 Cal. 349) overruled. — NILMONEY PODDAR *v.* QUEEN-EMPRESS, I. L. R., 16 Cal. 442. [Petheram, C.J., and Mitter, Prinsep, Wilson, and Tottenham, JJ. Mar. 21, 1889.]

WHERE several Hindus acting in concert forcibly removed an ox and two cows from the possession of a Mahomedan, not for the purpose of causing "wrongful gain" to themselves, or "wrongful loss" to the owner of the cattle, but for the purpose of preventing the killing of the cows, *held* that they could not properly be convicted of dacoity, but only of riot.—QUEEN-EMPRESS *v.* RAGHUNATH RAI, I. L. R., 15 All. 22. [Tyrrell, J. Aug. 6, 1892.]

WHEN a party is in possession of land for four or five days, though it may be in wrongful possession, another party, although claiming to be the rightful owner, is not entitled to go in force to turn him out, much less is he entitled to take armed men with him for that purpose. In an affray specific evidence as to the acts of each fighter cannot be expected, but only general evidence as to the accused taking part in it, and persons who, as in this case, punted the boats on which the fight took place, and in whose interests the fight on the boats took place, were held to be just as blameworthy as the men who struck the blows.—MOHER SHEIKH *v.* QUEEN-EMPRESS, I. L. R., 21 Cal. 392. [Trevelyan and Rampini, JJ. Aug. 28, 1893.]

WHERE certain accused persons were convicted of rioting, and it appeared that the charge did not specify any common object, and that neither the judgment of the Original Court nor that of the Sessions Judge in appeal found what was the common object which made the assembly of which the prisoners were members an unlawful one, *held* that these defects did not vitiate the proceedings, there being ample evidence on the record to prove what the common object of the assembly was, and to justify the conviction for the offence of which the lower Courts had found the accused guilty. *Held*, further, that, in such a case, a rule to show cause why the conviction should not be quashed under the provisions of s. 439 of the Code of Criminal Procedure ought not to be granted, unless, on the materials which are before the Court when the rule is granted, it would be prepared to make the rule absolute if no cause be shown against it.—BASIRADDI *v.* QUEEN-EMPRESS, I. L. R., 21 Cal. 827. [Petheram, C.J., and Rampini, J. June 1, 1894.]

BEFORE a conviction can properly be maintained for the offence of rioting, it is necessary that there should be a clear finding as to the common object of the unlawful assembly, and also that the common object so found should have been stated in the charge, in order that the accused person might have an opportunity of meeting it. Where a Sessions Judge in his charge to the jury referred to two possible common objects of an unlawful assembly, one of which only had been set out in the charge-sheet, *held* that, inasmuch as it was impossible to say which of the two common objects had been accepted by the jury, and it might well have been that they had accepted the one which had not been charged, and which consequently the accused had not an opportunity of meeting, the conviction must be set aside. If one member of an unlawful assembly is armed with a deadly weapon, the other members cannot on that account be charged under s. 148 of the Penal Code. It is only the actual person who can be charged under that section. —SABIR *v.* QUEEN-EMPRESS, I. L. R., 22 Cal. 276. [Trevelyan and Banerjee, JJ. Sep. 19, 1894.]

A WARRANT was issued by a Magistrate for the arrest of one Dalip under s. 114 of the Code of Criminal Procedure. The warrant was sent to a certain thana to be executed. It was there, after being copied into a book kept for that purpose at the thana, made over to a particular constable for execution. When the constable to whom the warrant had been made over had left the thana, it was discovered that Dalip was in a village other than that in which he had been supposed to be. Thereupon the officer temporarily in charge of the thana made a copy from the book at the thana, endorsed on the back the names of one Nazir Husain and some other constables, and, having signed the endorsement, sent Nazir Husain and the others out with this paper to arrest Dalip. Nazir Husain and his companions arrested Dalip; but as they were returning with him in custody, some of Dalip's friends, aided by Dalip himself, attacked them, rescued Dalip, and caused hurt to the police. *Held* that the police-officers concerned in arresting Dalip, under the circumstances above described were not acting in the lawful discharge of their duty within the meaning of s. 332 of the Penal Code, so as to render the accused liable to conviction under that section; but inasmuch as they were acting in good faith under the colour of their office, s. 99 of the Penal Code applied, and Dalip and his associates might be properly convicted under ss. 147 and 323 of the Code. The words "in the discharge

of his duty as such public servant" in the earlier portion of s. 332 of the Penal Code mean in the discharge of a duty imposed by law on such public servant in the particular case, and do not cover an act done by him in good faith under colour of his office. ***The Queen*** v. ***Roxburgh*** (12 Cox Cr. Ca. 8) referred to.—QUEEN-EMPRESS *v.* DALIP, I. L. R., 18 All. 246. [Edge, C.J., and Burkitt, J. Feb. 18, 1896.]

IN a case where the accused were convicted by a Deputy Magistrate of the offence of rioting under s. 147, and theft under s 379 of the Penal Code, and sentenced to four months for the first and two months for the latter offence, but on appeal the District Magistrate, considering the case to be one of theft rather than rioting, abandoned the sentence under s. 147, but upheld the conviction under s. 379 of the Penal Code, and sentenced them to six months' rigorous imprisonment. ***Held*** that what the District Magistrate had in effect done was to enhance the sentence under s. 379 of the Penal Code, which he had no power to do under s. 423, cl. (*b*), sub-s. 3 of the Code of Criminal Procedure. — RAMZAN KUNJRA *v.* RAMKHELAWAN CHOWBE, I. L. R., 24 Cal. 316. [Ghose and Gordon, JJ. Jan. 19, 1897

THE accused, receiving information that the complainant's party were about to take forcible possession of a plot of land which was found by the Court to be in the possession of the accused, collected a large number of men, some of whom were armed, and went through the village to the land in question. While they were engaged in ploughing, the complainant's party came up, some of them being armed, and interfered with the ploughing. A fight ensued, in the course of which one of the complainant's party was grievously wounded, and subsequently died, and two of the accused's party were hurt. ***Held*** that, if the accused were rightfully in possession of the land and found it necessary to protect themselves from aggression on the part of another body of men, they were justified in taking such precautions as they thought were required, and using such force or violence as was necessary to prevent the aggression. ***Held*** also that under such circumstances they could not rightly be held to be members of an unlawful assembly. ***Queen-Empress*** v. ***Narsang Pathakbai*** (I. L. R., 14 Bom. 441), ***Birjoo Singh*** v. ***Khub Lall*** (19 W. R. Cr. 66), and ***Shunkur Singh*** v. ***Burmah Mahto*** (23 W. R. Cr. 25), followed. ***Ganouri Lal Dass*** v. ***Queen-Empress*** (I. L. R., 16 Cal. 206) distinguished. — PACHKAURI *v.* QUEEN-EMPRESS, I. L. R., 24 Cal. 686. [Ghose and Gordon, JJ. Mar. 16, 1897.]

THE commitment of a case under s. 147 of the Penal Code to the Court of Session by a Deputy Magistrate is not necessarily illegal. Although the case is shown to be triable only by a Magistrate under the second schedule of the Criminal Procedure Code, there is nothing in s. 254 of the Criminal Procedure Code which prevents a Magistrate committing a case under s. 147 of the Penal Code to the Court of Session, provided he finds that the accused has committed an offence, which in his opinion cannot be adequately punished by him. The instructions contained in Circular No. 9 of 6th September 1869 are to be read subject to the provisions of the Criminal Procedure Code.—QUEEN-EMPRESS *v.* KAYEMULLAH MANDAL, I. L. R., 24 Cal. 429. [Rampini and Stevens, JJ. April 6, 1897.]

A FIRST-CLASS Magistrate took a case on his file, and commenced a regular enquiry therein under ss. 147 and 324 of the Penal Code: but, after hearing evidence, and being of opinion that only an offence under s. 323 of the Penal Code had been made out, he proceeded to deal with the case summarily. ***Held*** that, inasmuch as the evidence adduced was not sufficient to justify a committal, but clearly disclosed an offence over which he had summary jurisdiction, the Magistrate was right in acting as he did. Such a course is different to disregarding part of a charge for the purpose of dealing with a case summarily. The High Court will not interfere where a Magistrate has ***bonâ fide*** acted in the interests of justice. ***Empress*** v. ***Abdool Karim*** (I. L. R., 4 Cal. 18) distinguished —QUEEN-EMPRESS *v.* RANGAMANI, I. L. R., 22 Mad. 459. [Boddam, J. Jan. 10, 1899.]

THE party of the accused accompanied by R went armed with ***lathis*** to fish in a tank in which R had a two-annas share. The complainant, who with some other co-sharers represented an eleven-anna interest in the tank, went there with some of these co-sharers, to protest on the ground that the accused had no share or interest in the tank. A fight ensued, in the course of which some of the complainant's party received slight injuries. ***Held*** that the accused were rightly convicted of rioting and voluntarily causing hurt under ss. 147 and 323 of the Penal Code. ***Ganouri Lal Das*** v. ***Queen-Empress*** (I. L. R., 16 Cal. 206) followed. ***Pachkauri*** v. ***Queen-Empress*** (I. L. R., 24 Cal. 686) referred to.—ANANT PANDIT *v.* MADHUSUDAN MANDAL, I. L. R., 26 Cal. 574. [Prinsep and Stevens, JJ. Mar. 22, 1899.]

A CONVICTION for rioting, based upon a charge, which does not specify the common object of the assembly charged with rioting,

is improper.—CHUNDER COONAR SEN *v.* QUEEN-EMPRESS, 3 C. W. N. 605. [Prinsep and Hill, JJ. May 31, 1899.]

THE accused were convicted by a Magistrate of theft of mangoes and also of rioting, the common object of the unlawful assembly being the forcibly taking away of mangoes belonging to the complainant. On appeal the Sessions Judge not only found that the common object was not the taking of the mangoes, but that the dispute between the parties was as to certain land. He, however, dismissed the appeal, and confirmed the conviction. *Held* that, as the accused were convicted on a different finding of fact from that to which they were called upon to plead and to defend themselves at the trial, they were entitled to an acquittal.—RAHIMUDDI *v.* ASGAR ALI, I. L. R., 27 Cal. 990 [Prinsep and Handley, JJ. June 6, 1900.]

N, S, AND G were appointed special constables under s. 17 of the Police Act. A Police Inspector accompanied by some police went to their village and informed them that they had been so appointed, and requested them to accompany him to the police-station of B, which they declined to do. The Inspector then had N arrested, whereupon N shook himself free, and N, S, and G with other persons, who had assembled, abused and threatened the police, and compelled them to withdraw from the village. N, S, and G were convicted under s. 19 of the Police Act, and they were also convicted with other persons under s. 353 read with s. 149 of the Penal Code. *Held* that the refusal of N, S, and G to accompany the Inspector constituted no offence under s. 19 of the Police Act, as the order was intended not for any purpose of the police duty, but simply that they might obtain the authority of their appointment and the necessary arms. *Held*, further, that the refusal of N to accompany the Inspector was not an offence, for which N could be arrested, and as the police when obstructed were not acting in lawful discharge of their duty, none of the persons concerned could be convicted of an offence under s 353 of the Penal Code, but they were guilty of rioting under s. 147 of that Code.—RAMAN SINGH *v.* QUEEN-EMPRESS, I. L. R., 28 Cal. 411. [Prinsep and Handley, JJ. July 6, 1901.]

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Bailable. Not comp.

**148.*** Whoever is guilty of rioting, being armed with a deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.†

**Rioting, armed with deadly weapon.**

THE offence of rioting, armed with deadly weapons, and stabbing a person on whose premises the riot takes place, are distinct offences, and punishable as separate offences under ss. 148, 149, and 324 of the Penal Code. s. 149 being read as a proviso to s. 148.—QUEEN *v.* CALLACHAND, 7 W. R. 60. [Norman and Seton-Karr, JJ. April 29, 1867.] See *contra*, *Queen* v. *Durzoola*, 9 W. R. 33. Followed in *Empress* v. *Ram Adhin*, I. L. R., 2 All. 139.

CONVICTION and sentence both for rioting and for grievous hurt upheld, the punishment being on the whole not more severe than might properly have been awarded, if the conviction had been for grievous hurt only. A person convicted of rioting should not be convicted of hurt or grievous hurt caused to himself.—QUEEN *v.* AZGUR, 5 W. R. 19. [Seton-Karr and Macpherson, JJ. Jan. 26, 1866.]

IN a case of rioting with deadly weapons, the side found guilty of using them and causing grievous hurt are properly punishable more severely than the men of the other side.—QUEEN *v.* MOORUT MAHTON, 8 W. R. 3. [Kemp and Glover, JJ. June 3, 1867.]

THERE had been a riot and fight between two factions, and some members of one party (A) were charged with the murder of the leader of the other party (B), and some members of the other party (B) were charged with causing grievous hurt to the leader of party (A). *Held* that the members of each party should have been committed for trial separately, and that the Magistrate was wrong in committing the members of party (A) and of party (B) for trial all together upon joint charges as if they had had one common object.—QUEEN *v.* SHEIKH BAZU, 8 W. R. 47; B. L. R. Sup. Vol. 750. [Peacock, C.J., and Loch, Bayley,

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* As to the duty to give information of an offence punishable under s. 148, see the new Code of Criminal Procedure (Act V. of 1898), ss. 44 and 45.

† As to punishment for an offence under s. 148, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

Kemp, Seton-Karr, Phear, and Macpherson, JJ. July 27, 1867.]

IT is unnecessary to punish a prisoner under both s. 144 and s. 148 of the Penal Code, as the offence under s. 144 is almost merged in the offence under s. 148. There is, however, nothing actually illegal in sentencing for both offences.—SREEKISSEN *v.* JUGLAL, 9 W. R. 5. [Kemp and Jackson, JJ. Jan. 13, 1868.]

HELD that where the prisoners were charged, under s. 148 of the Penal Code, of rioting, armed with deadly weapons, and also under s. 324 of voluntarily causing hurt by dangerous weapons, they should have been sentenced only under *one* or *other* of these sections, the charges being, properly speaking, only alternative charges. The High Court refused to interfere with the reception by the Sessions Judge of the uncorroborated evidence of accomplices.—REG. *v.* DINA SHEIKH, 10 W. R. 63; 3 B. L. R. 15, note. [Phear and Hobhouse, JJ. Dec. 15, 1868.]

CERTAIN persons made a sudden attack upon the prisoners for the purpose of cutting their crops. The prisoners resisted, and, having no time to complain to the police, inflicted a wound upon one of the assailants with a bamboo, from the effects of which he afterwards died. The Sessions Judge convicted the prisoners under ss. 148 and 304. In appeal, the High Court held that the force used and the injuries inflicted were not such as to exceed the right of private defence of property, and directed an acquittal.—QUEEN *v.* GURU CHURN CHANG, 6 B. L. R. Ap. Cr. 9: 14 W. R. 69. [Kemp and Glover, JJ. Nov. 19, 1870.]

HELD (Ainslie, J., dissenting) that s. 149 of the Penal Code is not intended to subject a member of an unlawful assembly to punishment for every offence which is committed by one of its members during the time they are engaged in the prosecution of the common object. In order to bring a case within s. 149, the act must be done with a view to accomplish the common object of the unlawful assembly, or it must be proved that the offence, though committed in prosecution of the common object of the unlawful assembly, is one which the accused knew would be likely to be committed in prosecution of the common object. *Per* Jackson, J.—Any offence done by a member of an unlawful assembly, in prosecution of the particular one or more of the five objects mentioned in s. 141, which is or are brought home to the unlawful assembly to which a prisoner belongs, is an offence within the meaning of the first part of s. 149. Where a certain number of persons, members of an unlawful assembly (party A), attacked another party (B), who were in occupation of land, with the view to drive them off the land by force, and one of the members in party A fired a gun at and killed one of the persons in party B, in consequence of a sudden and unexpected resistance which was offered by party B, it was held (Ainslie, J., dissenting), on a consideration of the evidence, that the persons composing party A, other than the person who fired the gun, could not be convicted of murder under s. 149, Penal Code. The conviction was altered under the circumstances to one of rioting, armed with a deadly weapon, under s. 148 of the Penal Code.—QUEEN *v.* SABID ALI, 20 W. R. 5; 11 B. L. R. 347. [Couch, C.J., and Jackson, Phear, Ainslie, and Pontifex, JJ. April 21, 1873.]

NO Magistrate is entitled to split up an offence into its component parts for the purpose of giving himself summary jurisdiction. If a charge of an offence not triable summarily is laid and sworn to, the Magistrate must proceed with the case accordingly, unless he is at the outset in a position to show from the deposition of the complainant that the circumstances of aggravation are really mere exaggeration, and not to be believed. Therefore, a Magistrate, when he has before him a person charged with having been armed with a deadly weapon while a member of an unlawful assembly, is not at liberty to disregard that part of the charge which charges the prisoner with having been armed with a deadly weapon, and so to give himself jurisdiction to try the case summarily, and then, by inflicting a sentence of imprisonment not exceeding three months, to deprive the prisoner of his right of appeal.—EMPRESS *v.* GOLAM MAHOMED; EMPRESS *v.* ABDOOL KAREEM, I. L. R., 4 Cal. 18; 3 C. L. R. 81. [White and Prinsep, JJ. July 19, 1878.]

WHERE death results in a fight between two bodies of men deliberately fighting together, a greater proportion of the men composing both sides being armed with deadly weapons, and it being further apparent from the evidence that the man slain was an adult, and that no unfair advantage was taken by the one side or the other during the fight, the offence committed is culpable homicide, but does not amount to murder.—SHAMSHERE KHAN *v.* EMPRESS, I. L. R., 6 Cal. 154; 7 C. L. R. 158. [White and Field, JJ. July 31, 1880.]

A DISTURBANCE having been created with reference to the possession of certain chur land, the Sessions Judge, on appeal, found that certain persons had unlawfully trespassed thereupon, and that the accused had been justified in resisting the trespassers by force. Inasmuch, however, as he considered the accused had exceeded their right of private defence of

their property, he convicted them of rioting under s. 148 of the Penal Code. ***Held*** that, on the findings of the Judge, the conviction could not be supported, inasmuch as, on such findings, the persons convicted were not members of an unlawful assembly.—IN THE MATTER OF KALEE MUNDLE, 10 C. L. R. 278. [Mitter and Maclean, JJ. Feb. 21, 1882.]

THE offences of rioting armed with a deadly weapon and voluntarily causing hurt with a dangerous weapon to two persons are distinct offences, and a person charged with such offences can be convicted and sentenced in respect of the rioting and of the hurt caused to each of the persons injured. A and B were charged with rioting armed with deadly weapons under s. 148 of the Penal Code; and they were also charged under s. 324, coupled with s. 149, with causing hurt by a dangerous weapon to X; and B was further charged under s. 324 with causing a like hurt to Y. A being also charged under s. 324, coupled with s. 149, in respect of the hurt caused by B to Y. A and B were convicted on all charges, and separate sentences, to take effect in succession, were awarded in respect of each offence charged. The offences under s. 324 were committed during the riot. ***Held*** that the several acts with regard to which the prisoners were charged did not fall within the provisons of s. 71 of the Penal Code, inasmuch as it was not found that the causing of the hurt was the force or violence which alone constituted the rioting, and that consequently, under s. 235 of the Criminal Procedure Code, the several sentences passed were strictly legal.—LOKE NATH SARKAR v. QUEEN-EMPRESS, I. L. R., 11 Cal. 349. [Tottenham and Ghose, JJ. Mar. 6, 1885.]

SEPARATE sentences passed upon persons for the offences of rioting and grievous hurt are not legal where it is found that such persons individually did not commit any act which amounted to voluntarily causing hurt, but were guilty of that offence under s. 149 of the Penal Code. ***Empress*** v. ***Ram Partab*** (I. L. R., 6 All. 121) approved: ***Loke Nath Sarkar*** v. ***Queen-Empress*** (I. L. R., 11 Cal. 349) overruled. — NILMONEY PODDAR *v.* QUEEN-EMPRESS, I. L. R., 16 Cal. 442. [Petheram, C.J., and Mitter, Prinsep, Wilson, and Tottenham, JJ. Mar. 21, 1889.]

EIGHT persons, who were charged with a number of others, were tried on various charges consisting of rioting armed with deadly weapons (s. 148, Penal Code), assaulting or obstructing a public servant when suppressing a riot (s. 152), and voluntarily causing hurt and grievous hurt to deter a public servant from his duty (ss. 332 and 333). The common object set out in the charge was "to resist the execution of a decree obtained by Suresh Chunder Deb against Shaik Ali Yar in the Court of the Second Subordinate Judge of Alipore, dated 30th April 1891, and also by means of criminal force, or show of criminal force, to overawe the members of the police-force in the execution of their lawful powers as police-officers," and it was held that resistance to the police was one of the component parts of the offence of rioting charged. At the trial in the Court of Session all eight accused were convicted of the offence charged under s. 148, and each was sentenced to the maximum punishment allowed under that section, *viz.*, three years' rigorous imprisonment. Seven out of the eight were convicted of offences under s. 152, and sentenced each to an additional term of two years' rigorous imprisonment for those offences. Two out of the seven accused were further convicted of offences under s. 332 of the Penal Code, the hurt therein charged being caused to police-officers engaged in suppressing the riot, and each sentenced to a further additional term of two years' rigorous imprisonment for that offence. The eighth accused, who was not convicted of an offence under s. 152, was convicted of an offence under s. 333, the grievous hurt being similarly caused to a police-officer, and for that offence was sentenced to five years' rigorous imprisonment in addition to the sentence of three years passed on him under s. 148. It was contended on appeal —(1) that the sentences passed under s. 152 in addition to those under s. 148 were illegal; (2) that separate sentences under s. 152 and ss. 332 and 333 were illegal; (3) that the cumulative sentences under s. 148 and ss. 332 and 333 were illegal, in so far as they exceeded the maximum sentence provided for either of the offences. ***Held, as regards*** (1), that as resistance to the police was one of the component parts of the offence of rioting, of which the accused were convicted and sentenced to the maximum punishment provided by s. 148, and having regard to the provisions of s. 71, the additional sentences under s. 152 were illegal. ***Held***, further, that s. 152 contemplates an assault or obstruction to some particular public servant, and that as the charge against the accused as framed was merely to the effect that they assaulted and obstructed ***members of the police-force*** in the discharge of their duties, &c., the conviction under that section could not be upheld. ***Held, as regards*** (2), that separate sentences under s. 152 and ss. 332 and 333 were illegal, as the hurt inflicted on the police-officers was the violence used towards them which constituted the essence of the offence under s. 152. ***Held, as regards*** (3), that the separate sentences passed under s. 148 and ss.

332 and 333 were not illegal, there being nothing in s. 71 of the Penal Code which limits the amount of punishment that may be imposed for these offences.—FERASAT *v.* QUEEN-EMPRESS, I. L. R., 19 Cal. 105. [Beverley and Ameer Ali, JJ. Nov. 9, 1891.]

THE question whether or not a *lathi* is a "deadly weapon" within the meaning of s. 148 of the Penal Code is a question of fact to be determined on the special circumstances of each case as it arises.—QUEEN-EMPRESS *v.* NATHU, I. L. R., 15 All. 19. [Edge, C.J., and Tyrrell, J. July 27, 1892.]

AN abetment in British India by a British subject of an offence committed in foreign territory is not an offence punishable under the Penal Code, and cannot, therefore, be tried by a Court in British India. *Regina* v. *Elmstone* (7 Bom. H. C. Rep. 89 Cr. Ca.) and *Empress* v. *Moorga Chetty* (I. L. R., 5 Mad. 338) followed. The accused, a Native Indian subject of Her Majesty, was committed to the Court of Session for abetting the commission of murder or of rioting under ss. 302 and 147 of the Penal Code. The alleged abetment consisted of words spoken in British territory by the accused, inciting certain Portuguese subjects to kill one Bhana if he attempted to remove the produce of certain lands situate in the Portuguese territory of Daman. A disturbance afterwards occurred at Daman in connection with this matter, in which one man was killed, and another wounded. Thereupon the Governor-General of Portuguese India moved the Government of Bombay to bring the accused to justice as the instigator of the murder. The Government of Bombay, being of opinion that s. 188 of the Code of Criminal Procedure was applicable to the case, passed a Resolution in the Political Department, directing the District Magistrate to take the necessary action in the matter. The District Magistrate thereupon committed the accused to the Court of Session on a charge of abetment of murder or of rioting. *Held* quashing the commitment, that the alleged abetment was not an offence punishable under the Penal Code, and that, therefore, the Sessions Court had no jurisdiction to try the accused. *Held*, also, that s. 188 of the Code of Criminal Procedure had no application to the present case, the alleged offence of abetment not having been committed outside British India.—QUEEN-EMPRESS *v.* GANPATRAO RAMCHANDRA, I. L. R., 19 Bom. 105. [Jardine and Ranade, JJ. March 8, 1894.]

AN accused in a trial by jury is entitled to the verdict of the jury on questions of fact, and where a verdict is vitiated owing to misdirection by the Judge, the Appeal Court has no option but to set aside the verdict, and direct a re-trial. Were the appeal Court to go into the facts in such a case, it would be substituting the decision of the Judges of that Court for the verdict of the jury, who have the opportunity of seeing the demeanour of the witnesses and weighing the evidence with the assistance which this affords, whereas the Judges of the Appeal Court can only arrive at a decision on the perusal of the evidence. *Makin* v. *Attorney-General of New South Wales*, L. R. (1894) A. C. 57, referred to. S. 537 of the Code of Criminal Procedure does not warrant an Appeal Court, in a case where there has been misdirection in a charge to a jury, going into the evidence with a view to decide whether there is sufficient evidence to justify a conviction. Under s. 418 an appeal in a case tried by a jury lies on matters of law only, and the Appeal Court has no power to try the accused on matters of fact. The word "erroneous" in cl. (*d*) of s. 423 must not be read as "wrong on the facts," but must be read in connection with the words that follow as meaning that the verdict has been vitiated and rendered bad or defective by reason of a misdirection or a misunderstanding of the law. Fourteen accused were charged with rioting armed with deadly weapons, and with murder and causing grievous hurt during such riot. The common object alleged by the prosecution was to compel the payment of certain money by one of the persons of the opposite party. Some of the accused who admitted their presence at the scene of the occurrence stated that they had been attacked on account of an allegation being made that one of the opposite party had enticed away another's wife, and that they had merely acted in self-defence. The case was tried before a jury, and on the close of the case for the prosecution the Sessions Judge, considering that possibly the common object alleged by the prosecution might be considered not to have been proved, amended the charge, and added an alternative common object to it, *viz.*, that the object of the assembly was to punish one of the opposite party for enticing away another's wife. There was no evidence on the record to prove the alternative common object, it being based solely on a portion of the statements of some of the accused; and the Sessions Judge put it to the jury that it was an inference that could possibly be drawn from the evidence, but it was for them to draw that inference or not. The jury convicted all the accused without specifying which common object they relied on, and were not asked, under s. 303 of the Code of Criminal Procedure, any questions for the purpose of ascertaining what their verdict was based on. *Held* that the Judge had misdirected the jury, and that the verdict of the jury leaving it uncertain what was the common object which actuated the accused, it

ment for every offence which is committed by one of its members during the time they are engaged in the prosecution of the common object. In order to bring a case within s. 149, the act must be done with a view to accomplish the common object of the unlawful assembly, or it must be proved that the offence, though committed in prosecution of the common object of the unlawful assembly is one which the accused knew would be likely to be committed in prosecution of the common object. *Per* Jackson, J.—Any offence done by a member of an unlawful assembly in prosecution of the particular one or more of the five objects mentioned in s. 141, which is or are brought home to the unlawful assembly to which a prisoner belongs, is an offence within the meaning of the first part of s. 149. Where a certain number of persons, members of an unlawful assembly (party A), attacked another party (B), who were in occupation of land, with the view to drive them off the land by force, and one of the members in party A fired a gun at, and killed, one of the persons in party B, in consequence of a sudden and unexpected resistance which was offered by party B, it was held (Ainslie, J., dissenting), on a consideration of the evidence, that the persons composing party A other than the person who fired the gun could not be convicted of murder under s. 149, Penal Code. The conviction was altered under the circumstances to one of rioting armed with a deadly weapon under s. 148 of the Penal Code.—QUEEN *v.* SABID ALI, 20 W. R. 5; 11 B. L. R. 347. [Couch, C.J., and Jackson, Phear, Ainslie, and Pontifex, JJ. April 21, 1873.]

IT is necessary, before persons can be convicted of rioting, &c., under s. 147 or s. 149, Penal Code, to ascertain clearly that they have taken such a share in the transaction as will bring them within the criminal charge; and it must appear on the evidence that they had a common object, which common object they were going to carry out by unlawful means.—QUEEN *v.* GHOLAM MAHOMED, 22 W. R. 17. [Markby and Mitter, JJ. May 26, 1874.]

WHERE each of several persons took part in beating a person so as to break eighteen ribs and cause his death, each of them was held to be guilty, as a principal, of the murder of the deceased.—QUEEN *v.* GOUR CHUNDER DASS, 24 W. R. 5. [Markby and Morris, JJ. May 31, 1875.]

WHERE, after the object of an unlawful assembly had been accomplished, and the opposite party driven away, one of the members entered into an altercation with another, and wounded him with a fish-spear, it was held that the act was not one done with a view to accomplish the common object of the assembly, or one which the rest knew would be likely to be committed in the prosecution of that object.—IN THE MATTER OF BINOD, 24 W. R. 66. [Kemp and Glover, JJ. Nov. 17, 1875.]

IF a body of men armed with *lathis*, and under the leadership of one who, to the knowledge of the rest, is armed with a gun, assemble for the purpose of forcibly carrying off another man's property, and if, in effecting that purpose, any one of the party, taking the gun, shoots and kills a person who is making a lawful resistance, the whole party may properly be convicted of murder under s. 149 of the Penal Code.—HARI SINGH *v.* EMPRESS, 3 C. L. R. 49. [Jackson, Mitter, and Maclean, JJ. June 4, 1878.]

WHERE a prisoner is constructively guilty of murder under s. 34 of the Penal Code, it is doubtful if he can be said to have committed the offence of murder within the meaning of s. 149, so as to make other prisoners, by a double construction, guilty of murder.—*In re* JHURBOO MAHTON, I. L. R., 8 Cal. 739. [Field, J. April 28, 1882.]

A MEMBER of an unlawful assembly, some members of which have caused grievous hurt, cannot lawfully be punished for the offence of rioting as well as for the offence of causing grievous hurt.—EMPRESS *v.* RAM PARTAB, I. L. R., 6 All. 121. [Straight, J. Dec. 5, 1883.]

THE offences of rioting armed with a deadly weapon and voluntarily causing hurt with a dangerous weapon to two persons are distinct offences, and a person charged with such offences can be convicted and sentenced in respect of the rioting and of the hurt caused to each of the persons injured. A and B were charged with rioting armed with deadly weapons under s. 148 of the Penal Code; and they were also charged under s. 324, coupled with s. 149, with causing hurt by dangerous weapons to X; and B was further charged under s. 324 with causing a like hurt to Y, A being also charged under s. 324, coupled with s. 149, in respect of the hurt caused by B to Y. A and B were convicted on all charges, and separate sentences, to take effect in succession, were awarded in respect of each offence charged. The offences under s. 324 were committed during the riot. *Held* that the several acts with regard to which the prisoners were charged did not fall within the provisions of s. 71 of the Penal Code, inasmuch as it was not found that the causing of the hurt was the force or violence which alone constituted the rioting, and that consequently, under s. 235 of the Criminal Procedure Code, the several sentences passed were strictly legal.—LOKE NATH SARKAR *v.* QUEEN-EMPRESS, I. L. R., 11 Cal. 349. [Tottenham and Ghose, JJ. March 6, 1885.]

S. 149 of the Penal Code creates no offence, but was intended to make it clear that an accused person whose case falls within its terms cannot put forward the defence that he did not, with his own hand, commit the offence committed in prosecution of the common object of the unlawful assembly, or such as the members of the assembly knew to be likely to be committed in prosecution of that object. In prosecution of the common object of an unlawful assembly, M, with his own hand, caused grievous hurt. M and other members of the assembly, as to whom it did not appear whether or not any of them personally used force or violence, were convicted of rioting under s. 147, and grievous hurt under s. 325 of the Penal Code, and were each sentenced to separate terms of imprisonment for each offence. The highest aggregate punishment, which was M's, was six years' rigorous imprisonment being one year for rioting, and five years for causing grievous hurt. *Held* that, assuming s. 71 of the Penal Code to be applicable, the sentences were not illegal, as the combined periods of imprisonment did not, in the case of any prisoner, exceed the maximum punishment of seven years' rigorous imprisonment which could have been awarded for the offence punishable under s. 325. *Held*, also, that the riot could not in any of the cases be considered a part of the offence under s. 325, that s. 71 did not apply, and that the sentences were legal. *Queen-Empress* v. *Ram Partab* (I. L. R., 6 All. 121) dissented from. *Queen-Empress* v *Dungar Singh* (I. L. R., 7 All. 29), *Queen-Empress* v. *Ram Sarup* (I. L. R., 7 All. 757), *Queen* v. *Rubbeeoollah* (7 W. R. 13), *Loke Nath Sarkar* v. *Queen-Empress* (I. L. R., 11 Cal 349), *Queen-Empress* v. *Pershad* (I. L. R., 7 All. 414), *Chandra Kant Bhuttacharjee* v. *Queen-Empress* (I. L. R., 12 Cal. 498), and *Reg.* v. *Tukaya bin Tamana* (I. L. R., 1 Bom. 214), referred to.—QUEEN-EMPRESS *v.* BISHESHAR, I. L. R., 9 All. 645. [Edge, C.J., and Brodhurst, J. May 16, 1887.]

THE meaning of s. 149 is clearly explained by Alison in the following remarks: "It is no less worthy of notice that this holds only with such outrages as are the natural result of the common enterprise, and which all who engaged in it must have made up their minds to be indifferent to when they once concurred in its adoption. It will not hold, therefore, with separate and independent acts of violence as are not so much the object or natural and usual consequence of the undertaking as the result of an accidental and casual ebullition of wickedness on the part of some of the actors, which went much beyond the common purpose of the assembly. Thus, if a mob repair to a warehouse of grain with the intent to compel the dealer to sell at their own price, certainly all the measures calculated to constrain or intimidate his will are chargeable on all those present, as throwing stones, breaking open his doors, threatening or maltreating his own or his servant's person, or the like; but if, taking advantage of the opportunity thus afforded, some individuals break into the building and commit theft, or set it on fire, or murder the inmates, those ulterior and undesigned acts of violence can be stated only against the actual perpetrators."—Principles of the Law of Scotland, p. 524.

THE accused were charged before a Magistrate of the second class with causing grievous hurt, as members of an unlawful assembly, under ss. 149 and 325 of the Penal Code. The evidence showed that one of the accused had used an axe in causing the hurt. The Magistrate apparently ignored this fact, and he convicted the accused under s. 325 of the Code. The accused appealed. The District Magistrate who heard one appeal, and the First-class Magistrate who heard the rest of the appeals, were both of opinion that the offence committed by the accused was one of causing grievous hurt with a dangerous weapon within the meaning of s. 326 of the Penal Code, and as such beyond the jurisdiction of the Second-class Magistrate. But they did not think it proper, under the circumstances of the case, to quash the convictions. The Sessions Judge, on examining the record of the case, was of opinion that as the offence committed by the accused was not cognizable by the trying Magistrate, his proceedings were void *ab initio* under s. 530 of the Criminal Procedure Code. He, therefore, referred the case to the High Court, and recommended that the convictions under s. 325 should be set aside. *Held* that the proceedings before the Second-class Magistrate were not void *ab initio*, as he had jurisdiction to try the accused for offences punishable under ss. 149 and 325 of the Penal Code with which they were originally charged. *Held*, also, that though it was the duty of the trying Magistrate, when the evidence disclosed a circumstance of aggravation, such as the use of a dangerous weapon which made the offence cognizable by a higher Court, to adopt the proper procedure to send the case to the higher Court, still it was not necessary to quash the proceedings, as the accused were not in any way prejudiced, and the sentences were not inadequate.—QUEEN-EMPRESS *v.* GUNDYA, I. L. R., 13 Bom. 502. [Jardine and Candy, JJ. Jan. 28, 1889.]

IN a case in which it was found that all the accused were guilty of rioting armed with deadly weapons, that the fight was premeditated and pre-arranged, a regular pitched battle or trial of strength between the two

parties concerned in the riot, and that one of the accused, in the course of the riot and in prosecution of the common object of the assembly, killed, or attempted to kill, a man under such circumstances that his act amounted to an attempt to murder, the question arose whether that act could be said to bear a less grave character by reason of excep. 5 to s. 300 of the Penal Code. *Per Curiam.—Held* that, upon such finding, the case did not fall within the exception. Per Pigot, J. (Petheram, C.J., and Macpherson, J., concurring.)—The 5th exception to s. 300 should receive a strict and not a liberal construction; and in applying the exception, it should be considered with reference to the act consented to or authorized, and next with reference to the person or persons authorized, and as to each of those some degree of particularity at least should appear upon the facts proved before the exception can be said to apply. *Shamshere Khan* v. *Empress* (I. L. R., 6 Cal. 154) and *Queen* v. *Kukier Mather* (unreported) dissented from, so far as they decide that from such a finding as the above consent to take the risk of death is inferred. *Per* O'Kinealy, J.—Before excep. 5 can be applied, it must be found that the person killed with a full knowledge of the facts, determined to suffer death, or take the risk of death; and that this determination continued up to, and existed at, the moment of his death. *Queen* v. *Kukier Mather* (unreported) observed on. *Per* Ghose, J.—No general rule of law can be laid down in determining in cases of this description whether the person killed or wounded suffered death, or took the risk of death, with his own consent, it being a question of fact, and not of law, to be decided upon the circumstances of each case as it arises. *Shamshere Khan* v. *Empress* (I. L. R., 6 Cal. 154) and *Queen* v. *Kukier Mather* (unreported) observed on, and the propositions of law laid down therein concurred with.—QUEEN-EMPRESS *v.* NAYAMUDDIN, I. L. R., 18 Cal. 484. [Petheram, C.J., and Pigot, O'Kinealy, Macpherson, and Ghose, JJ. May 19, 1891.]

WHEN a prisoner is convicted of rioting and of hurt, and the conviction for hurt depends upon the application of s. 149 of the Penal Code, it is illegal to pass two sentences, one for riot, and one for hurt. But in such a case the two sentences would be legal, provided the total punishment does not exceed the maximum which the Court might pass for any one of the offences. When, however, the accused is guilty of rioting, and is also found to have himself caused the hurt, he may be punished both for rioting and for hurt. In such a case the total punishment can legally exceed the maximum which the Court might pass for any one of the offences. *Queen-Empress* v. *Ram Sarup* (I. L. R., 7 All. 757) approved.—QUEEN-EMPRESS *v.* BANA PUNJA, I. L. R., 17 Bom. 260. [Sargent, C.J., Parsons, and Telang, JJ. Dec. 19, 1892.]

BEFORE a conviction can properly be maintained for the offence of rioting, it is necessary that there should be a clear finding as to the common object of the unlawful assembly, and also that the common object so found should have been stated in the charge in order that the accused person might have an opportunity of meeting it. Where a Sessions Judge in his charge to the jury referred to two possible common objects of an unlawful assembly, one of which only had been set out in the charge-sheet: *Held* that, inasmuch as it was impossible to say which of the two common objects had been accepted by the jury, and it might well have been that they had accepted the one which had not been charged, and which consequently the accused had not an opportunity of meeting, the conviction must be set aside. If one member of an unlawful assembly is armed with a deadly weapon, the other members cannot on that account be charged under s. 148 of the Penal Code. It is only the actual person who can be charged under that section.—SABIR *v.* QUEEN-EMPRESS, I. L. R., 22 Cal. 276. [Trevelyan and Banerjee, JJ. Sep. 19, 1894.]

NEITHER of the cases of *Queen* v. *Sabed Ali* (11 B. L. R., F. B., 347; 20 W. R. Cr. 5) and *Hari Singh* v. *The Empress* (3 C. L. R. 49) lays down any hard-and-fast rule as to the circumstances under which one member of an unlawful assembly can be deemed guilty of an offence committed by another under the provisions of s. 149 of the Penal Code, and every case must be decided on its own merits. In dealing with such cases, while, on the one hand, it is necessary for the protection of the accused that he should not, merely by reason of his association with others as members of an unlawful assembly, be held criminally liable for offences committed by his associates, which he himself neither intended, nor knew to be likely to be committed. On the other hand, it is equally necessary for the protection of the peace that members of an unlawful assembly should not lightly be let off from suffering the penalties for offences for which, though committed by others, the law has made them punishable by reason of their association with the actual offender with one common object. Those two cases respectively emphasize the necessity of keeping these considerations in view. Members of an unlawful assembly may have a community of object only up to a certain point, beyond which they may differ in their objects, and the knowledge possessed by each member of what is likely to be committed in prosecution of their common object will

vary, not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of s. 149 may be different on different members of the same unlawful assembly.—JAHIRUDDIN *v.* QUEEN-EMPRESS, I. L. R., 22 Cal. 306. [Beverley and Banerjee, JJ. Dec. 21, 1894.]

The accused, receiving information that the complainant's party were about to take forcible possession of a plot of land which was found by the Court to be in the possession of the accused, collected a large number of men, some of whom were armed, and went through the village to the land in question. While they were engaged in ploughing, the complainant's party came up, some of them being armed, and interfered with the ploughing. A fight ensued, in the course of which one of the complainant's party was grievously wounded, and subsequently died, and two of the accused's party were hurt. *Held* that if the accused were rightfully in possession of the land, and found it necessary to protect themselves from aggression on the part of another body of men, they were justified in taking such precautions as they thought were required, and using such force or violence as was necessary to prevent the aggression. *Held* also that under such circumstances they could not rightly be held to be members of an unlawful assembly. *Queen-Empress* v. *Narsang Pathakbai* (I. L. R., 14 Bom 441), *Birjoo Singh* v. *Khub Lall* (19 W. R. Cr. 66), and *Shunkur Singh* v. *Burmah Mahto* (23 W. R. Cr. 25) followed. *Ganouri Lal Dass* v. *Queen-Empress* (I. L. R., 16 Cal. 206) distinguished.—PACHKAURI *v.* QUEEN-EMPRESS, I. L. R., 24 Cal. 686. [Ghose and Gordon, JJ. Mar. 16, 1897.]

N, S, AND G were appointed special constables under s 17 of the Police Act. A Police Inspector accompanied by some police went to their village and informed them that they had been so appointed, and requested them to accompany him to the police station of B, which they declined to do. The Inspector then had N arrested, whereupon N shook himself free, and N, S, and G with other persons, who had assembled, abused and threatened the police, and compelled them to withdraw from the village. N, S, and G were convicted under s. 19 of the Police Act, and they were also convicted with other persons under s. 353 read with s. 149 of the Penal Code. *Held* that the refusal of N, S, and G to accompany the Inspector constituted no offence under s. 19 of the Police Act, as the order was intended not for any purpose of the police duty but simply that they might obtain the authority of their appointment and the necessary arms. *Held*, further, that the refusal of N to accompany the Inspector was not an offence, for which N could be arrested, and as the police when obstructed were not acting in lawful discharge of their duty, none of the persons concerned could be convicted of an offence under s. 353 of the Penal Code, but they were guilty of rioting under s. 147 of that Code.—RAMAN SINGH *v.* QUEEN-EMPRESS, I. L. R., 28 Cal. 411. Prinsep and Handley, JJ. July 6, 1900.

**150.** Whoever hires, or engages, or employs, or promotes or connives at the hiring, engagement, or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person, as a member of such unlawful assembly, in pursuance of such hiring, engagement, or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

**Hiring, or conniving at hiring, of persons to join unlawful assembly.**

Court by which offence is triable. Cognizable. Warrant or summons, according to offence committed by person hired, &c. According as offence is bailable or not. Not comp.

**151.** Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

**Knowingly joining or continuing in assembly of five or more persons after it has been commanded to disperse.**

Any Mag. Cognizable. Summons. Bailable. Not comp.

*Explanation.*—If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.

AN order given by an officer superior in rank to an officer in charge of police-stations, commanding an assembly of five or more persons likely to cause a disturbance of the public peace to disperse, is a lawful order within the meaning of s. 480 of the Code of Criminal

Procedure (Act X. of 1872).—EMPRESS *v.* TUCKER, I. L. R., 7 Bom. 42. [Kemball and Pinhey, JJ. Sep. 28, 1882.]

WHERE the object of only three persons was to draw a crowd, and their action was such as was calculated to, and did, draw a crowd of fifty or sixty persons likely to cause a disturbance of the public peace. *Held* that the gathering constituted an assembly of five or more persons within the meaning of s. 151 of the Penal Code, and that a refusal to disperse after being lawfully commanded to disperse rendered every member of the gathering liable to conviction under the said section.—EMPRESS *v.* TUCKER, I. L. R., 7 Bom. 42. [Kemball and Pinhey, JJ. Sep. 28, 1882.]

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Bailable. Not comp.

Assaulting or obstructing public servant when suppressing riot, &c.

**152.** Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant in endeavouring to disperse an unlawful assembly, or to suppress a riot or affray, or uses, or threatens or attempts to use, criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

A, WITH SIX others, commits the offences of rioting, grievous hurt, and assaulting a public servant endeavouring, in the discharge of his duty as such, to suppress the riot. A may be separately charged with and convicted of, offences under ss. 147, 325, and 152 of the Indian Penal Code.—CRIM. PRO. CODE (Act V. of 1898), s. 235, illus. (*g*).

ILLUS. (*g*) of s. 235 of the Criminal Procedure Code does not apply merely to the case of persons who, in addition to the offence of rioting, have, with their own hands, committed the further offences of voluntarily causing grievous hurt, and of assaulting a public servant when engaged in suppressing a riot; and the convictions referred to in the illustration relate specially to convictions obtained under the provisions of s. 149 of the Penal Code.—QUEEN-EMPRESS *v.* RAM SARUP, I. L. R., 7 All. 757. Petheram, C. J., and Straight, Brodhurst, and Tyrrell, JJ. May 12, 1885.

EIGHT persons, who were charged with a number of others, were tried on various charges, consisting of rioting armed with deadly weapons (s. 148, Penal Code), assaulting or obstructing a public servant when suppressing a riot (s. 152), and voluntarily causing hurt and grievous hurt to deter a public servant from his duty (ss. 332 and 333). The common object set out in the charge was "to resist the execution of a decree obtained by Suresh Chunder Deb against Shaik Ali Yar in the Court of the Second Subordinate Judge of Alipore, dated 30th April 1891, and also by means of criminal force, or show of criminal force, to overawe the members of the police-force in the execution of their lawful powers as police-officers;" and it was held that resistance to the police was one of the component parts of the offence of rioting charged. At the trial in the Court of Session all eight accused were convicted of the offence charged under s. 148, and each was sentenced to the maximum punishment allowed under that section, *viz.*, three years' rigorous imprisonment. Seven out of the eight were convicted of offences under s. 152, and sentenced each to an additional term of two years' rigorous imprisonment for those offences. Two out of the seven accused were further convicted of offences under s. 332 of the Penal Code, the hurt therein charged being caused to police-officers engaged in suppressing the riot, and each sentenced to a further additional term of two years' rigorous imprisonment for that offence. The eighth accused, who was not convicted of an offence under s. 152, was convicted of an offence under s. 333, the grievous hurt being similarly caused to a police-officer, and for that offence was sentenced to five years' rigorous imprisonment in addition to the sentence of three years passed on him under s. 148. It was contended on appeal—(1) that the sentences passed under s. 152 in addition to those under s. 148 were illegal; (2) that separate sentences under s. 152 and ss. 332 and 333 were illegal; (3) that the cumulative sentences under s. 148 and ss. 332 and 333 were illegal, in so far as they exceeded the maximum sentence provided for either of the offences. *Held as regards* (1), that, as resistance to the police was one of the component parts of the offence of rioting of which the accused were convicted and sentenced to the maximum punishment provided by s. 148, and having regard to the provisions of s. 71, the additional sentences under s. 152 were illegal. *Held*, further, that s. 152 contemplates an assault or obstruction to some particular public servant, and that, as the charge against the accused as framed was merely to the effect that they assaulted and obstructed *members of the police-force* in the discharge of their duties, &c., the conviction under that section could not be upheld. *Held as regards* (2), that separate sentences under s. 152 and ss. 332 and 333 were illegal, as the

hurt inflicted on the police-officers was the violence used towards them which constituted the essence of the offence under s. 152. ***Held***, ***as regards*** (3) that the separate sentences passed under s. 148 and ss. 332 and 333 were not illegal, there being nothing in s. 71 of the Penal Code which limits the amount of punishment that may be imposed for these offences.—FERASAT *v.* QUEEN-EMPRESS, I. L. R., 19 Cal. 105. [Beverley and Ameer Ali, JJ. Nov. 9, 1891.]

**153.** Whoever malignantly or wantonly, by doing anything which is illegal, gives provocation to any person, intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Any Mag. Cognizable. Warrant. Bailable. Not comp.

**Wantonly giving provocation with intent to cause riot—**

**if rioting be committed;**

**if not committed.**

Any Mag. Cognizable. Summons. Bailable. Not comp.

IN August 1893, a riot took place in Bombay between Hindus and Mussalmans. The excitement caused by the riot had not entirely subsided, when the accused composed and published a poem, giving an account of the outbreak, and incidentally extolling certain classes of the Hindu community, namely, the Ghatis and Kamatis for the brave resistance which they had offered to the Mahomedan rioters. The poem extolled the Ghatis and Kamatis, and then followed these lines:—

> May God give glory to you, confer joy on you night and day.
> Fight again for your country's good.
> Brave, brave are the Kamatis
> Why fear for dying, brother, why fear for dying?
> Sooner or later, but only once a man has to die.

The poem was written in Gujarati, a language not ordinarily spoken by the Ghatis and Kamatis, or even by the Mahomedans. It did not appear that any copies of the work were distributed among the people who had taken part in the riot. Nor did any fresh riot take place subsequently to the publication of the work. The accused were prosecuted and convicted under ss. 117 and 153 of the Penal Code, on the ground that the lines quoted above, especially the words "Fight again," were a direct instigation to the Ghatis and Kamatis to renew the disturbances. ***Held*** that the meaning of the passages complained of was to be gathered from the whole poem. The general spirit of the poem was clearly in favour of peace and reconciliation. It consisted from beginning to end of a lamentation over the riots, and the destruction and death they had caused, and of repeated counsel to peace and harmony between Hindus and Mahomedans. And there was nothing to indicate that the author's intention was to instigate the Hindus or provoke the Mahomedans to renew the disturbances. The words, "Fight again," were, no doubt, objectionable, but it would not be a proper construction of the words to allow them to override the whole context of the work. The composition could not be regarded as an "illegal act," and its publication was not "malignant" or "wanton" within the meaning of s. 153 of the Penal Code.—QUEEN-EMPRESS *v.* KAHANJI, I. L. R., 18 Bom. 758. [Jardine and Ranade, JJ. Dec. 11, 1893.]

**153A.*** Whoever, by words, either spoken or written, or by signs, or by visible representations, or otherwise, promotes or attempts to promote feelings of enmity or hatred between different classes of Her Majesty's subjects, shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Pres. Mag. or Mag. of 1st class. Uncog. Warrant. Not bailable. Not comp. Sanction.

**Promoting enmity between classes.**

*Explanation.*—It does not amount to an offence within the meaning of this section to point out, without malicious intention, and with an honest view to their removal, matters which are producing, or have a tendency to produce, feelings of enmity or hatred between different classes of Her Majesty's subjects.

* S. 153A has been inserted by the Indian Penal Code Amendment Act (IV. of 1898), s. 5. As to authority for instituting prosecutions under s. 153A, see the new Code of Criminal Procedure (Act V. of 1898), s. 196.

Presy. Mag. or Mag. of 1st or and class. Uncog. Summons. Bailable. Not comp.

**154.** Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees;

Owner or occupier of land on which an unlawful assembly is held.

if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police-station,

and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it, and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

THE owner or occupier of land on which an unlawful assembly is held cannot be convicted under s. 154 of the Penal Code, unless there is a finding that the riot was premeditated.—QUEEN v. SURROOP CHUNDER PAUL, 12 W. R. 75. [Norman and Kemp, JJ. Dec. 10, 1869.]

THE following procedure should be observed in the case of a charge under s. 154 against the owner of land on which an unlawful assembly is held: The charge ought to be a clear and distinct charge of the offence specified in s. 154. After such charge, the prisoner should be called on to plead, and if his plea is 'not guilty,' then legal evidence for the prosecution should be gone into. The records of another case, would not, of themselves, be legal evidence itself for the conviction. This separate evidence in support of the charge under s. 154 being given, and a *primâ-facie* case being made out for the prosecution, the prisoner must then be allowed opportunity to rebut that evidence, after which judgment should be passed.—IN THE MATTER OF C. G. D. BETTS AND MAHOMED ISMAIL CHOWDHRY, 15 W. R. 6; 6 B. L. R. Ap. 83. [Bayley and Mitter, JJ. Jan. 21, 1871.]

IT is not necessary, in order to render the owner of land on which a riot takes place criminally liable, that he should be aware of the likelihood of such an occurrence. That his karinda should have taken an active part in the riot is sufficient to warrant the conviction of the owner under s. 154 of the Penal Code.—QUEEN-EMPRESS v. PAYAG SINGH, I. L. R., 12 All. 550. [Edge, C.J., and Brodhurst, J. June 20, 1890.]

THE accused was the sole proprietor of village A. A serious riot involving loss of life took place at village A, and the accused's *naib* instead of doing anything to prevent or suppress the riot accompanied the rioters and stood close by, while the riot was going on, after which he absconded. The accused who had no knowledge that a riot was likely to be committed was convicted under s. 154 of the Penal Code and fined. *Held* (Rampini and Pratt, JJ.), a landlord is liable under s. 154 of the Penal Code for the acts of the commission as well as omission not only of himself, but of his agent or manager. Knowledge on the part of the owner or occupier of the land, of the acts or intention of the agent is not an essential element of an offence, under s. 154 of the Penal Code, and he may be convicted under that section, though he may be in entire ignorance of the acts of his agent or manager. Rampini, J.—There seems no ground for holding that s. 154 is intended in order to punish the landlord, where his agent has not rendered himself liable to the criminal law, and when the agent has done so, then his liability is at an end On the contrary the provisions of the section impose on non-resident landholders and their agents, the duty of maintaining the public peace and preventing unlawful assembly and riots on their estates and render the former for any dereliction in the discharge of this duty. *Queen-Empress* v. *Payag Singh* (I. L. R., 12 All. 550) followed. The *Queen* v. *Surroop Chunder Paul* (12 W. R. 75), *Torakant Das* v *Empress* (4 C. W. N. 691), *Queen-Empress* v. *Hurnath Roy* (3 W. R. 54), *In the Matter of Radha Nath Chowdhry* (7 C. L. R. 289), referred to. Ameer Ali, J.—Owners of property are made responsible by law for the negligence of their agents or managers, but not for their criminal acts. A charge of neglect assumes that the agent is not directly concerned in the commission of the offence. If he is so concerned it ceases to be neglect, it is a crime. It would be straining the law to make the absent owner, who has himself no knowledge of the occurrence, liable for not giving information of a riot that has taken place, if his agent takes part in it, and, as a rioter actually taking part in it, does not, as a matter

of course give notice of it.—KAZI ZEAMUDDIN AHMED v. QUEEN-EMPRESS, I. L. R., 28 Cal. 504. [Ameer Ali, Rampini, and Pratt, JJ. May 18 and June 19, 1901.]

**155.** Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom,

Liability of person for whose benefit a riot is committed.

Presy. Mag: or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

A ZEMINDAR ought not to be made liable under s. 155, Penal Code, for a sudden and unpremeditated riot which there was no reason to infer he could have anticipated, or thought likely to happen.—QUEEN v. HURNATH ROY, 3 W. R. 54. [Kemp and Seton-Karr, JJ. July 25, 1865.]

THE mere fact that a person is the owner or occupier of land, in respect of which, or upon which, a riot takes place, is not sufficient to raise a presumption against him. It must be positively proved that he or his agent or manager knew or had reason to believe that the riot would be committed, and, having that knowledge or belief, did not use all lawful means in his power to prevent, disperse, or suppress it.—QUEEN v. SURROOP CHUNDER PAUL, 12 W. R. 75. [Norman and Kemp, JJ. Dec. 10, 1869.]

TO constitute an offence under s. 157 of the Penal Code, it must be proved that the accused has hired, or engaged, or employed other persons for the purpose of an unlawful assembly; and it is not sufficient to show that some of the accused's servants have been taken from a district where men have a well-known character as *lathials*, and had been in his service some time before the riot was perpetrated. A non-resident partner or sharer who has taken no active part in the management of the estate cannot, like a resident sharer, be convicted under ss. 154 and 155 of the Penal Code.—IN THE MATTER OF RADHANATH CHOWDHRY, 7 C. L. R. 289. [Mitter and Maclean, JJ. Sept. 9, 1880.]

IN order to convict the manager of an indigo-factory under s. 156 of the Penal Code, it must be shown by legal evidence (1) that a riot was committed; (2) that the riot, if committed, was committed for the benefit of the accused; and (3) that the accused had reason to believe that a riot was likely to be committed.—BRAE v. EMPRESS, I. L. R., 10 Cal. 338. [Mitter and Pigot, JJ. Sep. 22, 1883.]

**156.** Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom,

Liability of agent of owner or occupier for whose benefit a riot is committed.

Ditto.

the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place, and for suppressing and dispersing the same.

IN order to convict the manager of an indigo-factory under s. 156 of the Penal Code, it must be shown by legal evidence (1) that a riot was committed; (2) that the riot, if committed, was committed for the benefit of the accused; and (3) that the accused had reason to believe that a riot was likely to be committed.—BRAE v. EMPRESS, I. L. R., 10 Cal. 338. [Mitter and Pigot, JJ. Sep. 22, 1883.]

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Not comp.

**157.** Whoever harbours, receives, or assembles in any house or premises in his occupation or charge, or under his control, any persons, knowing that such persons have been hired, engaged, or employed, or are about to be hired, engaged, or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

**Harbouring persons hired for an unlawful assembly.**

To constitute an offence under s. 157 of the Penal Code, it must be proved that the accused has hired, or engaged, or employed other persons for the purpose of an unlawful assembly, and it is not sufficient to show that some of the accused's servants have been taken from a district where men have a well-known character as *lathials*, and had been in his service some time before the riot was perpetrated. A non-resident partner or sharer who has taken no active part in the management of the estate cannot, like a resident sharer, be convicted under ss. 154 and 155 of the Penal Code.—IN THE MATTER OF RADHANATH CHOWDHRY, 7 C. L. R. 289. [Mitter and Maclean, JJ. Sept. 9, 1880.]

Ditto.

**158.** Whoever is engaged or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both;

**Being hired to take part in an unlawful assembly or riot;**

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

and whoever, being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**or to go armed.**

**159.** When two or more persons, by fighting in a public place, disturb the public peace, they are said to "commit an affray."

**Affray.**

HELD that a *chabutra*, which was neither a place to which the public had a right of access, nor a place to which the public were ever permitted to have access, was not, though it adjoined a public road, a "public place" within the meaning of s. 159 of the Penal Code.—QUEEN-EMPRESS v. SRI LAL, I. L. R., 17 All. 166 [Edge, C.J., and Banerji, J. Feb 4 1895.]

Any Mag. Uncog. Summons. Bailable. Not comp.

**160.** Whoever commits an affray shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

**Punishment for committing affray.**

IN an affray respecting land, one party were the aggressors, and the other side (had the affair not ended fatally) would have been in the legal exercise of the right of defence of property, and would have been entitled to the benefit of s. 104 of the Penal Code. *Held*, that one year's imprisonment was sufficient punishment for the latter.—QUEEN v. SHUNKER SINGH, 1 W. R. 34 [Kemp and Glover, JJ. Dec. 5, 1864.]

A SENTENCE of rigorous imprisonment passed in a case of affray with homicide under Reg. VI. of 1828 quashed as illegal, and altered to one of imprisonment with labour.—QUEEN v. KOMARUDDY BHOOYA, 1 W. R. 47. [Kemp and Glover, JJ. Dec. 21, 1864.]

IN a trial arising out of an affray or faction-fight, the members of each faction should be tried separately. The statements of the members of each faction can then, if desired, be taken on solemn affirmation, and be made evidence against their opponents; but if they decline to give evidence on the ground of implicating themselves, they cannot be compelled to do so.—QUEEN v. MAHOMED HOSSEIN, 1 N.-W. P. 293. [Pearson and Turner, JJ. April 2, 1869.]

WHERE certain parties, in the course of a sudden quarrel, committed an affray, resulting in grievous hurt and consequent death, it was held that, as there was no unlawful assembly there could not be a conviction for rioting

but for affray only. The question whether any of the prisoners were guilty of culpable homicide was not considered by the Court.—QUEEN *v.* PHOOLLEE MISSER, 12 W. R. 72. [Jackson and Markby, JJ. Nov. 30, 1869.]

PRISONERS were convicted of having committed an offence punishable under s. 160 of the Penal Code, and were sentenced to pay a fine of Rs. 25 each, or in default to be rigorously imprisoned for 30 days, the full term of imprisonment under the section. *Held* by a majority of the High Court (Kindersley, J., dissenting) that, having regard to the provisions of s. 309 of the Criminal Procedure Code (Act X. of 1872), the sentence was legal.—REG. *v.* MUHAMMAD SAIB, I. L. R., 1 Mad. 277. [Innes, Offg. C.J., and Kindersley, Busteed, and Tarrant, JJ. Sep. 4, 1877.] But see the following ruling:—

S. 33 of the Criminal Procedure Code, 1882, does not authorize a Magistrate to pass a sentence, in default of payment, in excess of the term prescribed by s. 65 of the Penal Code. *Reg.* v. *Muhammad Saib* (I. L. R., 1 Mad. 277) was overruled in 1881.—QUEEN-EMPRESS *v.* VENKATESAGADU, I. L. R., 10 Mad. 165. [Collins, C.J., and Kernan, Muttusami Ayyar, Brandt, and Parker JJ. Jan. 18, 1887.]

## CHAPTER IX.*

### OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

**161.** Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing, or forbearing to do, any official act, or for showing, or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering, or attempting to render, any service or disservice to any person, with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Public servant taking gratification other than legal remuneration in respect of an official act.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Summons. Bailable. Not comp.

*Explanations.*—"Expecting to be a public servant."—If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

"Gratification."—The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

"Legal remuneration."—The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government† which he serves to accept.

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* As to authority for institution of prosecutions against certain public servants, see the new Code of Criminal Procedure (Act V. of 1898), s. 197.

All actions and prosecutions against any person, which may be lawfully brought for anything done or intended to be done under the provisions of Act V. of 1861, or under the general police-powers thereby given, shall be commenced after notice in writing of such action and of the cause thereof being given to the defendant, or to the District Superintendent, or an Assistant District Superintendent of the District in which the act was committed, one month at least before the commencement of the action (Act V of 1861), s. 47.

† In the definition of "legal remuneration" the word "Government" includes—

(1) a Court of Wards for the purposes of s. 12 (2) of the Central Provinces Government Wards Act (XVII. of 1885):

(2) the Senate of the Allahabad University for the purposes of s. 18 (1) of the Allahabad University Act (XVIII. of 1887):

(3) any employer of a railway-servant as such for the purposes of s. 137 (1) of the Indian Railways Act (IX. of 1890).

**"A motive or reward for doing."—A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.**

***Illustrations.***

**(*a*.) A, a munsif, obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a cause in favour of Z. A has committed the offence defined in this section.**

**(*b*.) A, holding the office of Resident at the Court of a subsidiary Power, accepts a lakh of rupees from the Minister of that Power. It does not appear that A accepted this sum as a motive or reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that Power with the British Government. But it does appear that A accepted the sum as a motive or reward for generally showing favour in the exercise of his official functions to that Power. A has committed the offence defined in this section.**

**(*c*.) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z, and thus induces Z to give A money as a reward for this service. A has committed the offence defined in this section.**

THE Law Commissioners remark: "The punishment of fine will, we think, be found very efficacious in cases of this description, if the Judges exercise the power given them as they ought to do, and compel the delinquent to deliver up the whole of his ill-gotten gain."

A OFFERS a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in s. 161.—Penal Code, s. 109, illus. (*a*).

CHARGE.—That you, being a public servant in the Department, directly accepted from [*state the name*], for another party [*state the name*], a gratification, other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under s. 161 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].—Crim. Pro. Code (Act V. of 1898), sch. v., form xxviii (i.).

WHEN any Judge, or any public servant not removeable from his office without the sanction of the Government of India or the Local Government, is accused as such Judge or public servant of any offence, no Court shall take cognizance of such offence, except with the previous sanction of the Government having power to order his removal, or of some officer empowered in this behalf by such Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power to give such sanction has not been limited by such Government. Such Government may determine the person by whom, and the manner in which, the prosecution of such Judge or public servant is to be conducted and may specify the Court before which the trial is to be held.—Crim. Pro. Code (Act V. of 1898), s. 197.

IT is not generally known that, where a person gives a bribe to a public servant at the latter's request, the giver commits no offence. The authors of the Code make the following important remarks on the subject: "One important question still remains to be considered. We are of opinion that we have provided sufficient punishment for the public servant who receives a bribe. But it may be doubted whether we have provided sufficient punishment for the person who offers it. The person who, without any demand, express or implied, on the part of a public servant, volunteers an offer of a bribe, and induces that public servant to accept it, will be punishable under the general rule contained in cl. 88 as an instigator. But the person who complies with a demand, however signified, on the part of a public servant, cannot be considered as guilty of instigating that public servant to receive a bribe. We do not consider such a person to be liable to any punishment, and, as this omission may possibly appear censurable to many persons, we are desirous to explain our reasons. In all states of society the receiving of a bribe is a bad action, and may properly be made punishable. But whether the giving of a bribe ought or ought not to be punished is a question which does not admit of a short and general answer. There are countries in which the giver of a bribe ought to be more severely punished than the receiver. There are countries, on the other hand, in which the giving of a bribe may be what it is not desirable to visit with any punishment. In a country situated like England, the giver of a bribe is generally far more deserving of punishment than the receiver. The giver is gene-

rally the tempter; the receiver is the tempted. The giver is generally rich, powerful, well educated; the receiver, needy and ignorant. The giver is under no apprehension of suffering any injury if he refuses to give. It is not by fear, but by ambition, that he is generally induced to part with his money. Such a person is a proper subject of punishment. But there are countries where the case is widely different—where men give bribes to Magistrates from exactly the same feeling which leads them to give their purses to robbers or to pay ransom to pirates—where men give bribes because no man can, without a bribe, obtain common justice. In such countries we think that the giving of bribes is not a proper subject of punishment. It would be as absurd, in such a state of society, to reproach the giver of a bribe with corrupting the virtue of public servants, as it would be to say that the traveller who delivers his money when a pistol is held to his breast corrupts the virtue of the highwayman. We would by no means be understood to say that India, under the British Government, is in a state answering to this last description. Still we fear it is undeniable that corruption does prevail to a great extent among the lower class of public functionaries; that the power which those functionaries possess renders them formidable to the body of the people; that in the great majority of cases the receiver of the bribe is really the tempter, and that the giver of the bribe is really acting in self-defence. Under these circumstances, we are strongly of opinion that it would be unjust and cruel to punish the giving of a bribe in any case in which it could not be proved that the giver had really by his instigations corrupted the virtue of a public servant who, unless temptation had been put in his way, would have acted uprightly.

UNDER the above section a charge should be so framed as to deal with separate motives in separate heads.—5 Rev., Jud., and Pol. Jour. 138.

THE prisoner was convicted by the Sessions Judge of the offence of accepting a gratification as police-patel under s. 161 of the Penal Code. The examination of the prisoner before the Magistrate was not taken down in the form of question and answer, as required by s. 205 of the Criminal Procedure Code. *Per Curiam* —"The examination under s. 205 to be admissible as evidence under s. 366 must be taken in the form of question and answer, and certified as required in s. 205. But if it be not taken, as in the present case, the Court can order the confession to be proved by the evidence of the writer of the examination or other person who was present. In this case, however, the evidence is sufficient without the inadmissible examination, and, under ss. 426 and 439, the admission of the examination as evidence does not invalidate the trial and conviction."—REG. *v.* VITHOJI VALAD ABBA, 2 Bom. H. C. R. 398. [Couch and Newton, JJ. Mar. 16, 1864.]

CASE of offering a bribe to a juryman. Although what passed between the prisoner and the juryman might not have amounted to an offer of a bribe to the latter, yet it was held to be so when taken in connection with what passed between the prisoner and the juryman's brother. — QUEEN *v.* BAWOOL CHUNDER BISWAS, 1 W. R. 36. [Kemp and Glover, JJ. Dec. 7, 1864.]

THE motives under which an accused person is charged with having taken a sum of money other than a legal remuneration should not have been gathered together as one head of the charge. If it was necessary that they should be all charged owing to a doubt in the mind of the committing officer as to which would be proved or presumed, they should be formed into separate heads, but it would have been preferable had only one or two of these motives been selected.—4 W. R. Cr. L., 3, No. 904 of 1865.

THE taking of a gratification by a sarishtadar to influence the Principal Sadr Amin in his decisions is sufficient to a legal conviction, whether the sarishtadar did, or did not, influence, or try to influence, the Principal Sadr Amin. — QUEEN *v.* KALLEE CHURN SARISHTADAR, 3 W. R. 10. [Glover, J. May 11, 1865.]

THE evidence of the person who bribes is admissible against the person bribed. A person who accepts for himself, or for some other person, a gratification for inducing, by corrupt or illegal means, a public servant to forbear to do a certain official act, is punishable, not under s. 161, but under s. 162 of the Penal Code.—QUEEN *v.* OBHOY CHURN CHUCKERBUTTY, 3 W. R. 19. [Glover, J. May 30, 1865.]

AN indictment will not be invalidated in consequence of the charge not notifying the specific section under which it has to be prosecuted. Under s. 161 it is necessary to show that the offence, the instigation of which is the subject of the charge, has been committed.—QUEEN *v.* NATABAR NUNDY, 1 Ind. Jur. N. S. 43. [Peacock, C.J., and Morgan and Macpherson, JJ. Jan. 22, 1866.]

WHERE a constable and others enter a house and apprehend certain persons as gamblers, and afterwards release them on payment of a sum of money by the latter, the offence committed is not house-trespass and extortion, but taking a bribe as regards the

constable, and abetment of that offence as regards the others. — GOVT. *v.* MAHOMED HOSSEIN, 5 W. R. 49. [Norman and Campbell, JJ. Mar. 5, 1866.]

THE charge is incomplete inasmuch as the nature of the office held by the prisoners, so as to make them public servants should have been stated.—*In re* HURNATH TOLLAPATRO, 5 W. R. Cr. L. 8, April 9, 1866.

HELD that bribery and other offences punishable under the Penal Code with imprisonment exceeding six months are not triable under Ch. 15 of the Code of Criminal Procedure, and cannot, therefore, be compromised under s. 271 of the latter Code.—On a letter No. 100, dated 29th May 1869, from the Officiating Sessions Judge of Jessore, to the Registrar of the High Court.—12 W. R. 59. [Peacock, C.J., and Bayley, Kemp, Macpherson, and Glover, JJ. Sep. 6, 1869.]

A PATWARI taking grain as a consideration for showing favour to the giver in the discharge of his functions as patwari should be convicted under s. 161 (and not s. 165) of the Penal Code. Under s. 253 of the Criminal Procedure Code, it is imperative upon the Magistrate to summon the witnesses named by the prisoner.—QUEEN *v.* MUDSOODDEEN, 2 N.-W. P 148. [Spankie, J. April 20, 1870.]

THE Local Government, in sanctioning or directing (under s 167 of the Criminal Procedure Code, 1861) a charge against a public servant of an offence as such public servant, has power to limit its sanction by giving directions as to the person by whom, and the manner in which, the prosecution is to be preferred and conducted, and a Court has no jurisdiction to entertain a charge against such public servant if preferred otherwise than in accordance with such directions. *Semble*: The Local Government has power in the like case to direct that the accused servant shall be tried before a specified tribunal, being one having jurisdiction in that behalf. Therefore, where the sanction directed that the accused public servant should be prosecuted upon such charges as Mr. C might be prepared to prefer against him, and there was nothing on the record to show, nor did it otherwise appear, that Mr. C had preferred any charge against, or taken any part in the prosecution of, the accused public servant, the High Court quashed the conviction of the accused as having been without jurisdiction.—REG. *v.* VINAYAK DIVAKAR, 8 Bom. H. C. R. 32. [Westropp, C.J., and Gibbs and West, JJ. June 14, 1871.]

A PEON of a Collector's Court, who received no fixed pay from the Government, but was remunerated by fees whenever employed to serve any process, and was placed on the register of supernumerary peons, had been ordered by the Magistrate to do duty on a particular day at the office of the special sub-registrar, where he was detected receiving an eight-anna piece from a person, and was prosecuted for receiving an illegal gratification as a public servant. *Held* that the peon was a public servant under the definition of cl. 9, s. 21. A person who in fact (though wrongly) discharges the duties of an office whereby he is to all appearance a public servant, may, as such, be tried for receiving an illegal gratification under s. 161.—QUEEN *v.* RAMKRISTO DOSS, 16 W. R. 27; 7 B. L. R. 446. [Ainslie and Paul, JJ. July 24, 1871.]

ON a conviction of taking illegal gratification, a simple order to refund the money taken is quite inadequate to the gravity of the offence. Although no appeal lay in such a case, yet the High Court, upon a reference, having power to interfere, quashed the conviction.—IN THE MATTER OF MUTTY LALL CHUTTOPADHYA, 16 W. R. 64. [Bayley and Kemp, JJ. Dec. 8, 1871.]

WHERE the accused was charged under s. 116, Penal Code, with having abetted the commission of an offence punishable under s. 161 of that Code, the person abetted having been a Civil Surgeon of a sadr station, it was held that the enhanced imprisonment prescribed by the latter part of s. 161 could not be awarded, as the Civil Surgeon was not a public servant within the words of the section, "whose duty it is to prevent the commission of such offence."—QUEEN *v.* RAMNATH SURMA BISWAS, 21 W. R. 9. [Phear and Morris, JJ. Nov 18, 1873.]

WHERE a police-officer who had been called on to answer to a charge of bribery, which was not sustained by the evidence, was found guilty of violation of duty under s. 29, Act V. of 1861, of which offence the trying officer found sufficient evidence in the course of the trial, *held* that an accused person called on to answer to a specific charge cannot be convicted on an entirely different charge, without previous notice of the offence imputed to him, and opportunity being afforded him of meeting the accusation under s. 23, Act V. of 1861. A police-officer is not bound to arrest a person against whom no proceedings have been directed if he believes that he has not sufficient grounds for apprehending him. —IN THE MATTER OF GRISH CHUNDER NUNDEE, 26 W. R. 8. [Morris and McDonell, JJ. Sep. 7, 1876.]

K, a police-officer, employed in a Criminal Court to read the diaries of cases investigated by the police, and to bring up in order each case for trial with the accused and witnesses, after a case of theft had been decided

by the Court in which the persons accused were convicted, and a sum of money, the proceeds of the theft, had been made over by the order of the Court to the prosecutor in the case, asked for and received from the prosecutor a portion of such money, not as a motive or reward for any of the objects described in s. 161 of the Penal Code, but as "dasturi." *Held* that K was not, under these circumstances, punishable under s 161 of the Penal Code, but under s. 165 of that Code.—EMPRESS *v.* KAMPTA PRASAD, I. L. R., 1 All. 530. [Stuart, C.J., and Spankie, J. Dec 15, 1877.]

THE manager of a Court of Wards' estate paid into a Bank, carrying on the treasury business of the Government, a sum of money on behalf of Government. B, a poddar in the Bank, demanded and took a reward for his trouble in receiving the money. On B being prosecuted and charged under s 161 of the Penal Code, *held*, that although the money might have been paid on account of Government, it was on behalf of the Bank, and not on behalf of the Government, that the money was received by the accused, and that the poddar was a servant of the Bank only, and not a public servant within the meaning of cl. 9, s. 21, of the Penal Code.—IN THE MATTER OF THE PETITION OF MODUN MOHUN, I. L. R., 4 Cal 376. [Ainslie and Broughton, JJ. Dec. 10, 1878.]

To ask for a bribe is an attempt to obtain one, and a bribe may be asked for as effectually in implicit as in explicit terms. Where, therefore, B, who was employed as a clerk in the Pension Department, in an interview with A, who was an applicant for a pension, after referring to his own influence in that department, and instancing two cases in which, by that influence, increased pensions had been obtained, proceeded to intimate that anything might be effected by "kar-rawai," and on the overture being rejected, concluded by declaring that A would rue and repent the rejection of it, *held* that the offence of attempting to obtain a bribe was consummated.—EMPRESS *v.* BALDEO SAHAI, I. L. R., 2 All. 253. [Pearson and Spankie, JJ. April 7, 1879.]

THE accused was charged with having received illegal gratifications from C and Co. on three specific occasions in 1876. In 1876, 1877, and 1878, C and Co. were doing business as Commissariat contractors, and the accused was the manager of the Commissariat Office. *Held* that evidence of similar but unconnected instances of receiving illegal gratifications from C and Co. in 1877 and 1878 was not admissible against him under ss. 5 to 13 of the Evidence Act. *Held*, *per* Garth, C.J. (Maclean J., concurring).—The evidence was not admissible under s. 14. *Per* Garth, C.J.—S. 14 applies to cases where a particular act is more or less criminal or culpable according to the state of mind or feeling of the person who does it, not to cases where the question of guilt or innocence depends upon actual facts, and not upon the state of a man's mind or feeling. *Per* Mitter, J.—If the receipt of the illegal gratifications mentioned in the charge be considered proved by other evidence, and if it were necessary to ascertain whether the accused received them as a motive for showing favour in the exercise of his official functions, the alleged transactions of 1877 and 1878 would be relevant under s. 14, but they would not be relevant to establish the fact of payments in 1876.—EMPRESS *v.* M. J. VANDOORY MOODELIAR, I. L. R., 6 Cal. 655, 8 C. L. R. 197. [Garth, C.J., and Mitter and Maclean, JJ. Jan. 22 and Feb 9, 1881.]

A COMPLAINT was filed by Ganesh Narayan Sathe in the Court of the District Magistrate of Poona against Balkrishna Govind Sindekar and five other mamlatdars, charging them with purchasing judicial offices through the instrumentality of one Hanmantrao jaghirdar, who was alleged to have had influence with Mr. A. T. Crawford, Revenue Commissioner, C D It was held that, as a general rule, any person having knowledge of the commission of an offence may set the law in motion by a complaint, even though he is not personally interested or affected by the offence The exceptions to this rule, of which ss 195 and 198 of the Criminal Procedure Code are examples, are exceptions created by statute. There is nothing in the Code showing an intention to confine prosecutions to the persons directly injured Where the offence charged is a "warrant" and not a "summons" case, a Magistrate ought to proceed with the inquiry or trial in spite of the withdrawal of the complainant, if he finds the elements of an offence on the facts set forth in the complaint. S. 248 of the Code of Criminal Procedure applies only to a "summons" case. *Semble*: A complainant is not a witness punishable for refusal to answer under s 485 of the Code of Criminal Procedure or under s. 179 of the Penal Code.—*In re* GANESH NARAYAN SATHE, I. L. R., 13 Bom. 600. [Scott and Jardine, JJ. June 19, 1889.]

THE accused, who were classers employed in the Revenue Survey Department, were charged, under s 161 of the Penal Code, with taking bribes from the rayats of certain villages. The only evidence against the accused was that of persons who had either subscribed to the bribes, or collected subscription, or paid the money to the accused. They

stated that they had offered the bribes, because the classers had threatened to raise the assessment, cut down the hedges, and erect new boundary-marks. As regards this evidence, the trying Magistrate remarked that, even if all the witnesses for the prosecution were treated as accomplices, it was open to him to convict on their uncorroborated testimony, as "there was inherent truth in their statements, and circumstances existed which negatived the presumption of a conspiracy, and evidenced signs of truthfulness." The Magistrate was also of opinion that there was a distinction between accomplices who volunteered to assist in the receipt of illegal gratifications, and those who assisted under compulsion. In the opinion of the Magistrate, the witnesses in the present case belonged to the latter class, and there was no reason to disbelieve their evidence. He, therefore, convicted the accused under s. 161 of the Penal Code, and sentenced them to rigorous imprisonment and fine. *Held* (Scott, J., dissenting), that the convictions were illegal, there being no evidence to corroborate the witnesses for the prosecution, all of whom were accomplices. *Held* also (Scott, J., dissenting), that there was such error in the consideration by the Magistrate of the evidence as to prejudice the accused, and such a failure of justice as to justify the Court in revision in setting aside the convictions. *Per Curiam.*—The limits of the application of the doctrine of necessity as an excuse for an act otherwise criminal are those prescribed in s. 94 of the Indian Penal Code. Therefore, witnesses, who, in order to avoid pecuniary injury or personal molestation, had offered or given bribes to a public servant, were abettors of the offence of taking an illegal gratification, and their evidence should be treated as that of accomplices. By the law both of India and England, the evidence of an accomplice is admissible, and a conviction is not illegal, because it proceeds upon the uncorroborated testimony of an accomplice (s. 133 of the Evidence Act, I. of 1872). But the presumption that an accomplice is unworthy of credit, unless corroborated in material particulars, has become a rule of practice of almost universal application. *Per* Scott, J.—There may be, however, cases of an exceptional character in which the accomplice-evidence alone convinces a Judge; and if he acts on that conviction, with the character of the witnesses clearly present in his mind, a Revisional Court ought not to interfere in the absence of other circumstances showing a want of judicial discretion. *Per* Jardine, J.—The mere circumstance of a person being present on a lawful occasion does not raise a presumption of that person's complicity in an offence then committed so as to make s. 34 of the Penal Code applicable—*Reg.* v. *Farler* (8 C. and P. 106). Where the Magistrate on that ground did make that presumption against an accused person, and applied the provisions of s. 34, he committed an error in law, and the High Court, as a Court of Revision, might acquit the accused.—QUEEN-EMPRESS *v.* MAGANLAL AND MOTILAL, I. L. R., 14 Bom. 115. [Bayley, Scott, and Jardine, JJ., Sept. 24, 1889.]

AN order by the Board of Revenue, sanctioning the prosecution of a Deputy Tahsildar by the Collector of the District for "bribery or such of the charges set forth in the Deputy Collector's report as he thinks likely to stand investigation by a Criminal Court," is not a legal sanction within the meaning of the Criminal Procedure Code, s. 197, and a commitment on any of such charges should be quashed.—QUEEN-EMPRESS *v.* SAMAVIER, I. L. R., 16 Mad. 468. [Collins, C.J., and Parker, J. Mar. 8, 14, 1893.]

THE Mahars of a certain village having been suspended from their office for some months, a meeting of the villagers was held at the house of the Patel, at which the Patel was present to consider the question of their restoration to office, and an agreement was there come to that they should be restored on their paying a sum of Rs. 300 towards the repair of the village-temple. *Held* that the Patel, being a public servant, had committed an offence under s. 161 of the Penal Code (Act XLV. of 1860).—IMPERATRIX *v.* APPAJI, I. L. R., 21 Bom. 517. [Jardine and Ranade, JJ., Jan. 16, 1896.]

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Summons. Bailable. Not comp.

**162.** Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or, in the exercise of the official functions of such public servant, to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person, with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, "or

**Taking gratification in order, by corrupt or illegal means, to influence public servant.**

with any member of the Senate of the Allahabad University,"* or with any public servant as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

THE evidence of the person who bribes is admissible against the person bribed. A person who accepts, for himself or for some other person, a gratification for inducing, by corrupt or illegal means, a public servant to forbear to do a certain official act, is punishable, not under s. 161, but under s. 162 of the Penal Code.—QUEEN *v.* OBHOY CHURN CHUCKERBUTTY, 3 W. R. 19. [Glover, J. May 30, 1865.]

A CONVICTION, on a charge of attempting to receive a gratification for influencing a public servant in the exercise of his public functions, is illegal as disclosing no legal offence when it omits to state the person or persons for whom the gratification was obtained, or the public servant to be influenced in the exercise of his public functions. A Judge ought to explain to the jury the legal construction to be put on a document relied on by the prosecution.—QUEEN *v.* SETUL CHUNDER BAGCHEE, 3 W. R. 69. [Kemp and Seton-Karr, JJ. Aug. 29, 1865.]

Taking gratification for exercise of personal influence with public servant.

**163.** Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or, in the exercise of the official functions of such public servant, to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, "or with any member of the Senate of the Allahabad University,"* or with any public servant as such shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Presy. Mag. or Mag. of 1st class. Uncog. Summons. Bailable. Not comp.

*Illustration.*

An advocate who receives a fee for arguing a case before a Judge; a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust, are not within this section, inasmuch as they do not exercise or profess to exercise personal influence.

Punishment for abetment by public servant of offences defined in section 162 or 163.

**164.** Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Summons. Bailable. Not comp.

*Illustration.*

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Public servant obtaining valuable thing, without consideration, from person concerned in proceeding or business transacted by such public servant.

**165.** Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any valuable thing, without consideration, or for a consideration which he knows to be inadequate,

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

* *In ss. 162 and 163 the words quoted have been inserted by the Allahabad University Act* (XVIII. of 1887), s. 18 (2).

from any person whom he knows to have been, or to be, or to be likely to be, concerned in any proceeding or business transacted, or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate,

or from any person whom he knows to be interested in, or related to, the person so concerned,

shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

*Illustrations.*

(*a.*) A, a Collector, hires a house of Z, who has a settlement-case pending before him. It is agreed that A shall pay fifty rupees a month, the house being such that, if the bargain were made in good faith, A would be required to pay two hundred rupees a month. A has obtained a valuable thing from Z without adequate consideration.

(*b.*) A, a Judge, buys of Z, who has a cause pending in A's Court, Government promissory notes at a discount when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

(*c.*) Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

A PATWARI taking grain as a consideration for showing favour to the giver in the discharge of his functions as patwari should be convicted under s 161 (and not s. 165) of the Penal Code.—QUEEN *v.* MUDSOODDEEN, 2 N.-W. P. 148. [Spankie, J. April 29, 1870.]

WHERE a complaint charged a person who was one of the public servants mentioned in s. 167 of the Criminal Procedure Code with committing acts which, if committed by a private individual, would have constituted the offence of extortion, it was held that it was not illegal to treat the charge as a charge of extortion, and to proceed with the trial without sanction for the prosecution — REG. *v.* PARSHRAM KESHAV, 7 Bom. H. C. R., 61. [Gibbs and Melvill, JJ July 28, 1870.]

K, a police-officer employed in a Criminal Court to read the diaries of cases investigated by the police, and to bring up in order each case for trial with the accused and witnesses, after a case of theft had been decided by the Court in which the persons accused were convicted, and a sum of money, the proceeds of the theft, had been made over by the order of the Court to the prosecutor in the case, asked for and received from the prosecutor a portion of such money, not as a motive or reward for any of the objects described in s. 161 of the Penal Code, but as "dasturi." *Held* that K was not, under these circumstances, punishable under s. 161 of the Penal Code, but under s. 165 of that Code.—EMPRESS *v.* KAMPTA PRASAD, I. L. R., 1 All. 530. [Stuart, C.J., and Spankie, J. Dec. 15, 1877.]

THE accused was charged with having received illegal gratifications from C and Co. on three specific occasions in 1876. In 1876, 1877, and 1878, C and Co. were doing business as Commissariat contractors, and the accused was the manager of the Commissariat Office. *Held* that evidence of similar but unconnected instances of receiving illegal gratifications from C and Co. in 1877 and 1878 was not admissible against him under ss. 5 to 13 of the Evidence Act. *Held, per* Garth, C.J. (Maclean, J., concurring). The evidence was not admissible under s. 14. *Per* Garth, C.J.—S. 14 applies to cases where a particular act is more or less criminal or culpable according to the state of mind or feeling of the person who does it, not to cases where the question of guilt or innocence depends upon actual facts, and not upon the state of a man's mind or feeling. *Per* Mitter, J.—If the receipt of the illegal gratifications mentioned in the charge be considered proved by other evidence, and if it were necessary to ascertain whether the accused received them as a motive for showing favour in the exercise of his official functions, the alleged transactions of 1877 and 1878 would be relevant under s. 14, but they would not be relevant to establish the fact of payments in 1876. — EMPRESS *v.* M. J. VAYAPOORY MOODELIAR, I. L. R., 6 Cal. 655: 8 C. L. R. 197. [Garth, C.J., and Mitter and Maclean, JJ. Jan. 22 and Feb. 9, 1881.]

**166.** Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

**Public servant] disobeying law with intent to cause injury to any person.**

*Illustration.*

**A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.**

CHARGE.—That you, on or about the day of , at , did [*or* omitted to do, *as the case may be*] such conduct being contrary to the provisions of Act , section , and known by you to be prejudicial to , and thereby committed an offence punishable under s. 166 of the Indian Penal Code, and within my cognizance, or the cognizance of the Court of Session (*or* High Court)].—Crim. Pro. Code (Act V. of 1898), sch. v., form xxviii. (*i.*).

A POSTMASTER who absents from his station without leave, and thereby causes delay in the despatch of the mails, should be convicted under s. 47 of the Post-office Act (XIV. of 1866), and not under s. 166 of the Penal Code.—Weir, p. 31.

A WITNESS summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court. The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility. If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence; and if the interpreter disobeys such direction, he shall be held to have committed an offence under s. 166 of the Penal Code.—Evidence Act (I. of 1872), s. 162.

ANY marriage-registrar, knowingly and wilfully issuing any certificate for marriage after the expiration of three months after the notice has been entered by him as aforesaid, or knowingly and wilfully issuing, without the order of a competent Court authorizing him so to do, any certificate for marriage, where one of the parties intending marriage is a minor, before the expiration of fourteen days after the entry of such notice, or any certificate the issue of which has been forbidden as aforesaid by any person authorized by him in this behalf, shall be deemed to have committed an offence under s. 166 of the Penal Code.—Christian Marriage Act (XV. of 1872), s. 72.

*Per Curiam*: A zamindari karnam is a public servant, and is bound by law to produce accounts to the proprietor or farmer of a zamindari.—SUBRAMANYA *v.* SOMASUNDARA, I. L. R., 15 Mad. 127. Collins, C.J., and Handley, J., Oct. 23, 1891.

**167.** Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Summons. Bailable. Not comp.

**Public servant framing an incorrect document with intent to cause injury.**

ACCUSED, a village patwari, prepared an incorrect copy of an entry in his *roznamcha* for S, plaintiff in a civil suit. The entry related to a contract between S and another. Accused was convicted, under s. 167, of framing an incorrect document as a public servant. *Held* [*per* Lindsay, J.) that the conviction was right.—HIRA SINGH *v.* CROWN, Panj. Rec., No. 32 of 1872.

ACCUSED, a copyist in the Small Cause Court office, framed an incorrect copy of a document filed with a certain record, by adding a name not contained in the original

The incorrect copy was delivered duly certified to one L D, the applicant for it, and who was probably in collusion with the copyist. This copy was afterwards made use of in a suit against the person whose name had been fraudulently added, and then the fraud was detected. The Magistrate convicted accused under s. 167, and ordered him to pay a fine of Rs. 100. *Held* that s. 167 was not applicable to the case, as it was not shown that accused intended or knew it to be likely that he would cause injury to any person, but that the accused had committed the offence of "issuing or signing a false certificate" within the meaning of s. 197. *Held* also (*per* Barkley, J.) that making what purports to be a copy of a document is not included in the words "preparation or translation of any document," nor in the words "frames or translates that document," as used in s. 167. —CROWN *v.* DEIVA SINGH, Panj. Rec., No. 15 of 1879.

Presy. Mag. or Mag. of 1st class. Uncog. Summons. Bailable. Not comp. Ditto.

**168.** Whoever, being a public servant, and being legally bound, as such public servant, not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Public servant unlawfully engaging in trade.

**169.** Whoever, being a public servant, and being legally bound, as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name, or in the name of another, or jointly or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.

Public servant unlawfully buying or bidding for property.

WHERE a sub-inspector of police was charged with having purchased a pony which had been impounded, it was *held* that the Magistrate should have proceeded under s. 19, Act I. of 1871, taken with s. 169 of the Penal Code, and that the accused could not be convicted, under s. 406 of the Penal Code, of criminal breach of trust.—IN THE MATTER OF RAJKRISTO BISWAS, 16 W. R. 52; 8 B. L. R. Ap., 1. [Kemp, Offg. C.J., and Ainslie, J. Sep. 25, 1871.]

Any Mag. Cognizable. Warrant. Bailable. Not comp.

**170.** Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office, or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Personating a public servant.

THE prisoner having passed himself off as a police-officer, and cheated several villagers out of money, was held guilty of cheating and falsely personating a public servant.—QUEEN *v.* SADANUND DOSS *alias* SONA BISWAS, 2 W. R. 29. [Kemp, J. Jan. 30, 1865.]

WHERE more than one offence is proved in respect of which the accused has been charged and tried, a conviction for each such offence must follow, whether s. 71 of the Penal Code applies to the case or not; and subject to the provisions of s. 71, a separate sentence must be passed in respect of each such conviction. Under s. 35 of the Criminal Procedure Code, sentences of imprisonment cannot be passed so as to run concurrently. In a trial for offences under ss. 170 and 383 of the Penal Code, committed in the same transaction, it appeared that but for personating a public servant, the accused would not have been in a position to commit the act of extortion complained of. *Held* that the first and second paragraphs of s. 71 of the Penal Code did not apply to the case; that the third paragraph also did not apply, because the words "constitute an offence" refer to the definitions of offences contained in the Code irrespective of the evidence whereby the acts complained of are proved; and personating a public servant as defined in s. 170 was not a constituent element of extortion as defined in s. 383; that in the present case the former offence was completed before the latter had begun; and that separate sentences for each offence were, therefore, not illegal.—QUEEN-EMPRESS *v.* WAZIR JAN, I. L. R., 10 All. 58. [Mahmood, J. Sep. 16, 1887.]

**171.** Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

Any Mag. Cognizable. Summons. Bailable. Not comp.

**Wearing garb or carrying token used by public servant with fraudulent intent.**

## CHAPTER X.*

### OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

**172.*** Whoever absconds in order to avoid being served with a summons, notice, or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice, or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

Any Mag. Uncog. Summons. Bailable. Not comp. Sanction.

**Absconding to avoid service of summons or other proceeding.**

or, if the summons, notice, or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

*Certain cases of contempt which do not fall specifically under any of the sections of Chapter X.:—*

1. A BARRISTER, offended by the use of a strong expression on the part of a Judge while sitting in Court, sends an officer to the Judge's private residence upon a pacific errand to ask for an explanation. *Held* by nine Judges out of eleven, that the party sending the message and the party conveying it, are guilty of contempt of Court.—IN THE MATTER OF CHARLES PIFFARD, ESQ., B.A., AND EDMUND GEORGE FRANCIS, 1 Hydes' Rep. 79. [Peacock, C.J., and Wells, Norman, Levinge, Campbell, Seton-Karr, Raikes, Steer, Roberts, and Jackson, JJ. May, 1863.]

2. IT is "a contempt of the Court," and full of danger to the administration of justice, that a suitor, on any pretext whatever, should communicate with a Judge, either by letter, or in conversation, or in any manner whatsoever, otherwise than by public proceedings in open Court, respecting the merits of any case in which he is interested, and which is either pending in the Court of such Judge, or likely to come before him.—WILLIAM TAYLER *v.* RANEE ASMEDH KOONWAR, 4 W. R. (Civ.) 86. [Loch and Norman, JJ. Dec. 11, 1865.]

A WARRANT addressed to a police-officer to apprehend an offender, and to bring him before the Magistrate, is not a "summons, notice, or order" within the meaning of s. 172 of the Penal Code; and the offence of absconding by an offender, against whom a warrant has been so issued, is not punishable under that section. Such a case must be dealt with under the Criminal Procedure Code.—QUEEN *v.* WOMESH CHUNDER GHOSE, 5 W. R. 71; 1 Wym. 61. [Peacock, C.J., and Norman and Campbell, JJ. April 18, 1866.]

S. 172 of the Penal Code applies to a *witness* who absconds to evade service of warrant issued under ss. 188 to 190 of the Code of Criminal Procedure, while s. 183 of the latter Code applies to a *party* who absconds. —IN THE MATTER OF HOSSEIN MANJEE, 9 W. R. 70. [Loch and Glover, JJ. May 19, 1868.]

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* As to the application of ss. 176, 177, and 187 of this chapter to offences under special or local laws, see s. 40, *supra*.

As to authority for instituting prosecutions under ss. 172 to 188 (both inclusive), see the new Code of Criminal Procedure (Act V. of 1898), s. 195 (*1*) (*a*).

As to procedure in case of offences described in ss. 175, 178, 179, and 180, see the new Code of Criminal Procedure (Act V. of 1898), ss. 480, 481, 482, and the Presidency Small Cause Courts Act (XV. of 1882), Ch. XII.

AN accused person against whom a proclamation has been issued, must, until he has surrendered, be regarded as in contempt, and the Court will not entertain any application on his behalf.—QUEEN v. BISHESHUR PERSHAD, 2 N.-W. P. 441. [*Morgan*, C.J., *and* Ross, Turner, Spankie, and Turnbull, JJ Dec. 3, 1870.]

A WARRANT addressed to a nazir by a Civil Court for the arrest of a defendant in execution of a decree is not a notice, summons, or order within the meaning of s. 172 of the Penal Code.—QUEEN v. ZAHOOR ALI KHAN, 4 N.-W. P. 97. [Spankie, J. June 26, 1872.

IT is illegal to punish a person under s. 172 for absconding to prevent the execution of a warrant issued against him, as a warrant is neither a summons nor a notice, but is addressed to the officer required to execute it, not to the person whose attendance is required. Such a case must be dealt with under the Criminal Procedure Code.—QUEEN v. AMIR JAN, 7 N.-W. P. 302 Spankie J May 28, 1875.

A COLLECTOR, who, in order to draw up a report for the information of Government, holds a departmental inquiry into the conduct of a tahsildar accused of extortion in the discharge of his executive duties, is authorized, under the provision of Mad. Act III of 1869, to issue summonses for the attendance of persons whose evidence may appear to him necessary for the investigation In order to prove the commission of an offence under s 172 of the Penal Code, the prosecutor must show that a summons, notice, or order has been issued, and that the accused knew, or had reason to believe, that it had been issued To abscond to avoid the service of process which has not issued is no offence under s 172 of the Penal Code Absconding does not necessarily imply change of place, but may be effected by concealment. If a person, having concealed himself before process issues, continues to do so after it has issued, he absconds.—SRINIVASA AYYANGAR v. REG., I. L. R., 4 Mad. 393. [Turner, C.J., and Muttusami Ayyar, J. Dec. 2, 1881.]

EXCEPT as provided in ss. 477, 480, and 485 (of Act V. of 1898), no Judge of a Criminal Court, or Magistrate, other than a Judge of a High Court, the Recorder of Rangoon, and the Presidency Magistrates, shall try any person for any offence referred to in s. 195 (of Act V. of 1898), when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding. Nothing in s. 576 or s. 482 (of Act V. of 1898) shall prevent a Magistrate, empowered to commit to the Court of Session or High Court, from himself committing any case to such Court, or shall prevent a Presidency Magistrate from himself disposing of any case instead of sending it for inquiry to another Magistrate.—Crim. Pro. Code (Act V of 1898), s. 487.

S. 195 of the new Code of Criminal Procedure (Act V. of 1898) lays down: "No Court shall take cognizance of any offence punishable under ss 172 to 188 (both inclusive) of the Penal Code, except with the previous sanction, or on the complaint, of the public servant concerned, or of some public servant to whom he is subordinate. . . . . The sanction referred to in this section may be expressed in general terms, and need not name the accused person, but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed. When sanction is given in respect of any offence referred to in this section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts."

Presy. Mag. or Mag. of 1st or and class. Uncog. Summons. Bailable. Not comp. Sanction.

**173.*** Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice, or order proceeding from any public servant, legally competent, as such public servant, to issue such summons, notice, or order,

Preventing service of summons or other proceeding, or preventing publication thereof.

or intentionally prevents the lawful affixing to any place of any such summons notice, or order,

or intentionally removes any such summons, notice, or order from any place to which it is lawfully affixed,

or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made,

* As to authority for instituting prosecutions under ss. 172 to 188 (both inclusive), see the new Code of Criminal Procedure (Act V. of 1898), s. 195 (1) (a).

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order, or proclamation, is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

REFUSING to sign a summons by an accused person does not constitute the offence of intentionally preventing the service of a summons on himself under s. 173 of the Penal Code.—REG. v. KALVA BIN FAKIR, 5 Bom. H. C. R. 34. [Newton, Offg. C.J., and Tucker, J. April 15, 1868.]

A REFUSAL to give a receipt for a summons is not an offence under s. 173 of the Penal Code.—*In re* BHOOBUNESHUR DUTT, I. L. R., 3 Cal. 621; 2 C. L. R. 80. [Markby and Mitter, JJ. Dec. 14, 1877.]

A REFUSAL to receive a summons is not an offence under s. 173 of the Penal Code.—REG. v. PUNAMALIE, I. L. R., 5 Mad. 199. [Kernan and Kindersley, JJ. April 28, 1882.]

A MERE refusal to sign a receipt for a summons is not an offence under s. 173 or s. 180 of the Penal Code.—QUEEN-EMPRESS v. KRISHNA GOBINDA DAS, I. L. R., 20 Cal. 358. [Pigot and Rampini, JJ. Aug. 25, 1892.]

Non-attendance in obedience to an order from public servant.

**174.*** Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order, or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same,

Any Mag. Uncog. Summons. Bailable. Not comp. Sanction.

intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order, or proclamation, is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

*Illustrations.*

(*a*.) A, being legally bound to appear before the Supreme Court at Calcutta in obedience to a subpœna issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(*b*.) A, being legally bound to appear before a Zillah Judge as a witness, in obedience to summons issued by that Zillah Judge, intentionally omits to appear. A has committed the offence defined in this section.

THERE is nothing in s. 219, Code of Criminal Procedure (Act XXV. of 1861), which prevents an accused person who has forfeited his bail-bond by default of appearance from being proceeded against under s. 179 of the Penal Code, notwithstanding that his surety has paid the penalty mentioned in the recognizance. IN THE MATTER OF TAJVOMUDDU LAHOREE, 10 W. R. 4. [Phear and Hobhouse, JJ. June 2, 1861.]

S. 174 of the Penal Code does not apply to the case of a defendant escaping from custody under a warrant in execution of a decree of a Civil Court.—REG. v. SARDAR PATHU, 1 Bom. H. C. R. 38. [Newton and Tucker, JJ. Aug. 12, 1863.]

* As to authority for instituting prosecutions under ss. 172 to 188 (both inclusive), see the new Code of Criminal Procedure (Act V. of 1898), s. 195 (*1*) (*a*).

WHERE a person disobeyed a proclamation, it was held that he was punishable under s. 174.—QUEEN v. WOMESH CHUNDER GHOSE, 5 W. R. 71; 1 Wym. 61. [Peacock, C.J., and Norman and Campbell, JJ. April 18, 1866.]

THE proclamation issuable under s. 159, Act VIII. of 1859, cannot be legally affixed to the *mal* cutcherry of a defaulting witness. Before the provisions of that section can come into play, personal service of summons must be attempted. In the absence of process of legal service, the Magistrate's order of imprisonment for contempt, under s. 174 of the Penal Code and s. 168 of the Code of Criminal Procedure, was quashed.—QUEEN v. HURYNATH CHOWDHRY, 7 W. R. 58. [Kemp and Glover, JJ. April 27, 1867.]

MAGISTRATES may, under the Criminal Procedure Code, issue summons for service upon witnesses beyond the limits of their districts.—PRO., Aug. 18, 1866, 3 Mad. H. C. R. Ap. 5.

A MAGISTRATE can take cognizance of an offence under s. 174, Penal Code, committed against his own Court. An order of forfeiture under s. 148, Code of Criminal Procedure, if substantially legal, cannot be disturbed for an immaterial error of procedure.—BAIJOO BAUL v. GUNGUN MISSER, 8 W. R. 61. [Jackson and Hobhouse, JJ. Aug. 13, 1867.] Overruled by *Queen* v. *Chandra Sekhar Roy*, 5 B. L. R. 100; 13 W. R. 66, *infra*.

THE Chairman of Municipal Commissioners appointed under Act XXVI. of 1850, although a public servant, is not legally competent as such to issue an order for attendance before him. *Held* accordingly that disobedience of such an order was not an offence within s. 174 of the Penal Code.—REG. v. PURSHOTAM VALJI, 5 Bom. H. C. R. 33 [Newton, Offg. C.J., and Tucker, J. April 15, 1868.]

A CONVICTION under s. 174 of the Penal Code for "having intentionally omitted to attend the mahalkari's kachahri to give evidence in a revenue-case under ss. 26 and 29 of Reg. XVII. of 1827, though the summons issued was duly served upon the accused," was not illegal.—REG. v. NARAINAPPA COMTE, 5 Bom. H. C. R. 39. [Newton, Offg. C.J., and Tucker, J. May 20, 1868.]

A CONVICTION for non-attendance in obedience to an order from a public servant, under s. 174, Penal Code, cannot be bad, unless the person summoned was legally bound to attend, and refused or intentionally omitted to attend. A witness was summoned by a Judge of a Small Cause Court to attend on a certain day to give evidence in a certain case. Before that day, however, the case was adjourned, and the witness was not served with a fresh summons or notification of the adjournment. Not having attended when the case was heard, he was fined. *Held* that, not having been re-summoned, the witness was not bound to attend.—IN THE MATTER OF SREENATH GHOSE, 10 W. R. 33. [Jackson and Hobhouse, JJ. Sep. 8, 1868.]

BEFORE a fine can be inflicted under s. 174, Penal Code, for non-attendance, it must be proved that such non-attendance was in the nature of a wilful disobedience.—QUEEN v. UNGUN LALL, 1 N.-W. P. 303. [Pearson and Turner, JJ. July 2, 1869.]

IN India it is not illegal to serve a summons, notice, or order on a Sunday.—4 Mad. Jur. 347, No. 1453, 1869.

THE defendant was arrested by warrant, and was released on bail to appear before the Magistrate on a specified day. The defendant appeared on that day, but the Magistrate being unable to take up the case, a verbal order was given to the defendant to appear on the following day. This he omitted to do, and was convicted under s. 174 of the Penal Code. *Held* that the conviction was good.—PRO., Jan. 18, 1870, 5 Mad. H. C. R. Ap. 15.

HELD, overruling *Baijoo Baul* v. *Gungun Misser* 18 W. R. 61, that a Magistrate cannot take cognizance of an offence under s. 174, Penal Code, committed against his own Court, but is bound, under s. 471 of the Code of Criminal Procedure, to send the case for trial before another Magistrate. The only cases under the Criminal Procedure Code in which a Sessions Judge or Magistrate can try a case in which he is himself interested, pointed out.—QUEEN v. CHANDRA SEKHAR ROY, 13 W. R. 66; 5 B. L. R. 100. [Jackson and Glover, JJ. April 23, 1870.]

A MAGISTRATE cannot issue a warrant of arrest against a witness under s. 260 of the Code of Criminal Procedure unless he is first satisfied that the witness has disobeyed a summons which was served on him. In order to make a person summoned as a witness liable under s. 174 of the Penal Code, the fact must be that he intentionally omitted to attend at the place or time mentioned in the summons, or that he wilfully departed from the place where he had attended before the time at which it was lawful for him to depart.—QUEEN v. SUTHERLAND; QUEEN v. NARAIN SINGH, 14 W. R. 20 [Phear and Dwarka nath Mitter, JJ. July 20, 1870.]

THE accused was convicted upon a charge that he, being summoned as a defendant in

a case of trespass, left the Court without permission, and thereby disobeyed the summons. The Sub-Magistrate gave the accused a verbal order to appear when required, but the Magistrate did not adjourn the case to any particular day. *Held* that the conviction was bad —PRO., Dec. 22, 1870. 6 Mad. H. C. R. Ap. 10.

*Queen* v. *Chandra Sekhar Roy* (13 W. R. 66; 5 B. L. R. 100), ruling that a Court before which an offence is committed under ch. 10 of the Penal Code cannot try the case itself, followed, notwithstanding the argument of the Sessions Judge in this case that that ruling should apply only to certain cases under ch. 10.—CHUTOORBHOOJ BHARTHEE *v.* MR. MACNAGHTEN, 15 W. R. 2. [Bayley and Mitter, JJ. Jan. 18, 1871.]

A MAHALKARI invested with the powers of a Second-class Subordinate Magistrate cannot issue a summons under s. 8 of Act XI. of 1843, nor can a person be convicted under s. 174 of the Penal Code for having disobeyed such a summons so issued.—REG. *v.* VENKAJI BHASKAR, 8 Bom H. C. R. 19. [Lloyd and Kemball, JJ. April 13, 1871.]

ACCUSED was summoned as a witness in a case to be heard on 27th May The summons was not served personally on accused, but affixed to the door of his house. On the appointed date the case was not taken up, but was adjourned by public proclamation until June 5th. On this latter date accused failed to attend. For this he was convicted of an offence under s. 174 of the Penal Code. There was no evidence that the summons had been brought to the knowledge of the accused so as to require him to attend on the first occasion. *Held* that, on the ground of there being no evidence of the commission of an offence, the conviction must be quashed. The adjournment of a trial by public proclamation is irregular and objectionable.—PRO., Aug. 1 1871, 6 Mad. H C. R. Ap. 29.

A MAGISTRATE, while travelling in his district, tried a case partly at a place, and then fixed Sunday next at noon for further trial of the case, to be held in another village. On the Sunday the witnesses for the defence came to the village, but at 3 P. M. instead of noon. The Magistrate, after waiting an hour beyond the time fixed, moved to the next village, and subsequently sentenced the defaulting witnesses, under s. 174 of the Penal Code, to one month's simple imprisonment. The High Court on reference quashed the conviction.—QUEEN *v.* HARGOBIND DATTA SIŔKAR, 8 B. L. R. Ap. 12. [Jackson and Mookerjee, JJ. Aug. 14, 1871.]

A SUB-MAGISTRATE convicted certain persons, under s. 174 of the Penal Code, of disobedience to summonses issued by him as tahsildar. *Held* that the convictions under the first part of s. 174 were sustainable. Mad. Act III. of 1869 gives a tahsildar power to issue summonses.—PRO., Nov. 30, 1871, 6 Mad. H. C. R. Ap. 44.

A WARRANT issued under s. 76 of the Code of Criminal Procedure should be sealed, and should describe the person to be apprehended under it with reasonable particularity, so that there may be no difficulty in establishing his identity, and should be subscribed with the name and full official title of the Magistrate issuing it. Where a warrant was defective in all the above particulars, the prisoner apprehended under it was released by the High Court.—*In re* JAMES HASTINGS, 9 Bom. H. C. R. 154. [Sargent, J. Jan. 20, 1872.]

A CONVICTION under s. 174 of the Penal Code for disobeying a verbal order of a Village Magistrate is good.—PRO., Feb. 20, 1872, 7 Mad. H. C. R. Ap. 3.

BEFORE convicting a person under s. 174 of the Penal Code, it is necessary to prove that he had notice to appear at a certain time and place, and that he did not do so.—IN THE MATTER OF SHIB PERSHAD CHUCKERBUTTY, 17 W. R. 38. [Bayley and Markby, JJ. Mar. 9, 1872.]

ACCUSED was convicted, under s. 174 of the Penal Code, of disobedience to a summons addressed to him as defendant in a suit brought before the Collector under Reg. VI of 1831. The summons did not specify the place at which his attendance was required. *Held* that on this ground the conviction was illegal.—PRO., Dec. 20, 1872, 7 Mad. H. C. R. Ap 14.

COMPLAINANT a batta-peon, arrested defendant on a warrant, and asked him to follow him. Defendant promised to do so, went into his house on the pretext of fetching a turban, and absconded. *Held* that a conviction under s. 174 of the Penal Code was illegal.—PRO., Jan. 5, 1875. 7 Mad. H. C. R. Ap 43.

A COLLECTOR who, in order to draw up a report for the information of Government, holds a departmental inquiry into the conduct of a tahsildar accused of extortion in the discharge of his executive duties, is authorized, under the provision of Mad. Act III. of 1869, to issue summonses for the attendance of persons whose evidence may appear to him necessary for the investigation. In order to prove the commission of an offence under s. 172 of the Penal Code, the prosecutor must show that a summons, notice, or order has been issued, and that the accused knew, or had reason to believe, that it had

been issued. To abscond to avoid the service of process which has not issued is no offence under s. 172 of the Penal Code. Absconding does not necessarily imply change of place, but may be effected by concealment. If a person, having concealed himself before process issues, continues to do so after it had issued, he absconds.—SRINIVASA AYYANGAR *v.* REG., I. L. R., 4 Mad. 393. [Turner, C.J., and Muttusami Ayyar, J. Dec. 2, 1881.]

A SUMMONS should be clear and specific in its terms as to the title of the Court, the place at which, the day, and the time of the day, when the attendance of the person summoned is required, and it should go on to say that such person is not to leave the Court without leave, and, if the case in which he has been summoned is adjourned, without ascertaining the date to which it is adjourned. Where a summons did not mention the place at which, or the time of the day when, the attendance of the person summoned was required, *held* that such person could not lawfully be punished under s. 174 of the Penal Code for non-attendance in obedience to such summons.—EMPRESS *v.* RAM SARAN, I. L. R., 5 All. 7. [Straight, J. July 7, 1882.]

A SUMMONS issued by a tahsildar to a village-karnam to appear and give information required for the preparation of census, jamabandi, and dual accounts, is not within the purview of Mad. Act III. of 1869, and disobedience of such a summons is not an offence under s. 174 of the Penal Code.—QUEEN *v.* VANAM SUBRAMANYAM, 1 L. R., 5 Mad. 377. [Muttusami Ayyar and Tarrant, JJ. Aug. 5, 1882.] Overruled by *Queen-Empress v. Subbana*, I. L. R., 7 Mad. 197, *infra*.

THE provisions of s. 174 of the Penal Code are not in conflict with the special provisions of ss. 15 and 16 of Reg. IV. of 1816 (Mad.). In ordinary cases disobedience to the summons of a village-munsif should be dealt with under the Regulation. But if a charge is laid under the Penal Code, the Criminal Court must deal with it.—QUEEN *v.* RAMACHANDRAPPA, I. L. R., 6 Mad. 249 [Turner, C.J., and Muttusami Ayyar, J. Jan. 25 1883.]

UNDER Mad. Act III of 1869, Collectors and their subordinate officers may issue a summons for the purpose of any inquiry, however general, which they are empowered to make for the purpose of administration.—QUEEN-EMPRESS *v.* SUBBANA, I. L. R., 7 Mad. 197. [Turner, C.J., and Kernan, Kindersley, and Muttusami Ayyar, JJ. Sep. 28, 1883.] Overrules *Queen* v. *Vanam Subramanyam*, I. L. R., 5 Mad. 377, *supra*.

*S.* 160 of the Code of Criminal Procedure, which authorizes a police-officer making an investigation under ch. 5 of the Code to require the attendance before himself of any person (within certain limits) who appears to be acquainted with the circumstances of the case, does not empower such officer to require the attendance of an accused person to answer the complaint made against him.—QUEEN-EMPRESS *v.* SAMINADA, I. L. R., 7 Mad. 274. [Turner, C.J., and Kernan, Kindersley, and Muttusami Ayyar, JJ. Nov. 15, 1883.]

A MAN who, in obedience to a summons to appear and answer a criminal charge, attends a Magistrate's Court, but, finding the Magistrate not present at the time mentioned in the summons, departs without waiting for a reasonable time, is guilty of an offence under s. 174 of the Penal Code.—QUEEN-EMPRESS *v.* KISAN BAPU, I. L. R., 10 Bom. 93. [Nanabhai Haridas and Wedderburn, JJ. Aug. 18, 1885.]

ANY police-officer making an investigation under ch. xiv. of the Code of Criminal Procedure (Information to Police, and their Powers to Investigate) may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case: and such person shall attend as so required.—Crim. Pro. Code (Act V. of 1898), s. 160.

WHERE a summons to a witness, issued under Act III. of 1869 (Madras), was shown to a person and taken back. *Held* that the summons had not been served.—*In re* KUPPAN, I. L. R., 11 Mad. 137. [Muttusami Ayyar and Parkar, JJ. Sep. 27, 1887.]

A REVENUE-OFFICER sent a yadast to a Third-class Magistrate, charging a certain person with having disobeyed a summons issued by the revenue-officer. The Third-class Magistrate thereupon tried and convicted the accused under s. 174 of the Penal Code. The District Magistrate referred the case on the ground that the conviction was bad under s. 530 (*k*) of the Code of Criminal Procedure. *Held* that as the yadast amounted to a complaint within the meaning of s. 4, although the complainant was not examined on oath as required by s. 200, the conviction was not illegal.—QUEEN-EMPRESS *v.* MONU, I. L. R., 11 Mad. 443. [Muttusami Ayyar and Parker, JJ. July 18, 1888.]

THE accused, who were parties to a petition pending in a District Court, were summoned by a tahsildar to give evidence on an inquiry by him as to whether or not the petitioner was a pauper. They omitted to attend on the summons, and were charged, in respect of such non-attendance, under s. 174

of the Penal Code, and were convicted. *Held* that the conviction was bad, the tahsildar not being authorized to issue the summons under Act III. of 1869 (Madras).—QUEEN-EMPRESS *v.* VARATHAPPA CHETTI, I. L. R., 12 Mad. 297. [Collins, C.J., and Muttusami Ayyar, J. Mar. 7, 26, 1889.]

IT is not an offence under the Penal Code, s. 174, to disobey a summons issued by a British Magistrate directing the person summoned to appear before him at a place outside British territory.—QUEEN-EMPRESS *v.* PARANGA, I. L. R., 16 Mad. 463. [Muttusami Ayyar and Shephard, JJ. Mar. 29, 1893.]

THE offence contemplated by s. 174, Penal Code, is an omission to appear at a particular time and at a particular place before a specified public functionary. Where, therefore, the public servant was absent on the date fixed in a summons, *held* that the person summoned could not be convicted under this section, though he failed to attend, having the intention to disobey the summons.—QUEEN-EMPRESS *v.* KRISHTAPPA, I. L. R., 20 Mad 31. [Subramania Ayyar and Boddam, JJ. Oct. 16, 1896.]

IN a summons case, on the day fixed for trial, an appearance was made on behalf of an accused person by his mukhtar who asked the Magistrate under s. 205 of the Code of Criminal Procedure to dispense with the personal attendance of the accused. The Magistrate, however, regarding the non-attendance of the accused as a contempt of Court, called upon him to show cause why he should not be prosecuted under s. 174 of the Penal Code for non-attendance on service of summons. *Held*, that the accused did make an appearance, though not a personal appearance, on service of summons; but that he did not personally attend should not, under the circumstances, have been regarded as an offence under s. 174 of the Penal Code.—DURGA DAS RAKHIT *v.* UMESH CHUNDRA SEN, I. L. R., 27 Cal. 985. [Prinsep and Handley, JJ. June 15, 1900.]

**175.*** Whoever, being legally bound to produce or deliver up any document to any public servant as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

**Omission to produce document to public servant by person legally bound to produce it.**

or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

**Court in which offence committed subject to provisions of ch. 35; or (if not committed in Court), Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp. Sanction.**

*Illustration.*

A, being legally bound to produce a document before a Zillah Court, intentionally omits to produce the same. A has committed the offence defined in this section.

WHEN any Civil, Criminal, or Revenue Court is of opinion that there is ground for inquiring into any offence referred to in s. 195, and committed before it or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary inquiry that may be necessary, may send the case for inquiry or trial to the nearest Magistrate of the first-class, and may send the accused in custody, or take sufficient security for his appearance before such Magistrate; and may bind over any person to appear and give evidence on such inquiry or trial. Such Magistrate shall thereupon proceed according to law, *and if upon complaint made and recorded under s. 200*, and may, if he is authorized under s. 192 to transfer cases, transfer the inquiry or trial to some other competent Magistrate.—Crim. Pro. Code (Act V. of 1898), s. 476.

WHEN any such offence as is described in s. 175, 178, 179, 180, or 228 of the Indian Penal Code, is committed in the view or presence of any Civil, Criminal, or Revenue Court, the Court may cause the offender, whether he is a European British subject or not, to be detained in custody; and at any

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* As to procedure in case of offences described in ss. 175, 178, 179, and 180, see the new Code of Criminal Procedure (Act V. of 1898), ss. 480, 481, 482, and the Presidency Small Cause Courts (Act XV. of 1882), Ch. XII.

As to authority for instituting prosecutions under ss. 172 to 188 (both inclusive), see the new Code of Criminal Procedure (Act V. of 1898), s. 195 (*1*) (*a*).

time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence, and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid. Nothing in s. 443 or 444 shall be deemed to apply to proceedings under this section.—Crim. Pro. Code (Act V. of 1898), s. 480.

A COURT other than the High Court, etc., can try persons for offences committed before itself only in cases to which s. 477, 480, or 485, is applicable; and none of these sections is applicable when the accused is charged under s. 175 of the Penal Code —QUEEN-EMPRESS *v.* SESHAYYA, I. L. R., 13 Mad. 24. [Collins, C J., and Wilkinson, J. Mar. 28, 1889.]

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp. Sanction.

**176*** Whoever, being legally bound to give any notice, or to furnish information on any subject to any public servant as such, intentionally omits to give such notice, or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

Omission to give notice or information to public servant by person legally bound to give it.

or, if the notice or information required to be given respects the commission of an offence,† or is required for the purpose of preventing the commission of an offence,† or in order to the apprehension of an offender,† with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

IN this section the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—S. 40, Penal Code.

EVERY person, whether within or without the presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under the following sections of the Indian Penal Code (namely), 121, 121A, 122, 123, 124, 124A, 125, 126, 130, "143, 144, 145, 147, 148," 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459, and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police-officer of such commission or intention. *For the purposes of this section the term "offence" includes any act committed at any place out of British India which would constitute an offence if committed in British India.*—Crim. Pro. Code (Act V. of 1898), s. 44.

EVERY village-headman, village-accountant, village-watchman, village-police-officer, owner or occupier of land, and the agent of any such owner or occupier, and every officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate, or to the officer in charge of the nearest police-station, whichever is the nearer, any information which he may obtain respecting—

(*a*) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, accountant, watchman, or police-officer, or in which he owns or occupies land, or is agent, or collects revenue or rent;

(*b*) the resort to any place within, or the passage through, such village, of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict, or proclaimed offender;

(*c*) the commission of, or intention to commit, in or near such village any non-bailable offence, or any offence punishable under

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* In s. 176, the word offence has the same meaning when the thing punishable under the special or local law as defined in ss. 41 and 42 is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—See s. 40, *supra*.

As to authority for instituting prosecutions under s. 176, see the new Code of Criminal Procedure (Act V. of 1898), s. 195 (*1*) (*a*).

† As to meaning of "offence" and "offender," see s. 177, explanation, *infra*.

s. 143, 144, 145, 147, or 148 of the Indian Penal Code;

(*d*) the occurrence, in or near such village, of any sudden or unnatural death, or of any death under suspicious circumstances;

(*e*) the commission of, or intention to commit, at any place out of British India near such village, any act which, if committed in British India, would be an offence punishable under any of the following sections of the Indian Penal Code, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460;

(*f*) any matter likely to affect the maintenance of order or the prevention of crime, or the safety of person or property, respecting which the District Magistrate, by general or special order made with the previous sanction of the Local Government, has directed him to communicate information.—Crim. Pro. Code (Act V. of 1898), s. 45.

A PRISONER cannot be punished under s. 118, as there was no omission of an act which he was bound to perform which facilitated the commission of an offence: but he should be convicted under s 176, Penal Code, as he was bound to report under s. 138, Act XXV. of 1861, after he was informed of the robbery.—GOVT. *v.* KESREE, 1 Agra H. C. R. 37. [Turner, J., and Spankie, Offg. J. Dec 21, 1866.]

THE refusal of a person to join in a dacoity does not imply a knowledge on his part of the commission of that offence, or render him liable to punishment under s. 176 of the Penal Code, for intentional omission to give notice or information for the purpose of preventing the commission of an offence.—QUEEN *v.* LAHAI MUNDAL, 7 W. R. 29. [Kemp and Markby, JJ. Feb 5, 1867.]

THE karnam of a village is not bound to report the commission of offences other than those specified in s. 138 of the Criminal Procedure Code. The village-munsif is bound to report the commission of all offences committed in his village to such person and in such manner as may be most likely to be effectual for the apprehension of the offenders. —PRO., Mar. 12, 1867: 3 Mad. H. C. R. Ap. 30.

A CHARGE should distinctly set forth the particular offence in respect of which the accused either omitted to give information, or gave information which he knew to be false, and it should appear precisely what his duty was in the matter.—QUEEN *v.* MOOSUBROO, 8 W. R. 37. [Jackson and Hobson, JJ. July 8, 1867.]

S. 176 of the Penal Code applies to persons upon whom an obligation is imposed by law to furnish certain information to public servants, and the penalty which the law provides is intended to apply to parties who commit an intentional breach of such obligation.—IN THE MATTER OF PHOOL CHAND BROJOBASSER, 16 W. R. 35. [Kemp and Glover, JJ. July 29, 1871.]

INTENTIONAL omission is the gist of the offence of a zemindar omitting to give information regarding an offence.—IN THE MATTER OF LUCHMUN PERSHAD GORGO, 18 W. R. 22. [Kemp and Glover, JJ. June 24, 1872.]

THE duty imposed by Act X. of 1872, s 90, upon village-headman, &c., of giving information as to the occurrence of any sudden or unnatural death, is intended to apply only when such occurrence takes place at or near the village of which he is headman, or in which he owns or occupies land, &c. Residence in a dwelling-house belonging to another is not occupation of land within the meaning of the section. The liability of the resident agent of an owner, under the section, arises when the owner is not resident, and has no personal knowledge of the fact required to be reported: where the owner has such knowledge, the liability attaches to him.—IN THE MATTER OF MUDHOOSOODUN CHUCKERBUTTY, 23 W. R. 60. [Jackson and McDonell JJ. April 8, 1875.]

THE provisions of s. 90 of the Criminal Procedure Code should not be put in force against one who has omitted to give information to the police of an offence having been committed in cases where the police have actually obtained such information from other sources.—IN THE MATTER OF SASHI BHUSAN CHUCKRABUTTY, EMPRESS *v.* SASHI BHUSAN CHUCKRABUTTY, I. L. R. 4 Cal 623. [Ainslie and Broughton, JJ. Dec. 17, 1878.] Relied on in *Queen-Empress v. Gopal Singh*, I. L. R., 20 Cal. 316, *infra*.

K WAS convicted under s. 176 of the Penal Code of having intentionally omitted to inform the police of the presence of V., a proclaimed offender, at a certain village. It was presumed by the Court that V was a proclaimed offender, because it was proved that the property of V had been attached under the provisions of s. 88 of the Code of Criminal Procedure, 1882. *Held* that the prosecutor was bound to prove the fact of proclamation. A person legally bound to give information to the police of the presence of a proclaimed offender at a certain place ought not to be prosecuted for omitting to give such information where the police are already aware of the fact.—*In re* PANDYA, I. L. R., 7 Mad 436. [Brandt, J. April 2, 1884.]

HELD (*per* Prinsep and Macpherson, JJ.).—It is not necessary, in order to support a con-

viction under s. 176 of the Penal Code against a person falling within the provisions of s. 45 of the Criminal Procedure Code for not giving information of an occurrence falling under cl. (*d*) of that section, to show that the death actually occurred on his land, when the circumstances disclosed show that a body has been found under circumstances denoting that the death was sudden, unnatural, or suspicious, the finding of the body being a fact from which a Court might reasonably infer, in the absence of evidence to the contrary, that the death took place there. *Held* (*per* Mitter, J.).—It is necessary, to secure a conviction in the latter case, to prove that the death took place or occurred in the village or on the land of the accused, and the finding of a body there does not of itself afford that proof.—MATUKI MISSRR *v.* QUEEN-EMPRESS, I. L. R., 11 Cal. 619. [Mitter, Macpherson, and Prinsep, JJ. May 13, 1885.]

UNDER s. 45 of the Code of Criminal Procedure, every owner or occupier of land is bound to report the occurrence therein of any sudden death. The head of a Nayar family was convicted and fined, under s. 176 of the Penal Code, for not reporting a sudden death in the family-house. *Held* (following former decisions of the Court) that the conviction was illegal, because s. 45 of the Code of Criminal Procedure does not apply to the owner of a house.—QUEEN-EMPRESS *v.* ACHUTHA, I. L. R., 12 Mad. 92. [Collins, C.J., and Muttusami Ayyar, J. Oct. 22, 1888.]

WHERE one of several persons bound to give information to the police under s. 45 of the Criminal Procedure Code gave such information as to the commission of a murder, in consequence of which a police-officer arrived in the village shortly after the occurrence, *held* that the fact that other persons who might possibly also be bound to give that information had omitted to do so was no ground for their prosecution and conviction of an offence under s. 176 of the Penal Code. *In the Matter of the Petition of Sashi Bhusan Chuckrabutty* (I. L. R., 4 Cal. 623) relied on.—QUEEN-EMPRESS *v.* GOPAL SINGH, I. L. R., 20 Cal. 316. [Pigot and Rampini, JJ. Aug. 24, 1892.]

Presv. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp. Sanction.

**177.*** Whoever, being legally bound to furnish information on any subject to any public servant as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;

Furnishing false information.

or, if the information which he is legally bound to give respects the commission of an offence,† or is required for the purpose of preventing the commission of an offence,† or in order to the apprehension of an offender,† with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

*Illustrations.*

(*a*.) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(*b*.) A, a village-watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound, under cl. 5, s. 7, Reg. III., 1821,‡ of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest police-station, wilfully misinforms the police-officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the latter part of this section.

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* In s. 177, the word offence has the same meaning when the thing punishable under the special or local law as defined in ss. 41 and 42 is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—See s. 40, *supra*.

As to authority for instituting prosecutions under s 177, see the new Code of Criminal Procedure (Act V. of 1898), s. 195 (*1*) (*a*)

† As to meaning of "offence" and "offender," see s. 177, explanation, *infra*.

‡ Ben. Reg. III. of 1821 has been repealed by Act XVII. of 1862. See now s. 45 of the new Code of Criminal Procedure (Act V. of 1898).

*Explanation.**—In section 176 and in this section the word "offence" includes any act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460; and the word "offender" includes any person who is alleged to have been guilty of any such act.

IN this section the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—S. 40, Penal Code.

To sustain a conviction under s. 177, it is not necessary to prove a fraudulent intention. It is quite sufficient if it is shown (1) that the accused was legally bound to furnish information, and (2) that he furnished as true what he either knew or believed to be false.—Weir, pp. 48-50.

VILLAGE-OFFICERS in Madras are not legally bound to furnish information on every matter connected with their duties.—Weir, p. 49.

ONE Yesu gave accused four annas to purchase a stamp for him (Yesu). The accused, on being asked his name by the stamp-collector, said, "Yesu," instead of giving his own name. *Held* that this amounted to the offence of giving false information under s. 177, and not to the offence of cheating by personation.—REG. *v.* RAGHOJI BIN KANOJI, 3 Bom. H. C. R. 42. [Couch, C.J., and Newton, J. Mar. 6, 1867.]

S. 177 of the Penal Code does not apply to the case of *any person* who is examined by a police-officer making a false statement, but to cases where, by law, landholders or village-watchmen are bound to give information, and to other analogous cases of the same description.—QUEEN *v.* LUCKHEE SINGH, 12 W. R. 23 [Jackson and Mitter, JJ. July 5, 1869.]

AN omission to give information that a crime has been committed does not, under s. 107 of the Penal Code, amount to abetment, unless such omission involves a breach of a legal obligation. A private individual is not bound by any law to give information of any offence which he has seen committed.—QUEEN *v.* KHADIM SHEIKH, 4 B. L. R. A. Cr. 7. [Loch and Glover, JJ. Nov. 23, 1869.] But see s. 44 of the Criminal Procedure Code (Act V. of 1898).

CERTAIN vaccinators were charged with furnishing false returns to their official superior. The Magistrate found as a fact that the returns furnished were false, but acquitted the defendants on the ground that they were not "legally bound" to furnish information within the meaning of s. 177 of the Penal Code. *Held* that s. 177 embraces every case in which a subordinate may seek to impose false information upon his superior. The defendants in the present case were public servants, and part of the duties which they undertook was to make true returns to their official superior. To make false returns was therefore an offence.—PRO., Dec. 21, 1871, 6 Mad. H. C. R. Ap. 48.

UNDER Act V. of 1861, a police-officer is bound to communicate information to his superior officer regarding the commission of a riot affecting the public peace, and to make an entry thereof in the diary which he is required by s. 44 of that Act to keep, and the omission to give such information brings him within the purview of s. 177 of the Penal Code.—IN THE MATTER OF SYED FUTTEH MAHOMED, 21 W. R. 30. [Kemp and Glover, JJ. Jan. 17, 1874.]

TO make a false entry in a diary kept by a Government servant, and sent to his official superior in pursuance of a departmental order, is an offence within the meaning of s. 177 of the Penal Code.—VIRASAMI MUDALI *v.* REG., I. L. R., 4 Mad. 144. [Kindersley and Muttusami Ayyar, JJ. Sept. 9, 1881.]

A PERSON attempted to obtain his recruitment in the police of a district by giving certain information which he knew to be false to the District Superintendent of Police. *Held* that such person had not thereby committed an offence punishable under s. 177 or s. 188 of the Penal Code, or the offence of attempting to "cheat," within the meaning of s. 415 of that Code.—EMPRESS *v.* DWARKA PRASAD, I. L. R., 6 All. 97. [Tyrrell, J. Sep. 25, 1883.]

THE information which, under the second branch of s. 177 of the Penal Code, a person is legally bound to give "for the purpose of preventing the commission of the offence," relates not to the commission of offences generally, but to the commission of some particular offence. P, a constable, was em-

* This explanation has been added by the Indian Criminal Laws Amendment Act (III. of 1894), s. 5.

ployed to make his rounds by night, and call at the houses of the notorious bad characters on his beat who were under police-supervision, and to ascertain whether they were indoors or not. On one occasion, having made his rounds, he falsely stated to his superior officer, as to some of these people, that they had been inside their houses, when, as a matter of fact, they had not. Upon these facts the Deputy Magistrate was of opinion that "the information which the accused was required to give, and which he falsely furnished, was information required for the purpose of preventing the commission of an offence, and therefore the offence made out fell under the second part of s. 177 of the Penal Code." He accordingly sentenced the accused to be rigorously imprisoned for six months. On appeal the Sessions Judge declined to interfere. An application was, therefore, made to the High Court on behalf of the accused and a rule obtained. The judgment of the Court (Wilson and Tottenham, JJ.) was as follows: Wilson, J.—The accused in this case was charged and convicted under s. 177 of the Penal Code. This section contains two branches. The first branch of it runs thus: "Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both." This deals with the simple case of a person who, being bound to furnish true information to a public servant, furnishes false information to him, and, under this part of the section, the maximum punishment is six months' simple imprisonment with or without fine. The second branch of the section is expressed thus: "Or if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both." The facts found against the accused were these. He was a constable, and was employed on what is described as round-duties—that is to say, it was his duty to make his rounds by night, and to call at the houses of the notorious bad characters on his beat who were under police-supervision, and to ascertain whether they were indoors or not. And on one occasion, having made his rounds, he falsely stated, as to some of these people, that they had been inside their houses, when, as a matter of fact, they had not. Now, that was information which he was bound to furnish to a public servant, that is to say, to his superiors, and it is found that he wilfully made a false statement; therefore his offence comes under the first part of the section. But he has been convicted under the second part of it on the ground that the information was required for the purpose of preventing the commission of an offence. I think that must mean, not for the purpose of preventing the commission of offences generally, or rendering the commission of them more difficult, but for the purpose of preventing the commission of some particular offence. That being so, the case does not come within the second part of that section. It follows, therefore, that the sentence which was passed was one which ought not to have been passed. The prisoner was sentenced to six months' rigorous imprisonment, whereas the maximum punishment to which he could have been sentenced was six months' simple imprisonment. It appears that he has already undergone three months' rigorous imprisonment, which he ought not to have been subjected to, and therefore the justice of the case requires that the three months' rigorous imprisonment which he has undergone should be taken as equivalent to the term of simple imprisonment, to which alone he could have been legally sentenced. He will, therefore, now be released from imprisonment, the sentence of six months' rigorous imprisonment which was passed upon him, being reduced to one of simple imprisonment from the date of the conviction to the present date. — IN THE MATTER OF THE PETITION OF PANATULLA. PANATULLA *v.* QUEEN-EMPRESS, I. L. R., 15 Cal. 386. [Wilson and Tottenham, JJ. Dec. 21, 1887.]

A MAGISTRATE issued processes for the attendance of the accused on the complaint of the Land Acquisition Deputy Collector for having given false information within the terms of s. 177 of the Penal Code and s. 10 of the Land Acquisition Act in certain written statements that they had made to the Collector. The complaint was that the written statements were false. The documents, however, contained more than one statement of fact. Neither in the complaint made by the Deputy Collector nor in his examination by the Magistrate, was any reference made to any particular statement made by either of the accused as being a false statement, nor had the Deputy Collector put in the written statements, upon which he desired to proceed either with his written complaint or at the time of his examination by the Magistrate. *Held* that the complaint was bad and the case should not be allowed to proceed in its present form. The Magistrate was bound to require from the complainant the written

statements on which the proceedings were founded, and also to ascertain from him the particular statement or statements on which the accusation was made.—DURGA DAS RAKHIT v. UMESH CHANDRA SEN, I. L. R., 27 Cal. 985. [Prinsep and Handley, JJ. June 15, 1900.]

**178.*** Whoever refuses to bind himself by an oath "or affirmation"† to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.‡

Refusing oath or affirmation when duly required by public servant to make it.

Court in which offence committed, subject to provisions of ch. 35; or (if not committed in Court). Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp. Sanction.

WHEN any such offence as is described in s. 175, 178, 179, 180, or 228 of the Indian Penal Code is committed in the view or presence of any Civil, Criminal, or Revenue Court, the Court may cause the offender, whether he is a European British subject or not, to be detained in custody; and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence, and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid. Nothing in s. 443 or 444 shall be deemed to apply to proceedings under this section.—Crim. Pro. Code (Act V. of 1898), s. 480.

UNDER s. 8 of the Oaths Act (X. of 1873), if any party to, or witness in, any judicial proceeding offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything contained in the Oaths Act, tender such oath or affirmation to him. Under s. 12 of the Oaths Act (X. of 1873), if the party or witness refuses to make the oath or solemn affirmation referred to in s. 8 of the said Act, he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

*Held* that a police-officer at a police-station, who, being as such officer bound to enter all reports brought to him of cognizable or non-cognizable offences in the station-diary, refused to enter a report made to him concerning the commission of an offence, and entered instead in the diary a totally different and false report as that which was made to him, had thereby committed the offence punishable under s. 177 of the Penal Code. — QUEEN-EMPRESS v. MUHAMMAD ISMAIL KHAN, I. L. R., 20 All. 151. [Edge, C.J., and Burkitt, J. Nov. 25, 1897.]

**179.*** Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant, in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.‡

Refusing to answer public servant authorized to question.

Ditto.

WHEN any such offence as is described in s. 175, 178, 179, 180, or 228 of the Indian Penal Code is committed in the view or presence of any Civil, Criminal, or Revenue Court, the Court may cause the offender, whether he is a European British subject or not, to be detained in custody; and at any time before the rising of the Court on the

* As to authority for instituting prosecutions under ss. 178 and 179, see the new Code of Criminal Procedure (Act V. of 1898), s. 195 (*1*) (*a*).

† In s. 178, the words quoted have been inserted by the Indian Oaths Act (X. of 1873), s. 15.

‡ As to procedure in case of offences described in ss. 178 and 179, see the new Code of Criminal Procedure (Act V. of 1898), ss. 480, 481, 482, and the Presidency Small Cause Courts Act (XV. of 1882), Ch. XII.

same day may, if it thinks fit, take cognizance of the offence, and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid. Nothing in s. 443 or 444 shall be deemed to apply to proceedings under this section.—Crim. Pro. Code (Act V. of 1898), s. 480.

UNDER s. 165 of the Evidence Act (I. of 1872), a Judge has the power of asking irrelevant questions to a witness, if he does so in order to obtain proof of relevant facts; but if he asks questions with a view to criminal proceedings being taken against the witness, the witness is not bound to answer them, and cannot be punished for not answering them under s. 179 of the Penal Code.—QUEEN-EMPRESS *v.* HARI LAKSHMAN, I. L. R., 10 Bom. 185. [Nanabhai Haridas and Wedderburn, JJ. Oct. 14, 1885].

A COMPLAINT was filed by Ganesh Narayan Sathe, in the Court of the District Magistrate of Poona, against Balkrishna Govind Sindekar and five other mamlatdars, charging them with purchasing judicial offices through the instrumentality of one Hanmantrao Jaghirdar, who was alleged to have had influence with Mr. A. T. Crawford, Revenue Commissioner, C. D. It was held that, as a general rule, any person having knowledge of the commission of an offence may set the law in motion by a complaint, even though he is not personally interested or affected by the offence. The exceptions to this rule, of which ss. 195 and 198 of the Criminal Procedure Code are examples, are exceptions created by statute. There is nothing in the Code showing an intention to confine prosecutions to the persons directly injured. Where the offence charged is a "warrant" and not a "summons" case, a Magistrate ought to proceed with the inquiry or trial in spite of the withdrawal of the complainant, if he finds the elements of an offence on the facts set forth in the complaint. S. 248 of the Code of Criminal Procedure applies only to a "summons" case. *Semble*.—A complainant is not a witness punishable for refusal to answer under s. 485 of the Code of Criminal Procedure, or under s. 179 of the Penal Code.—*In re* GANESH NARAYAN SATHE, I. L. R., 13 Bom. 600. [Scott and Jardine, JJ. June 19, 1889.]

Court in which offence committed, subject to provisions of ch. 35; or (if not committed in Court). Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp. Sanction.

**180.*** Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.†

Refusing to sign statement.

WHEN any such offence as is described in s. 175, 178, 179, 180, or 228, Penal Code, is committed in the view or presence of any Civil, Criminal, or Revenue Court, the Court may cause the offender, whether he is a European British subject or not, to be detained in custody: and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence, and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.—Crim. Pro. Code (Act V. of 1898), s. 480.

IF the Court in any case considers that a person accused of any of the offences referred to in s. 480 of Act V. of 1898, and committed in its view or presence, should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is, for any other reason, of opinion that the case should not be disposed of under s. 480 of Act V. of 1898, such Court, after recording the facts constituting the offence, and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, shall forward such person under custody to such Magistrate. The Magistrate to whom any case is for-

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* As to authority for instituting prosecutions under s. 180, see the new Code of Criminal Procedure (Act V. of 1898), s. 195 (*1*) (*a*).

† As to procedure in case of offences described in s. 180, see the new Code of Criminal Procedure (Act V. of 1898), ss. 480, 481, 482, and the Presidency Small Cause Courts Act (XV. of 1882), Ch. XII.

warded under this section shall proceed to hear the complaint against the accused person in the manner hereinbefore provided.—Crim. Pro. Code (Act V. of 1898), s. 482.

WHERE, in the course of a revenue-inquiry, the accused made a deposition, but refused to sign it, it was held that such refusal did not constitute an offence punishable under s. 180.—Mad. H. C. Rulings, Jan. 18, 1870

THE defendant was convicted of contempt of Court under s. 163 of the Code of Criminal Procedure for having refused to sign a deposition given by him as a witness in the course of a revenue inquiry. The High Court set aside the conviction.—PRO., Jan. 9, 1871, 6 Mad. H. C. R. Ap. 14.

AN accused person who refuses to sign a statement made at his trial in answer to questions put by the Court commits no offence punishable under s. 180 of the Penal Code.—IMPERATRIX v. SIRSAPA, I. L. R., 4 Bom. 15. [Westropp, C.J. Aug. 5, 1877.]

A MERE refusal to sign a receipt for a summons is not an offence under s. 173 or s. 180 of the Penal Code.—QUEEN-EMPRESS v. KRISHNA GOBINDA DAS, I. L. R., 20 Cal. 358. [Pigot and Rampini, JJ. Aug. 25, 1892.]

**181.*** Whoever, being legally bound by an oath "or affirmation "† to state the truth on any subject to any public servant or other person authorized by law to administer such oath "or affirmation,"† makes to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

**False statement on oath or affirmation to public servant or person authorized to administer an oath or affirmation.**

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp. Sanction.

S. 181 applies to cases in which the proceedings are not of a judicial character, such as proceedings before a Commissioner of Income-tax. A person is not legally bound to state the truth where the officer who administers the oath is trying a case wholly beyond his jurisdiction. — *In re* ANDY CHETTY, 2 Mad. H. C. R. 438 [Frere and Innes, JJ. Aug. 12, 1865.]

S. 181 of the Penal Code appears to refer to matters which do not come under the definition of judicial proceedings; and, although the wording of the section, is apparently large enough to admit false statements of every description, its action is restricted as regards those made under certain circumstances by the succeeding section 193. Were it not so, the Magistrate of a District acting under s. 181 might try all cases of perjury himself instead of committing them, as he is, no doubt, bound to do, to the Sessions.—QUEEN v. BULORAM, 7 W. R. (104) 68. [Kemp and Glover, JJ. May 20, 1867.]

THE making of a false return of service of summons is an offence punishable, not under s. 181, but under s. 193, of the Penal Code, and is cognizable by the Court of Session alone.—QUEEN v. SHAMA CHURN ROY, 8 W. R. 27. [Jackson and Hobhouse, JJ. June 25, 1867.] But see 4 Mad. H. C. R. Ap. 18. *infra*.

A CONVICTION under s. 181, Penal Code, is good, though the offence falls within s. 193. But a sentence under s. 181, which awards no term of imprisonment, is illegal. —PRO., Nov. 14, 1868, 4 Mad. H. C. R. Ap. 18. But see *Queen v. Shama Churn Roy*, 8 W. R. 27, *supra*.

WHERE a false statement is made in a stage of a judicial proceeding before a Magistrate, he ought not to convict under s. 181, but commit to the Sessions under s. 193. A conviction under s. 181 for making a false statement in a stage of a judicial proceeding was held to be illegal.—QUEEN v. NUSSEROODDEEN SHAZWAL, 11 W. R. 24. [Norman and Jackson, JJ. Mar. 25, 1869.]

WHEN an offence under s. 193 of the Penal Code is established, a conviction under s. 181 is illegal. When the accused made, on solemn affirmation, a statement before an Income-tax Commissioner, which statement the accused knew, or had reason to believe, to be incorrect, it was held that such statement amounted to the offence of giving false evidence in a judicial proceeding under s. 193 of the Penal Code, and was, therefore, not cognizable by a Full-power Magistrate,

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*** As to authority for instituting prosecutions under s. 181, see the new Code of Criminal Procedure (Act V. of 1898), s. 195 (1) (a).**

**† In s. 181, the words quoted have been inserted by the Indian Oaths Act (X. of 1873), s. 15.**

as it could not be treated as constituting an offence triable under s. 181 of the Penal Code (making a false statement to a public servant).—REG. *v.* DAYALJI ENDARJI, 8 Bom. H. C. R. 21. [Lloyd and Kemball, JJ. April 25, 1871.]

S. 51, ch. 6 of Act I. of 1879, enacts that, "subject to such rules as may be made by the Governor-General in Council as to the evidence which the Collector may require, allowance shall be made by the Collector for impressed stamps spoiled in the cases hereinafter mentioned," &c. According to a rule made with reference to that section, "the Collector may require every person claiming a refund under ch. 6 of the said Act, or his duly authorized agent, to make an oral deposition on oath," &c. *Held*, therefore, that the Collector himself is the officer, and no other, to whom power is given by law to make inquiries into applications for allowances for spoiled stamps, to take evidence on oath in reference thereto, and to grant or refuse such applications, and he cannot delegate his authority in the matter. *Held*, therefore, where a person had applied for a refund under ch. 6 of Act I. of 1879, and the Collector made over the application for inquiry to a Deputy Collector, that the Deputy Collector was not entitled to put the witnesses produced by the applicant on their oaths, and consequently, in reference to the statements of such witnesses, no charge under s. 181 or s. 193 of the Penal Code was sustainable.—EMPRESS *v.* NIAZ ALI, I. L. R., 5 All. 17. [Stuart, C.J., and Straight, J. July 24, 1882.]

WHERE three persons, of whom one was a pleader, were tried together and convicted under s. 181 of the Penal Code of having made false statements on solemn affirmation about the same matter in the course of an inquiry into the conduct of the pleader under the provisions of the Legal Practitioners Act, *held* that the conviction of the pleader was bad, as his statement was improperly taken from him on solemn affirmation. *Held* also that the trial of the three prisoners together was a grave error of procedure vitiating the trial. *Held* further that an inquiry under the Legal Practitioners Act being a judicial proceeding, false statements on solemn affirmation made by the witnesses therein should be charged and tried separately under s. 193 of the Penal Code.—SUBBA *v.* QUEEN, I. L. R., 6 Mad. 252. [Innes and Kernan, JJ. Feb. 25, 1883.]

IN a petition of appeal from a conviction, the appellant falsely stated that the convicting Magistrate declined to summon his witnesses. The Magistrate to whom the appeal was preferred called upon the appellant to verify the allegations in the petition of appeal on solemn affirmation, and he did so. *Held* that the appellant had not committed an offence under s. 181 or 182 of the Penal Code.—QUEEN-EMPRESS *v.* SUBBAYYA, I. L. R., 12 Mad 451. [Collins, C.J., and Parker, J. July 11, 17, 1889.]

*Held* that a person seeking by an application in revision to get rid of a conviction standing against him is incapable of tendering his own affidavit in support of such application, and consequently that, if he did not tender such an affidavit, he could not be prosecuted for false statements which might be contained therein. *Queen-Empress v. Subbayya* (I. L. R., 12 Mad. 451) referred to.—*In re* BARKAT, I. L. R., 19 All. 200. [Blair, J. Jan. 6, 1897.]

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp. Sanction.

False information with intent to cause public servant to use his lawful power to the injury of another person.

**182.*** Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

(*a*) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(*b*) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

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* S. 182 has been substituted for the original by the Indian Criminal Laws Amendment Act (III. of 1895), s. 1.

As to authority for instituting prosecutions under s. 182, see the new Code of Criminal Procedure (Act V. of 1898), s. 195 (*1*) (*a*).

*Illustrations.*

**(a.) A informs a Magistrate that Z, a police-officer subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.**

**(b.) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises attended with annoyance to Z. A has committed the offence defined in this section.**

**(c.) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that, in consequence of this information, the police will make enquiries and institute searches in the village to the annoyance of the villagers or some of them. A has committed an offence under this section.**

WHERE a person gives false information under the Madras Salt Act, he renders himself liable to a charge under s. 182 of the Penal Code.—Mad. Act I. of 1882, s. 24.

Ss. 182 and 211 of the Penal Code distinguished. The latter has been held to apply to a case of false charge in which the accused in the present case had appeared before the police, and charged the new complainant with having caused the death of the accused's child by poisoning.—RAFFEE MAHOMED *v.* ABBAS KHAN, 8 W. R. 67. [Jackson and Hobhouse, JJ. Sept. 3, 1867.]

A PERSON against whom information has been falsely given with a view to his injury has a right to bring a civil action for damages with or without the consent of the public servant against whom the offence was committed, but he cannot bring a criminal charge under s. 182 or any other section of ch. 10 of the Penal Code without the permission of such public servant, the law looking upon the conduct of the person who gives the false information as an offence, not against the individual charged, but against the public servant to whom the false information was given. To constitute an offence under s. 182, Penal Code, the information given must be information which the informer knew or believed to be false, and it must be proved that he gave it with such knowledge. Thus, where A, out of malice to B, gives C, a public servant, false information intended to injure B, B cannot prosecute A criminally under s. 182 without C's consent. — MOULVY ABDOOL LUTEEF, 9 W. R. 31; 5 Wym. 37. [Loch and Hobhouse, JJ. Mar. 10, 1868.] See *Queen* v. *Hurree Ram*, 3 N.-W. P. 194, *infra*.

WHERE a Deputy Magistrate instituted proceedings against a complainant and his witnesses for preferring a false charge of theft before him, it was held that he could not merely rely on the decision in the theft-case, but was bound to prove the falsity of the complaint of theft in the presence of the accused.—QUEEN *v.* RAM DASS BOISTUB, 11 W. R. 35. [Jackson and Markby, JJ. April 6, 1869.]

STATEMENTS made by a prisoner for the purposes of his defence cannot be held to be "information given to a public servant" within the meaning of s. 182 of the Penal Code.—QUEEN *v.* DARIA KHAN, 2 N.-W. P. 128. [Turner, Offg. C.J., and Spankie, J. April 2, 1870.]

IN a case in which a false charge was brought, a Magistrate gave the accused, A, permission under s. 195, Code of Criminal Procedure, 1882, to prosecute the complainant, B, of an offence under s. 211, Penal Code. The Magistrate tried the complaint of A as a complaint under s. 211, but he subsequently framed a charge against B under s. 182, Penal Code, and punished him under that section. *Held*, with reference to s. 195, Code of Criminal Procedure, 1882, that the offences under ss. 182 and 211, Penal Code, being offences under ch. 14 of the Code of Criminal Procedure, 1882, the Magistrate was wrong in framing the charge under s. 182 without obtaining the previous sanction of the Criminal Court which heard the previous complaint of B.—RAJ KUMAR *v.* KIRTI OJHA, 13 W. R. 67; 7 B. L. R. 29. [Loch and Hobhouse, JJ. April 30, 1870.]

UNDER the above section the gist of the offence consists in the offender's *intention* in giving the false information. The offence is the *contempt of the lawful authority* of the public servant by moving him to use his authority wrongfully. It is against the public servant that it is committed, and it is complete directly the false information is given irrespectively of the results which may actually follow the action that may be taken upon it. The specific injury that may result to the person in respect of whom the information is given is a distinct matter. And so it was

held that no ground for a complaint of giving false information to a public servant under this section exists on the part of any one but the public servant against whom the offence was committed.—QUEEN *v.* HURREE RAM, 3 N.-W. P. 194. [Turnbull, J. July 29, 1871.] See *In re Moulvy Abdool Luteef*, 9 W. R. 31, *supra*.

WHERE a person was accused under s. 182 of the Penal Code with having given false information to a head-constable, it was held that the provisions of s. 168 of the Code of Criminal Procedure had been sufficiently complied with, inasmuch as the Lower Appellate Court stated in its judgment that "the case had been forwarded under s. 182 by the officer in charge of the District Superintendent's office," the District Superintendent being the official superior of the head-constable.—QUEEN *v.* GRISH CHUNDER SIRCAR, 19 W. R. 33. [Glover and Mitter, JJ. Feb. 17, 1873.] Follows *Queen* v. *Ramgolam Singh*, 11 W. R. 22. But see the requirements of the corresponding section of the present law (s. 195 of the Code of Criminal Procedure, 1882), *infra*.

A DEPUTY MAGISTRATE has no power to question an order made by his superior, sanctioning a prosecution under ss. 182 and 211 of the Penal Code. Whether such sanction has been rightly or wrongly given is a question for the accused to raise before a competent Court.—EMPRESS *v.* IRAD ALLY, I. L. R., 4 Cal. 869; 4 C. L. R. 413. [Ainslie and Broughton, JJ. April 3, 1879.

AN offence under s. 211 of the Penal Code includes an offence under s. 182; it is therefore open to a Magistrate to proceed under either section, although, in cases of a more serious nature, it may be that the proper course is to proceed under s. 211.—BHOKTERAM *v.* HEERA KOLITA, I. L. R., 5 Cal. 184. [Ainslie and Broughton, JJ. April 26, 1879.

WHERE a person has instituted a charge found to be false by the police, a Magistrate except under exceptional circumstances, is not justified, merely on a perusal of a police-report, which has found a charge made to be false, in prosecuting the person by whom such charge was preferred, summarily under s. 182 of the Penal Code, but should proceed under s. 211. When a charge is pronounced false by the police, no proceedings should be taken by a Magistrate *suo motu*, until a reasonable interval has shown that the complainant accepts the results of the investigation.—IN THE MATTER OF RUSSICK LALL MULLICK, 7 C. L. R. 382. [Garth, C.J., and Maclean, J. Nov. 17, 1880.

S. 182 does not apply where the public servant misinformed is only competent to pass (and passes on) the information, and the power to be exercised by him cannot tend to any direct or immediate prejudice of the person against whom the information is levelled.—*Queen* v. *Periannan* and *Queen* v. *Naraina*, I. L. R., 4 Mad. 241. The following is a full report of these two cases: "The facts in these cases, which were referred by the District Magistrate of Salem for the orders of the High Court, on the ground that the proceedings therein were illegal, are sufficiently set out, for the purpose of this report, in the judgment of the Court (Innes and Muttusami Ayyar, JJ.) Judgment: The material facts in this case are as follow: Complaint was made to the Village-Magistrate that certain persons were beaten, and that jewels, exceeding Rs. 10 in value, were taken from the persons beaten. The Village-Magistrate reported the matter at the police-station, and the station-officer, after inquiry, referred the cases as false to the Sub-Magistrate of Vaniyambadi. In doing so he asked for sanction to prosecute the complainants under s. 182 (giving false information to a public servant with intent to cause him to use his lawful power to the injury of another person). The Sub-Magistrate accorded sanction, and subsequently himself tried, convicted, and punished the accused for an offence under s 182. The District Magistrate submits that the proceedings are illegal, on the grounds (1) that the Village-Magistrate to whom the information was given had no power in the case, (2) that the Sub-Magistrate had no power to give sanction, as he was not the public servant to whom the information was given. We are unable to concur in the opinion of the District Magistrate. Two questions appear to us to arise on the case, 1st, is s. 182 applicable to the circumstances? and, 2nd, was anything further required than what was done to render the prosecution legal? We think the words 'to use his lawful power' in s. 182 refer to some power to be exercised by the officer misinformed, which shall tend to some direct and immediate prejudice of the person against whom the information is levelled. They do not, we think, apply to such prejudice as might eventually arise in consequence of certain harmless intermediate steps to be taken by the misinformed officer, such as were taken in the present case, where all that the misinformed officer did or could do was to pass on the information. As to the other question, we think all was done that was necessary. The public servant himself complained, which is sufficient to satisfy the requirements of the section (467, Criminal Procedure Code, corresponding with s. 195, Act X. of 1882); and if it were not so, the Village-Magistrate may be said to be sub-

ordinate to the Second-class Magistrate, and the sanction of the Second-class Magistrate would be sufficient. We shall not therefore interfere."—QUEEN *v.* PERIANNAN and QUEEN *v.* NARAINA, I. L. R., 4 Mad. 241. [Innes and Muttusami Ayyar, JJ. Nov. 14, 18, 1881.]

M FALSELY informed the Collector of a district that certain zemindars had usurped possession of certain land belonging to Government, with the intent "to give trouble to such zemindars, and waste the time of the public authorities." *Held* that, inasmuch as such information was no more than an expression of a private person's belief, that the Collector might, if he chose, sustain a civil suit with success against such zemindars, and as, had the Collector agreed with the informant, the result would not have been that he would have used his lawful power as a Collector or as a Magistrate to the injury or annoyance of such zemindars, or that he would have done anything he ought not to have done, M had not committed an offence under s. 182 of the Penal Code.—EMPRESS *v.* MADHO, I. L. R., 4 All. 498. [Tyrrell, J. June 21, 1882.]

K MADE a report at a police-station, accusing R of a certain offence. The police having reported to the Magistrate having jurisdiction in the matter that, in their opinion, the offence was not established, the Magistrate ordered the case to be "shelved." K then preferred a complaint to the Magistrate, again accusing R of the offence. The Magistrate rejected the complaint with reference to the police-report. Subsequently R, with the sanction of the police-authorities, instituted criminal proceedings against K, under s. 182 of the Penal Code, in respect of the report which he had made at the police-station, and K was convicted under that section. *Held* that, before proceeding against K, the Magistrate should have fully investigated and sifted his complaint for himself, and should not have abrogated the functions imposed on him by law because the police had reported against the entertainment of the case. The views expressed in *Govt.* v. *Karimdad* (I. L. R., 6 Cal. 496), concurred in. *Held*, also, that K's conviction under s. 182 of the Penal Code was illegal, as the Magistrate had no power to entertain a complaint under that section at the instance of R, the application of s. 182 and the institution of prosecutions under it being limited to the public servant against whom the offence has been committed, or to his official superior as mentioned in s. 467 of Act X. of 1872 (or s. 195 of Act X. of 1882), and it not being intended that those provisions should be enforced at the instance of private persons. Moreover, if K's complaint was false, his offence was against R, and not against the public servant to whom the complaint was made, and fell within s. 211 of the Penal Code. Ordered that the complaint made by K should be investigated.—EMPRESS *v.* RADHA KISHAN, I. L. R., 5 All. 36. [Straight, J. July 5, 1882.] Overruled by *Empress* v. *Jugal Kishore*, I. L. R., 8 All. 382, *infra*. Dissented from in *Poonit Singh* v. *Madho Bhot*, I. L. R., 13 Cal. 270, *infra*.

WHERE a person specifically complains that another man has committed an offence, and does so falsely with the object of causing injury to that person, he is guilty of making a false charge of an offence under s. 211 of the Penal Code, and not under s. 182.—EMPRESS *v.* ARJUN, I. L. R., 7 Bom. 184. [West and Pinhey, JJ. Nov. 2, 1882.]

J COMPLAINED to the police that she had been raped by R. The police having reported the charge to be false, criminal proceedings were instituted against her under s. 182 of the Penal Code. In the meantime, J made a complaint in Court, again charging R with rape. This complaint was not disposed of, but the proceedings against her, under s. 182 of the Penal Code, were continued, and she was eventually convicted under that section. *Held* (setting aside the conviction, and directing that J's complaint should be disposed of) that such complaint should have been disposed of before proceedings were taken against her under s. 182.—EMPRESS *v.* JUMNI, I. L. R., 5 All. 387. [Oldfield, J. Mar. 9, 1883.]

THE accused was charged, in the alternative, by the trying Magistrate as follows: 'I, W. W. Drew, Magistrate, first class, hereby charge you, Ramji Sajabarao, as follows: 'That you, on or about the 13th day of October 1882, at Nandarpada, stated that you had seen Vishnu Vaman and Mahadu Lakshman carrying teakwood from Gohe Forest to Narayan Ramchandra, range-forest-officer, and on 14th February 1885 you stated on oath before the First-class Magistrate at Pen, at the trial of these persons, that you did not see where they had brought the wood from, and thereby committed an offence punishable under s. 182 or s. 193 of the Penal Code (Act XLV. of 1860), and within my cognizance; and I hereby direct that you, Ramji Sajabarao, be tried by the said Court on the same charge.'" At the trial the accused asserted the truth of the former of these two statements, and denied having made the other. The Magistrate was unable to find which of them was false, and convicted the accused, in the alternative, either under s. 182 or s. 193 of the Penal Code (Act XLV. of 1860). *Held* that the charge was bad in law, being an alternative charge

in a form forbidden by s. 233 of the Criminal Procedure Code (Act X. of 1882), which directs that, for every distinct offence of which any person is charged, there shall be a separate charge. Nor could the accused be tried upon a charge framed in the alternative as in the form given in Sch. V.-XXVIII. (4) of the Criminal Procedure Code (Act X. of 1882). For, upon the facts alleged, there was no way of charging him with one distinct offence on the ground of self-contradiction. He could not successfully be charged, under s. 193 of the Penal Code (Act XLV. of 1860), on contradictory statements, because he only made one deposition in which there were no discrepancies; and, similarly, he could not be charged under s 182 of the Penal Code, for he only once gave information to a public servant. *Held*, also, that, having regard to ss. 225, 232, and 537 of the Criminal Procedure Code (Act X. of 1882), the accused, convicted upon such a charge, must be held to have been misled in his defence, and his conviction and sentence reversed. In charges founded upon supposed contradictory statements, every presumption in favour of the possible reconciliation of the statements must be made. Under s. 172 of the Forest Act (VII. of 1878), a forest-officer is a public servant within the meaning of the Penal Code (Act XLV. of 1860). Any information given to him with the intent mentioned in s. 182 of the Penal Code is punishable under that section, whether that information is volunteered by the informant, or is given in answer to questions put to him by that officer.—QUEEN-EMPRESS *v.* RAMJI SAJABARAO, I. L. R., 10 Bom. 124. Nanabhai Haridas and Wedderburn, JJ. Sep 7, 1885.

A PROSECUTION under s. 182 of the Penal Code may be instituted by a private person, provided that he first obtains the sanction of the public officer to whom the false information was given, or of his official superior. *Queen* v. *Radha Kishan* (I. L. R., 5 All. 30) overruled. Where a specific false charge is made, the proper section for proceedings to be adopted under is s. 211 of the Penal Code.—QUEEN-EMPRESS *v.* JUGAL KISHORE, I. L. R., 8 All. 382. [Straight, Offg. C.J. May 28, 1886.]

AN information was given to a police-officer in the course of which two persons were named in whose houses stolen property belonging to a certain individual would be discovered. On complaint the information was found to be false, and the accused was convicted and punished for two offences under s. 182 as affecting two different persons. *Held* that, although the information related to two different persons, the accused could be charged with having made only one false statement, and punished for one offence under s. 182. S. 195, Criminal Procedure Code, clearly shows that a complaint directly made by a public servant mentioned therein is quite as sufficient as his sanction. *Empress of India* v. *Radha Kishan* (I. L. R., 5 All. 36) dissented from.—POONIT SINGH *v.* MADHO BHOT, I. L. R., 13 Cal. 270. [Mitter and Grant, JJ. July 22, 1886.]

S. 182 of the Penal Code must be read as an entire section, and, when so read, it applies to those cases in which the police are induced, upon information supplied to them, to do or omit to do something which might affect some *third person*, and which they would not have done had they known the truth of the matter laid before them. The facts of the case appear in the following judgment, which is reproduced in full: "Petheram, C.J.—We think that this rule must be made absolute to set aside the conviction. The facts of the case are that a person went on one occasion and informed the police that he had been robbed in the street of a shawl, but in the statement which he made to the police he did not indicate any particular person, or describe any person in such a way as by any possibility could be supposed to implicate any one as the person who committed the robbery. All he said was that he was robbed by a person whom he did not see. So that in the statement that he made he did not say anything to cast suspicion on any one in particular. Under these circumstances, there was no offence within the meaning of s. 182 of the Penal Code. That section provides that, if any person gives any information to a public servant with the intention of inducing him to put his powers in force to the injury or annoyance of any person, or to do or omit anything which such public servant would not have done or omitted to do if the true state of facts respecting which such information was given had been known to him, he shall be punished in a certain way there specified. As it seems to us, that section must be read as a whole, and, taken as a whole, we think it applies to those cases in which the police are induced, upon the information supplied to them, to do or omit to do something which might affect some third person, and which they would not have done if they had known the true state of things. Upon the information which was given to these police-constables, all that they could be justified in doing was to examine the informant as to what had happened to him, and then make such inquiries as the result of that examination might render desirable; but they would have no right to interfere with any one, or search any one's house'

because there were no circumstances brought to their knowledge by the information which this man gave which entitled them to suppose that any particular individual was guilty of any offence. Under the circumstances, the most that the statement of the accused amounts to is that it was untrue, and was made for the purpose of hoaxing the police. No doubt, that is a very wrong thing for any man to do. In the first place, it is wrong to tell lies, and in the second place, it is extremely wrong to take up the time of Government servants by putting them to useless inquiries under circumstances of this kind; but I do not think myself that such conduct comes within the meaning of this section, or amounts to anything more than a hoax, for which no punishment is provided by the Code. Under these circumstances, we cannot make a crime when it is not made one by the Code, or provide a punishment for it. The rule will therefore be made absolute to set aside the conviction; the prisoner will be discharged.—IN THE MATTER OF THE PETITION OF GOLAM AHMED KAZI, I. L. R, 14 Cal. 314. Petheram, C.J., and Beverley, J. Feb. 19, 1887. [The new section is broad enough to cover the above case.—ED.] Dissented from in *Queen-Empress* v. *Budh Sen*, I. L. R., 13 All. 351, *infra*.

UNDER s. 182 of the Penal Code the giving of false information to a public servant is penal, when either of two consequences is intended to be caused, or is known to be likely to be caused, by the false information, the first being the causing the public servant "to use the lawful power of such public servant to the injury or annoyance of any person;" the second being the causing the public servant "to do or omit anything which such public servant ought not to do or omit, if the true state of facts respecting which such information is given were known to him." To constitute an offence under the latter part of the section, it is not necessary to show that the act done would be to the injury or annoyance of any third person. A personated B at an examination, called the Vernacular Sixth Standard Examination. A passed the examination, and obtained a certificate from the educational authorities in B's name. B thereupon applied to the Assistant Collector to have his name entered in the list of candidates for service in the Revenue Department. He attached to this application the certificate issued in his name, as it was a rule of Government that only those who had passed the Sixth Standard Examination were eligible for employment in the Revenue Department. On receipt of this application the Assistant Collector ordered B's name to be entered on the list of candidates. *Held* that B was guilty of the offence of giving false information to a public servant within the meaning of the latter part of s. 182 of the Penal Code.—QUEEN-EMPRESS *v.* GANESH KHANDERAO AND GANESH DAULAT, I. L. R., 13 Bom. 506. [Jardine and Candy, JJ. Jan. 29, 1889.]

WHEN Subordinate Courts grant sanction to prosecute under s. 195 of the Criminal Procedure Code, it is incumbent on them so to frame the proceedings before them as to enable the High Court to satisfy itself from the record, whether the application for sanction has been properly granted or not. A Magistrate, in disposing of a charge of theft, delivered the following judgment: "The charge of theft of doors and windows is not proved at all against the accused. They are acquitted." There was no further record of the proceedings Immediately on the judgment being delivered, the pleader appearing for the accused applied for sanction to prosecute the complainant under ss. 182 and 211 of the Penal Code. The Magistrate refused to hear the application then, on the ground that it was not the proper time fixed by him to hear applications. The attorney for the complainant, who had expressed his willingness to have the application heard and disposed of there and then, intimated that he was prepared to show cause why sanction should not be granted, and asked that notice of any future application might be given to the complainant. The accused renewed the application the following day without notice to, and in the absence of, the complainant or his attorney, and the Magistrate granted the sanction asked for. On an application to the High Court to revoke the sanction, *held* that the Magistrate did not exercise a proper discretion under the circumstances in neglecting to give the complainant notice of the application, and an opportunity of being heard. *Held*, further, that the mere fact of the charge laid by the complainant not having been proved, was not in itself sufficient ground for granting sanction to prosecute him under ss. 182 and 211 of the Penal Code, and as, beyond the judgment of the Magistrate, there was nothing on the record to show that there were sufficient grounds for granting the sanction, it should be revoked.—KEDAR NATH DAS *v.* MOHESH CHUNDER CHUCKERBUTTY, I. L. R., 16 Cal. 661. [Prinsep and Hill, JJ. May 13, 1889.]

IN a petition of appeal from a conviction, the appellant falsely stated that the convicting Magistrate declined to summon his witnesses. The Magistrate to whom the appeal was preferred called upon the appellant

to verify the allegations in the petition of appeal on solemn affirmation, and he did so. *Held* that the appellant had not committed an offence under s. 181 or 182 of the Penal Code.—QUEEN-EMPRESS *v.* SUBBAYYA, I. L. R., 12 Mad. 451. [Collins, C.J., and Parker, J. July 11, 17, 1889.]

IN order to constitute the offence defined in s. 182 of the Penal Code, it is not necessary that the public servant to whom false information is given should be induced to do anything, or to omit to do anything, in consequence of such information. The gist of the offence is not what action may or may not be taken by the public servant to whom false information is given; but the intention or knowledge (to be inferred from his conduct) of the person supplying such information. *In the Matter of Golam Ahmed Kazi* (I. L. R., 14 Cal. 314) dissented from.—QUEEN-EMPRESS *v.* BUDH SEN, I. L. R., 13 All. 351. [Edge, C.J., and Straight, J. April 4, 1891.]

WHERE a Deputy Commissioner issued a sanction to prosecute the accused upon an express application made on behalf of a certain person against whom a charge of torture had been made, and which he found, for reasons stated in his judgment, to be false, *held* taking the order to have been one made under s. 195 of the Code of Criminal Procedure, that it was a proper sanction, inasmuch as it was given to a contemplated prosecution by a definite person. *Semble*, on the supposition that the order was one under s. 476 of the Criminal Procedure Code, that it was not necessary for the validity of an order under that section that there should be any evidence on the record contradicting the case which was thought to be false, or that there should be a preliminary inquiry. Although it may sometimes well be that a preliminary inquiry ought to be held, the adoption of a rigid rule to that effect is neither rendered imperative by the law, nor is it desirable. *In the Matter of Mutty Lall Ghose* (I. L. R., 6 Cal. 308), *The Queen v. Baijoo Lall* (I. L. R., 1 Cal. 450), and *Khepu Nath Sikdar v. Girish Chunder Mukerjee* (I. L. R., 16 Cal. 370), referred to and distinguished.—BAPERAM SURMA *v.* GOURI NATH DUTT, I. L. R., 20 Cal. 474. [Pigot and Hill, JJ. Nov. 2, 1892.]

THE proceeding under s. 195 of the Code of Criminal Procedure, by which an order granting or refusing to grant sanction to prosecute may be set aside, is a proceeding in revision, and not by way of appeal.—MEHDI HASAN *v.* TOTA RAM, I. L. R., 15 All. 61. [Knox, J. Nov. 19, 1892.]

A HEAD ASSISTANT MAGISTRATE sanctioned a prosecution under the Criminal Procedure Code, s. 195, on the charge of preferring a false complaint, and forwarded his proceedings to the Deputy Magistrate of another division of the district, who ordinarily had no jurisdiction to try offences committed in the division under the Head Assistant Magistrate. *Held* that the Deputy Magistrate had jurisdiction to try the charge.—QUEEN-EMPRESS *v.* NAGAPPA, I. L. R., 16 Mad. 461. [Shephard and Best, JJ. Mar. 28, 1893.]

WHERE, as the result of a police-investigation, it appears that a complaint made to the police of the commission of an offence punishable under the Penal Code is false, it is not necessary that the complainant should be given any further opportunity of establishing the truth of his allegations before his prosecution under s. 182 of the Penal Code is ordered. — QUEEN-EMPRESS *v.* RAGHU TIWARI, I. L. R., 15 All. 336. [Edge, C.J., and Aikman, J. May 16, 1893.]

WHERE one Judge exercising the revisional jurisdiction of the High Court, in reversal of an order of a first-class Magistrate, had granted sanction under the Criminal Procedure Code, s. 195, for a prosecution under the Penal Code, s. 182, an appeal was preferred from his judgment under the Letters Patent, s. 15. *Held* that no appeal lay, that section of the Letters Patent being inapplicable in cases of criminal jurisdiction.—SRINIVASA AYYANGAR *v.* QUEEN-EMPRESS, I. L. R., 17 Mad. 105. [Collins, C.J., and Shephard, J. Oct. 5, 1893.]

ON the 5th May 1894, C applied in writing, under the provisions of s. 133 of Act III. of 1884, to a municipality for a license to be granted to him in respect of two carriages and six ponies, and filled up and signed the usual statement required by the section. The sum payable in respect of the license was received, and the license asked for by C was granted to him, and at the same time the statement was sent to an overseer of the municipality for verification. On the 7th May the overseer reported that C had in his possession eight ponies and one horse. On the 8th May the chairman of the municipality passed an order directing C to be prosecuted for making a false statement in the schedule to his statement regarding the number of animals in respect of which he applied for the license. On the 9th May, C presented a petition asking that the tax on the three animals might be received, and stating that he did not think he was liable to take out a license for them, as they were old and diseased, and unfit for work. On the 13th May the chairman passed an order on this application that he had no power to interfere, as the prosecution of C had already been ordered. Meanwhile, on the 9th May, a paper was sent to

the Magistrate headed "List of municipal cases under Act III. of 1884," in which C appeared as charged with an offence under s. 199 of the Penal Code for "filing a false statement, that is to say, putting down in the schedule six ponies only instead of eight ponies and one horse." On the 12th May the Deputy Magistrate directed a summons to issue to C, returnable on the 23rd. On the 18th May the District Magistrate passed an order to the effect that the municipality could not institute a prosecution under the Penal Code, but that the Deputy Magistrate had power to do so, and that he should consider the provisions of ss. 182 and 417, read with s. 511, of the Penal Code, as applicable to the facts of the case. On the 19th May the summons was issued, and the case was heard on the 23rd and 24th May and 19th June, on which date formal charges under ss. 199, 182, and 417-511, of the Penal Code were framed. Thereafter the hearing proceeded till the 16th July, when, on an application to the High Court, the proceedings were stayed, and a rule issued to show cause why they should not be quashed. It was contended at the hearing of the rule that the High Court should not interfere at that stage of the proceedings under its revisional jurisdiction. *Held* that the High Court has power to interfere at any stage of a case, and that, when it is brought to its notice that a person has been subjected, as in this case, for over two months, to the harassment of an illegal prosecution, it is its bounden duty to interfere. *Held*, further, that it was quite clear that the municipality had no power to institute the proceedings, and that, having regard to the provisions of s. 191 of the Code of Criminal Procedure, it did not appear that the Deputy Magistrate, having no private complainant before him, had power, of his own motion, to institute them; but that, whether he had such power or not, the admitted facts of the case did not in law constitute any of the offences with which C was charged, and that the whole proceedings must be quashed. The Municipal Act is intended to be complete in itself as regards offences committed against the Municipal Commissioners, and there is no indication of any intention to render a delinquent also liable to punishment under the Penal Code. There is no penalty in the Act attached to the omission to make a return under s. 133, and no words in the Act constituting the making a false return a penal offence; and, as there are no such words in the Act as are necessary to make the provisions of the Penal Code applicable, the Court has no power to import them. The Municipal Commissioners in such a case have the remedy provided by the Act itself.—CHANDI PERSHAD *v.* ABDUR RAHMAN, I. L. R., 22 Cal. 131. [Petheram, C.J., and Beverley, J. Aug. 13, 1897.]

S. 195 of the Criminal Procedure Code (Act V. of 1898) runs as follows:—

195. (*1*) No Court shall take cognizance—

(*a*) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code,* except with the previous sanction, or on the complaint of the public servant concerned, or of some public servant to whom he is subordinate;

(*b*) of any offence punishable under sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, or 228 of the same Code,* when such offence is committed in, or in relation to any proceeding in any Court, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate;

(*c*) of any offence described in section 463, or punishable under sections 471, 475, or 476 of the same Code,* when such offence has been committed by a party to any proceeding in any Court in respect of a document *produced or* given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

(*2*) *In clauses (b) and (c) of sub-section (1), the term "Court" means a Civil, Revenue, or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877.*†

(*3*) *The provisions of sub-section (1) with reference to the offences named therein apply also to the abetment of such offences, and attempts to commit them.*

(*4*) The sanction referred to in this section may be expressed in general terms, and need not name the accused person, but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed.

(*5*) When sanction is given in respect of any offence referred to in this section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

(*6*) Any sanction *given or* refused under this section may be *revoked or* granted by any authority to which the authority *giving or* refusing it is subordinate; and no sanction shall remain in force for more than six months from the date on which it was *given, provided that the High Court may, for good cause shown, extend the time.*

* Act XLV. of 1860.
† Act III. of 1877.

(7) For the purposes of this section every Court shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie, *that is to say*,—

(*a*) *where such appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;*

(*b*) *where such appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case in connection with which the offence is alleged to have been committed;*

(*c*) *where no appeal lies, such Court shall be deemed to be subordinate to the principal Court of original jurisdiction within the local limits of whose jurisdiction such first-mentioned Court is situate.*

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp. Sanction.

**183.*** Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Resistance to the taking of property by lawful authority of public servant.

AN officer subordinate to an officer in charge of a police-station, who was deputed by the latter to make an inquiry under s. 135 of the Code of Criminal Procedure, attempted, without a search-warrant, to enter a house in search of property alleged to have been stolen, and was obstructed and resisted. *Held* (applying s. 99 of the Penal Code) that, even though the police-officer was not strictly justified in searching the house without a warrant, the person obstructing and resisting could not set up the illegality of the officer's proceeding as a justification of his obstruction, as it was not shown that that officer was acting otherwise than in good faith and without malice. A Magistrate acting judicially should not import into the case before him his previous knowledge of the character of the accused, but should determine his guilt or innocence upon the evidence given in the case.—REG. *v.* VYANKATRAV SHRINIVAS, 7 Bom. H. C. R. 50. [Gibbs and Melvill, JJ. June 15, 1870.]

*Held*, on the facts of the case, that a party (A) who objected to accompany a constable who had been directed to produce him before the Court, and also seized the constable by the arm, and resisted his carrying away a pony which A was charged with having misappropriated, was guilty of separate offences under ss. 353 and 183 of the Penal Code, and the infliction of separate sentences for each offence was not prevented by s. 71 of that Code.—QUEEN *v.* JOYAH MOHUN CHUNDER, 14 W. R. 19. [Loch and Hobhouse, JJ. July 16, 1870.]

IF a bailiff break the doors of a third person in order to execute a decree against a judgment-debtor, he is a trespasser if it turn out that the person or goods of the debtor are not in the house, and, under such circumstances, the owner of the house does not, by obstructing the bailiff, render himself punishable under s. 183 or s. 186 of the Penal Code. The accused was convicted, under s. 183, Penal Code, of obstructing a bailiff, who broke open the doors of the accused (a third party) to execute a decree against a judgment-debtor. The Bombay High Court, in quashing the conviction, made the following observations: "Now, in the present case, there is no evidence whatever that there were any goods of the debtor in the house of the accused Gazi; and, in the absence of such evidence, the presumption must be in her favour that there were no such goods. As there was no such property in the house, Gazi did not offer any resistance to the taking of any property by the lawful authority of a public servant, which is the offence of which she has been convicted under s. 183. Nor could she be convicted under what would appear to be a more appropriate section, namely, s 186, for voluntarily obstructing a public servant in the discharge of his public function; for the bailiff would have been exceeding his functions if he had done that which Gazi prevented him from doing."—REG. *v.* GAZI KOM ABA DORE, 7 Bom. H. C. R. 83. [Gibbs and Melvill, JJ. July 28, 1870.] But see cl. 1 of s. 99 of the Penal Code, which says that "there is no right of private defence against an act done by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law."

* As to authority for instituting prosecutions under s. 183, see the new Code of Criminal Procedure (Act V. of 1898), s. 195 (*1*) (*a*).

THE pay of G, a servant of a Railway Company, fell due on the 1st April. On the 31st March the Civil Court granted a prohibitory order under Act VIII. of 1859, attaching G's pay, and the order was served on the Auditor of the Company on the 1st April. The Auditor returned the order, having endorsed on it that it was dated March 31st, and G's pay was not due till the 1st April. The order was again served on the 1st April, and the Auditor again returned it with the remark that, since the first service, the pay due to G had been made over to him. The Auditor was convicted under s. 183 for resisting the taking of property by the lawful authority of a public servant. *Held* that the conviction was bad under s. 183, and could not be sustained under s. 188, as on the 31st March there was no debt due to G on which the prohibitory order could operate, and the Auditor was therefore, not bound to obey such an order.—LIGHTFOOT *v.* CROWN, Panj. Rec., No. 9 of 1874.

A PERSON was convicted under s. 183 of the Penal Code for offering resistance to the attachment of property by a public servant. The offence was committed on the 4th of February 1883, but the warrant under which the public servant acted was returnable on or before the previous day. *Held* that the conviction was bad.—ANAND LALL BERA *v.* EMPRESS ON THE PROSECUTION OF AZIM PEON, I. L. R., 10 Cal. 18; 13 C. L. R. 209. [Prinsep and Tottenham, JJ. Aug. 2, 1883.]

A MERE oral statement by a person claiming to be the owner of certain articles attached by a bailiff in execution of a decree, to the effect that he would not allow the bailiff to take away the articles unless he entered them as his property, does not amount to an offence under s. 183 of the Penal Code.—QUEEN-EMPRESS *v.* HUSAIN, I. L. R., 15 Bom. 564. [Birdwood and Parsons, JJ. Nov. 20, 1890.]

A DISTRICT JUDGE ordered that the house of the defendant in a suit pending before him be searched and certain property brought to the Court, and appointed a commissioner to carry out this order. The commissioner went to the house, but the defendant shut the doors, and would not admit him. A crowd collected, and the commissioner felt it would be unsafe to proceed to carry out the order by force, and was unable to do so otherwise. The defendant was prosecuted and sentenced under the Penal Code, s. 186. *Held* that the facts disclosed no offence under that section.—QUEEN-EMPRESS *v.* SOMMANNA, I. L. R., 15 Mad. 221. [Wilkinson and Subrahmanya Ayyar, JJ. Jan. 25, 28, 1892.]

A DECREE having been passed against the assets of a deceased debtor, execution was taken out, and the officer of Court proceeded to seize certain goods. The accused successfully resisted the seizure, asserting that the goods seized were his own. He was thereupon charged with having committed an offence under s. 183 of the Penal Code, but he was acquitted for want of proof by the prosecution that the goods were assets of the deceased. *Held* that the acquittal was wrong, and should be set aside.—QUEEN-EMPRESS *v.* TIRUCHITTAMBALA PATHAN, I. L. R., 21 Mad. 78. [Shephard and Subramania Ayyar, JJ. Oct. 16, 29, 1896.]

WHERE a village-chaukidar, without the preparation and publication of a list of defaulters, and without any written authority as required by s. 26 and s. 27 of the village Chaukidari Act (Ben. Act VI. of 1870), attached some property for levying the amount of arrears, *held* that resistance to such attachment was not an offence under s. 183 of the Penal Code.—DURGA CHARAN MALI *v.* NOBIN CHANDRA SIL, I. L. R., 25 Cal. 274. [Banerjee and Wilkins, JJ. Sep. 21, 1897.]

**184.*** Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant as such shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp. Sanction.

**Obstructing sale of property offered for sale by authority of public servant.**

A is charged, under s. 184 of the Indian Penal Code, with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.—Crim. Pro. Code (Act V. of 1898), s. 221, illus. (*d*).

**185.*** Whoever, at any sale of property held by the lawful authority of a public servant as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal in-

Ditto.

**Illegal purchase or bid for property offered for sale by authority of public servant.**

* As to authority for instituting prosecutions under ss. 184 and 185, see the new Code of Criminal Procedure (Act V. of 1898), s. 195 (*1*) (*a*).

capacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

WHERE the lease of a ferry was put up to auction, and the accused gave a mock-bid, it was held that he was rightly convicted under s. 185.—5 Rev., Jud., and Pol. Jour., Cal., p. 38.

A PERSON is guilty of contempt of the lawful authority of a public servant under s. 185 by bidding at an auction-sale held by a Magistrate, and failing to complete the sale.—QUEEN *v.* REAZOODDEEN, 3 W. R. 33. [Loch and Seton-Karr, JJ. June 24, 1865.]

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp. Sanction.

**186.*** Whoever voluntarily obstructs any public servant in the discharge of his public functions shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Obstructing public servant in discharge of public functions.

ESCAPING from lawful custody is not obstructing a public servant in the discharge of his public functions within the meaning of s. 186 of the Penal Code. Escaping from lawful custody is punishable under s. 224 of the Penal Code.—REG. *v.* POSHU BIN DHAMBAJI PATEL, 2 Bom. H. C. R. 128. [Couch, C.J., and Newton and Warden, JJ. Jan. 25, 1865.]

CONVICTION, under s 186 of the Penal Code, of obstructing a mauzadar in the discharge of his duty reversed, there being nothing to show that the mauzadar is a public servant.—JOYNATH *v* SOORJARAM, 8 W. R. 66. [Jackson and Hobhouse, JJ. Sep. 3, 1867.]

CONVICTION and sentence under s. 186 of the Penal Code reversed, as the conduct of the accused—refusing to accompany a measuring-clerk employed under Bom. Act I. of 1865 to his (the accused's) house, and permit it to be measured—did not constitute the offence of obstructing a public servant in discharging his public functions. *Quære.*—Whether s. 11 of Bom. Act I. of 1865 justifies surveyors in entering private houses for the purpose of measuring them.—REG. *v.* BHAGTIDAS, 5 Bom. H. C. R. 51. [Newton and Tucker, JJ. July 1, 1868.]

A MOFUSSIL Small Cause Court has no jurisdiction to punish for resistance of a process which it has issued, but such resistance being an offence under s. 186, it may send the accused before a Magistrate to be dealt with according to law.—RULE NISI IN THE CASE OF MONEE CHUNDER DOSS, 11 W. R. 62, Civ. Rul. [Bayley and Hobhouse, JJ. Jan. 26, 1869.]

IF a bailiff break the doors of a third person in order to execute a decree against a judgment-debtor, he is a trespasser if it turn out that the person or goods of the debtor are not in the house; and, under such circumstances, the owner of the house does not, by obstructing the bailiff, render himself punishable under s. 183 or s. 186 of the Penal Code.—REG. *v.* GAZI KOM ABA DORE, 7 Bom. H. C. R. 83. [Gibbs and Melvill, JJ. July 28, 1870.] But see cl. 1 of s. 99 of the Penal Code, which says that "there is no right of private defence against an act done by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law."

THE refusal of a cart-owner to give his cart on hire to a Government officer does not constitute the offence of obstructing a public servant in the discharge of his public functions within the meaning of s. 186 of the Penal Code.—REG. *v.* DHORI KULLAN, 9 Bom. H. C. R. 165. [Melvill and Kemball, JJ. Feb 8, 1872.]

WHERE accused refused to allow the attachment of his property in execution of a decree passed against him by the Cantonment Small Cause Court, *held* that the Judge of the Court had not jurisdiction as a Magistrate to try and convict accused of an offence under s. 186.—EMPRESS *v.* KHUSHALA, Panj. Rec., No. 22 of 1879.

THE resistance of a process of a Civil Court is punishable, under the Code of Criminal Procedure, by a Criminal Court; and such an offence is punishable under s. 186 of the Penal Code.—REG. *v.* BHAGAI DUFFADAR (10 W. R 43; 2 B. L. R 21, F. B.),

* As to authority for instituting prosecutions under s. 186, see the new Code of Criminal Procedure (Act V. of 1898), s. 195 (*1*) (*a*).

overruling *Reg.* v. *Chunder Kant Chuckerbutty* (9 W. R. 63), where it was held that the Civil Court, and not the Magistrate, had jurisdiction to fine for resisting a process of a Civil Court. The case of *Reg.* v. *Bhagai Dufadar* has been followed in that of *Mani Chandra Das* (2 B. L. R., A. C. J., 188), in which a Judge of a Small Cause Court in the Mofussil, found a judgment-debtor guilty of resisting an officer of the Court in attaching property in satisfaction of the decree, and fined him; but the High Court held that the Judge had acted without jurisdiction; he ought to have sent the judgment-debtor before the Magistrate.

IN a suit filed in a Mamlatdar's Court under Bom. Act III. of 1876, the plaintiff obtained a decree against the accused for possession of a certain piece of land When the Mamlatdar proceeded to execute the decree, he found that there was no land corresponding to the boundaries set forth in the plaint, and that the parties were joint owners and in joint-occupation of the land in dispute. Finding himself unable to execute the decree, the Mamlatdar referred the matter to the Collector for advice. The Collector, on looking into the papers of the case, ordered a surveyor to execute the decree by dividing the land in dispute and putting the decree-holder in possession of his share. The surveyor, in attempting to execute the decree, was obstructed by the accused, who was thereupon tried and convicted of the offence of voluntarily obstructing a public servant in the discharge of his public functions under s. 186 of the Penal Code (Act XLV. of 1860). *Held* (reversing the conviction) that, as the Collector had no legal authority to issue the order to the surveyor in execution of the Mamlatdar's decree, the surveyor, acting under that order, was not discharging a public function, and the act of the accused was not an offence against s. 186 of the Penal Code. *Held*, further, that the Collector's order was so entirely *ultra vires* as to leave no room for the operation of either the first or the second clause of s. 99 of the Penal Code.—QUEEN-EMPRESS v. TULSIRAM, I. L. R., 13 Bom. 168. [Birdwood and Parsons, JJ. May 3, 1888.]

A PERSON nominated by the Collector, under s. 69 of the Bengal Tenancy Act, for the purpose of making a division of crops between the landlord and the tenant, is not a public servant within the meaning of s. 186 of the Penal Code.—CHATTER LAL v. THACOOR PERSHAD, I. L. R., 18 Cal. 518. [Petheram, C.J., and Beverley, J. June 11, 1891.]

To spread a false report, and thereby prevent persons from bringing their children for vaccination to the public vaccinator, is not an offence under the Penal Code, s. 186.—QUEEN-EMPRESS v. THIMMACHI, I. L. R., 15 Mad. 93. [Wilkinson and Shephard, JJ. Oct. 16, 1891.]

A DISTRICT JUDGE ordered that the house of the defendant in a suit pending before him be searched and certain property brought to the Court, and appointed a commissioner to carry out this order. The commissioner went to the house, but the defendant shut the doors, and would not admit him. A crowd collected, and the commissioner felt it would be unsafe to proceed to carry out the order by force, and was unable to do so otherwise. The defendant was prosecuted and sentenced under the Penal Code, s. 186. *Held* that the facts disclosed no offence under that section.—QUEEN-EMPRESS v. SOMMANNA, I. L. R., 15 Mad. 221. [Wilkinson and Subrahmanya Ayyar, JJ. Jan. 25, 28, 1892.]

WHERE a Civil Court peon was sent by a Munsif to attach certain property, and on the peon reporting that he had been obstructed in making the attachment, the Munsif sent the case to the Deputy Magistrate for investigation and trial, and the Deputy Magistrate summarily tried the accused under s. 186 of the Penal Code, dismissed the case, and awarded compensation of Rs. 20 to the accused, *held* that the award of compensation was illegal: the peon, though nominally the informant in the case, was not the real complainant, nor could the proceedings properly be said to have been instituted before the Deputy Magistrate on his information.—BHARUT CHUNDER NATH v. JABED ALI BISWAS, I. L. R., 20 Cal. 481. [Pigot and Hill, JJ. Sep. 19, 1892.]

THE public functions contemplated by s. 186 of the Penal Code mean legal or legitimately authorized public functions, and were not intended to cover any act that a public functionary might choose to take upon himself to perform. A Batwara amin, in proceeding to measure certain lands in the course of proceedings connected with the partition of an estate under Ben. Act VIII. of 1876, was obstructed by certain persons who claimed the lands, and objected to their being measured. The lands were stated in the report of the amin to be the common land of estate No. 546 and of certain other estates. The persons who obstructed him were not co-sharers in that estate, and contended that the land sought to be measured had been divided amongst the *maliks* of the different estates, and different portions of it had been held separately by them. The persons so obstructing the amin were charged with an offence under s. 186 of the Penal Code, the Deputy Collector in charge of the batwara-

proceedings being of opinion that s. 112 of the Act applied, and that the amin was entitled to measure the land. The accused were convicted. *Held* that s. 112 is limited to cases where the community of interest in the land in dispute between the proprietors of the estate under partition as a body, and the proprietors of other estates, is admitted. When this is not admitted, the provisions of s. 116 apply. *Held*, further, that, as there was no evidence to show that such community of interest was admitted, the accused were entitled to the benefit of the doubt, and to have the case treated as one under s. 116; and that, as the procedure laid down in that section had not been followed, the amin had no power to measure the lands, and could not be said to be a public servant acting in discharge of his public functions, and that the conviction must consequently be set aside.—LILLA SINGH *v.* QUEEN-EMPRESS, I. L. R., 22 Cal. 286. [Banerjee and Sale, JJ. Oct. 17, 1894.]

THE petitioner was convicted, under s. 186 of the Penal Code, of obstructing a Civil Court peon, who was attaching his property in execution of a decree; the warrant of attachment was addressed to the nazir of the Court, who delegated its execution to a peon by an endorsement of the peon's name. *Held*, the nazir had authority thus to delegate the execution of the warrant to the peon. The words "to be executed" in s. 251 of the Code of Civil Procedure would seem to imply that it was not intended that the "proper officer" should himself execute all warrants sent to him. And there is nothing in the Code which indicates in any way that warrants, being either warrants of arrest or of attachment, or for distress and sale, are to be executed by the "proper officer" in any manner different from the service of summonses. The Court Fees Act (VII. of 1870) distinctly contemplates that the peons are to be employed, not only for the service of summonses, notices, or orders, but also for the execution of other processes, such as warrants of arrest, or of attachment and distress. Though the authority may well be conferred in more clear and explicit terms than are expressed by a mere endorsement by the nazir of the peon's name, still it is impossible to say that that is not sufficient evidence of the delegation.—DHARAM CHAND LAL *v.* QUEEN-EMPRESS, I. L. R., 22 Cal. 596. [Norris and Beverley, JJ. Mar. 6, 1895.] Followed in *Sheo Progash Tewari* v. *Bhoop Narain Prosad Pathak*, I. L. R., 22 Cal. 759, *infra*.

A NAZIR has authority to delegate the execution of warrants of arrest. *Dharam Chand Lal* v. *Queen-Empress* (I. L. R., 22 Cal. 596) followed. A peon acting under such delegation is a public servant within the meaning of the definition in s. 21, cl. 4, of the Penal Code. *Quære*.—Whether the escape of a prisoner from arrest is an obstruction of a public servant within the meaning of s. 186 of the Penal Code.—SHEO PROGASH TEWARI *v.* BHOOP NARAIN PROSAD PATHAK, I. L. R., 22 Cal. 759. [Petheram, C.J., and Beverley, J. Mar. 14, 1895.]

A PUBLIC servant executing a warrant of arrest which is not signed by the Magistrate as required by s. 75 of the Criminal Procedure Code, but only bears his initials, and the substance of which is not notified to the person to be arrested as required by s. 80 of the Code, cannot be said to be acting in the discharge of his public functions in a manner authorized by law. A person obstructing him cannot be convicted under s. 186 of the Penal Code.—ABDUL GAFUR *v.* QUEEN-EMPRESS, I. L. R., 23 Cal. 896. [O'Kinealy and Banerjee, JJ. May 22, 1896.]

BEFORE a person can be convicted of wilfully obstructing or impeding a railway servant in the discharge of his duties, within the meaning of s. 121 of the Railway Act (IX. of 1890), or of voluntarily obstructing a public servant in the discharge of his public functions, within the meaning of s. 186 of the Indian Penal Code, it must be shown that the obstruction or resistance was offered to a railway or public servant in the discharge of his duties or public function as authorized by law. The mere fact of a public servant or a railway servant believing that he was acting in the discharge of his duties will not be sufficient to make resistance or obstruction to him, amount to an offence.—BARODA KANTO PRAMANICK, *In re*, 1 C. W. N. 74. [O'Kinealy and Banerjee, JJ. July 16, 1896.]

WHERE a District Magistrate issued a warrant for the arrest and production of a witness for the purpose of giving evidence at an investigation held by the police, and in attempting to execute such warrant the police arrested the wrong person, and were assaulted in the attempt, *held* that, apart from the fact that the attempt to arrest was made on the wrong person, a District Magistrate has no authority to issue a warrant for the production of a witness at an investigation by a police-officer, but only before his own Court under ss. 76, 81, of the Code of Criminal Procedure. *Held*, also, that as the investigation was held by a police-officer under Chapter XIV. of the Criminal Procedure Code, the proper course was for the Sub-Inspector of Police to require the attendance of the witness under s. 160 of the Code of Criminal Procedure, and on failure by her to comply with such order,

prosecute her under s. 174 of the Penal Code. *Held*, further, that the accused were justified in their resistance, and that no offence either under s. 143 or s. 186 of the Penal Code was committed, and that they should be acquitted.—QUEEN-EMPRESS *v.* JOGENDRA NATH MUKERJEE, I. L. R., 24 Cal. 320. [Ghose and Gordon, JJ. Jan. 19, 1897.]

A NOTICE of demand of a house-tax under the Local Boards Act (Mad. Act V. of 1884) was affixed to the house. The owner, who was a potter and cultivator by occupation, was in the village at the time. He did not pay the tax. A warrant of distress was issued, the house-register not having been completely filled up, and a bucket and spade belonging to the defaulter were attached. The defaulter successfully resisted the distraint. *Held* that the provisions of the Act had been sufficiently complied with as regards the preliminary steps for making the demand and the service of notice, and the fact that the spade and the bucket were protected from attachment under s. 94 did not justify the resistance, and accordingly that the defaulter was guilty of offences under Penal Code, ss. 186 and 353.—QUEEN-EMPRESS *v.* POOMALAI UDAYAN, I. L. R., 21 Mad. 296. [Subramania Ayyar and Davies, JJ. Jan. 26, 1898.]

The petitioner was convicted under s. 186 of the Indian Penal Code of voluntarily obstructing a public servant in the discharge of his public functions. The officer obstructed was a surveyor employed by the Collector in the *khas mehal* department, and the functions in which he was obstructed were making a survey of a certain portion of a water-course which was in dispute. *Held* that the Collector, acting in the management of a *khas mehal*, the property of the Government, is as much the Government within the meaning of s. 17 of the Indian Penal Code as when he is exercising any other of the duties of his official position. *Held*, further, that the surveyor in the present case was a public servant, and that the duty upon which he was engaged when he was obstructed was a public duty.—BAJOO SING *v.* QUEEN-EMPRESS, I. L. R., 26 Cal. 158. [Stevens and Pratt, JJ. Nov. 2, 1898.]

AN arrest by a police-officer without notifying the substance of the warrant to the person against whom the warrant is issued, as required by s. 80 of the Criminal Procedure Code, is not a lawful arrest; and resistance to such an arrest is not an offence under s. 225B of the Penal Code.—SATISH CHANDRA RAI *v.* JODU NANDAN SING, I. L. R., 26 Cal. 748; 3 C. W. N. 741. [Prinsep and Hill, JJ. June 1, 1899.]

**187.*** Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both;

Presy. Mag. or Mag. of 1st or and class. Uncog. Summons. Bailable. Not comp. Sanction.

Omission to assist public servant when bound by law to give assistance.

and, if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence,† or of suppressing a riot or affray, or of apprehending a person charged with or guilty of an offence,† or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

IN this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

A MAGISTRATE directed a landholder "to find a clue" in a case of theft "within fifteen days, and to assist the police." *Held* that such order was not authorized by ss. 90 and 91 of Act X. of 1872 (corresponding with ss. 43 and 42 of Act X. of 1882), and the conviction of such landholder, under ss. 187 and 188, Penal Code, for disobedience

* As to authority for instituting prosecutions under s. 187, see the new Code of Criminal Procedure (Act V. of 1898), s. 195 (*1*) (*a*).

† In s. 187, the word "*offence*" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

to such order, was not maintainable.—EMPRESS v. BAKHSHI RAM, I. L. R., 3 All. 201. [Pearson, J. Aug. 18, 1880.]

AN omission or neglect by a zemindar, when called upon under s. 21 of Reg. XX. of 1817, to nominate some one to fill the office of village-watchman, which had become vacant, is not an offence under either s. 187 or s. 188 of the Penal Code—*In re* KALI PROSUNNO GHOSE, 7 C. L. R. 575. [Morris and Prinsep, JJ. Jan. 19, 1881.]

A PERSON was convicted under s. 187 of the Penal Code for refusing, when called on by a forest-guard, to serve as one of a *panch* for the purpose of drawing up a *panchnama* with reference to certain wood alleged to have been illegally cut in a reserved forest. *Held* that the conviction was illegal. The accused was not shown to be one of the persons contemplated by the first three paragraphs of s. 78 of the Forest Act (VII. of 1878), nor was the purpose for which he was called upon to give his assistance, one of the purposes mentioned in cls. (*a*) to (*d*) of the section. He was, therefore, not legally bound to assist the forest-guard.—QUEEN-EMPRESS v. BABAJI, I. L. R., 22 Bom. 769. [Jardine and Ranade, JJ. Jan. 28, 1897.]

Presv. Mag. or Mag. of 1st or and class. Uncog. Summons. Bailable. Not comp. Sanction.

**188.*** Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

**Disobedience to order duly promulgated by public servant.**

shall, if such disobedience causes or tends to cause obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both;

and, if such disobedience causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

*Explanation.*—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

*Illustration.*

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger or riot. A has committed the offence defined in this section.

S. 188 of the Penal Code should be read with ss. 133 to 144 of the Criminal Procedure Code (Act V. of 1898). Ss. 133 and 144 run as follow:—

Whenever a District Magistrate, a Subdivisional Magistrate, or, when empowered by the Local Government in this behalf, a Magistrate of the first class, considers, on receiving a report or other information, and on taking such evidence (if any) as he thinks fit,

that any unlawful obstruction or nuisance should be removed from any way, river, or channel which is, or may be, lawfully used by the public, or from any public place, or

that any trade or occupation, or the keeping of any goods or merchandise, by reason of its being injurious to the health or physical comfort of the community, should be suppressed, or removed, or prohibited, or

that the construction of any building, or the disposal of any substance as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building is in such a condition that it is likely to fall, and thereby cause in-

* As to authority for instituting prosecutions under s. 188, see the new Code of Criminal Procedure (Act V. of 1898), s. 195 (*1*) (*a*).

jury to persons living or carrying on business in the neighbourhood, or passing by, and that, in consequence, its removal, repair, or support, is necessary, or

that any tank, well, or excavation adjacent to any such way or public place should be fenced in such a manner as to prevent danger arising to the public,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing, or controlling such building, substance, tank, well, or excavation, within a time to be fixed in the order,

to remove such obstruction or nuisance; or

to suppress or remove such trade or occupation; or

to remove such goods or merchandise, or

to prevent or stop the construction of such building; or

to remove, repair, or support it, or

to alter the disposal of such substance; or

to fence such tank well, or excavation, as the case may be; or

to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside, or modified in manner hereinafter provided.

No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

*Explanation.*—A 'public place' includes also property belonging to the State, camping grounds, and grounds left unoccupied for sanitary and recreative purposes.—Crim. Pro. Code (Act V. of 1898), s. 133.

In cases where in the opinion of the District Magistrate, a *Chief Presidency Magistrate*, a Sub-divisional Magistrate, or of any other Magistrate specially empowered by the Local Government *or a Chief Presidency Magistrate*, or the District Magistrate to act under the section, immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order, stating the material facts of the case, and served in manner provided by s. 134 of Act V. of 1898, direct any person to abstain from a certain act, or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any persons lawfully employed, or danger to human life, health, or safety, *or a disturbance of the public tranquillity*, or a riot, or an affray. An order under this section may, in cases of emergency, or in cases where the circumstances do not admit of the serving, in due time, of a notice upon the person against whom the order is directed, be passed *ex parte*. An order under this section may be directed to a particular individual, or to the public generally, when frequenting or visiting a particular place. Any Magistrate may rescind or alter any order made under this section by himself or any Magistrate subordinate to him, or by his predecessor in office. No order under this section shall remain in force for more than two months from the making thereof, unless, in cases of danger to human life, health, or safety, or a likelihood of a riot or an affray, the Local Government, by notification in the official Gazette, otherwise directs.—Crim. Pro. Code (Act V. of 1898), s. 144.

THE following extract, taken from the Report of the Indian Law Commissioners, fully explains the reason for the enactment of s. 188 of the Penal Code: "We have, to the best of our ability, framed laws against acts which ought to be repressed at all times and places, or at times and places which it is in our power to define. But there are acts which at one time and place are perfectly innocent and which at another time or place are proper subjects for punishment; nor is it always possible for the Legislature to say at what time or at what place such acts ought to be punishable. Thus, it may happen that, a religious procession, which is in itself perfectly legal, and which, while it passes through many quarters of a town, is perfectly harmless, cannot, without great risk of tumult and outrage, be suffered to turn down a particular street inhabited by persons who hold the ceremony in abhorrence, and whose passions are excited by being forced to witness it. Again there are many Hindu rites which in Hindu temples and religious assemblies the law tolerates, but which could not with propriety be exhibited in a place where English gentlemen and ladies are in the habit of frequenting for purposes of exercise. Again, at a particular season, hydrophobia may be common among dogs at a particular place, and it may be highly advisable that all people at that place should keep their dogs strictly confined. Again, there may be a particular place in a town which the people are in the habit of using as a receptacle for filth, in general, this practice may do no harm, but an unhealthy season may arrive when it may be dangerous to the health of the population; and, under such circumstances, it is evidently desirable that

no person should be allowed to add to the nuisance. It is evident that it is utterly impossible for the Legislature to mark out the route of all religious processions in India, to specify all the public walks frequented by English ladies and gentlemen, to foresee in what months and in what places hydrophobia will be common among dogs, or when a particular dunghill may become dangerous to the health of a town. It is equally evident that it would be unjust to punish a person who cannot be proved to have acted with bad intentions for doing to-day what yesterday was a perfectly innocent act, or for doing in one street what it would be perfectly innocent to do in another street, without giving him some notice. What we propose, therefore, is to empower the local authorities to forbid acts which these authorities consider as dangerous to the public tranquillity, health, safety, or convenience; and to make it an offence in a person to do anything which that person knows to be so forbidden, and which may endanger the public tranquillity, health, safety, or convenience. It will be observed that we do not give to the local authorities the power of arbitrarily making anything an offence. For, unless the Court before which the person who disobeys the order is tried shall be of opinion that he has done something tending to endanger the public tranquillity, health, safety, or convenience, he will be liable to no punishment. The effect of the order of the local authority will merely be to deprive the person who knowingly disobeys the order of the plea that he had no bad intentions. He will not be permitted to allege that, if he has caused harm or risk of harm, it was without his knowledge."

BEFORE a person can be legally punished for refusal to remove and reconstruct roof-drains, evidence ought to be taken whether the party has disobeyed the Magistrate's order, and that such disobedience has produced, or is likely to produce harm.—QUEEN *v.* SHABUCKRAM BUKOOLEE, 2 W. R. 32. [Kemp and Glover, JJ. Feb. 8. 1865.]

THE mere non-service personally of a notice to remove a nuisance is not a sufficient ground for the Court, under s. 434 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 222 of the new Code of Criminal Procedure (Act X. of 1882), to set aside the Magistrate's order when it appears that the parties did not take the objection before the Magistrate, and that they, in fact, admitted knowledge of the existence of the notice, and sought to excuse their failure to obey it.—HOCHAN *v.* ELLIOT, 5 W. R. 4. [Seton-Karr and Macpherson, JJ. Jan. 15, 1866.]

A MAGISTRATE cannot, under s. 62, Criminal Procedure Code (Act XXV. of 1861), corresponding with s. 144, new Code of Criminal Procedure (Act X. of 1882), in general terms, forbid two parties to use any musical instrument in the neighbourhood of each other's house, though he may forbid their doing so for the purpose of mutual annoyance.—IN THE MATTER OF RAM CHUNDER GEER GOSSAIN, 6 W. R. 40. [Jackson and Markby, JJ. July 9, 1866.]

HELD that an Assistant Magistrate, as he comes with the definition of the term "any Magistrate," was competent to pass an order under s 62 of the Criminal Procedure Code (Act XXV. of 1861), which contemplates circumstances under which an immediate order is urgently required, and in this respect differs from s. 188 of the Penal Code.—GOVT. *v.* MAHOMED BUKSH, 1 Agra H C. R. 23. [Turner, J., and Spankie, Offg. J. Sep. 14, 1866.]

A SENTENCE of rigorous imprisonment passed by a Magistrate, F. P., under s. 188 of the Penal Code, for disobedience to an order duly promulgated by a public servant, altered to one of simple imprisonment, as the Magistrate's finding did not show that the case came within the latter part of the section, in which case alone the infliction of rigorous imprisonment was authorized.—REG. *v.* RATANRAO BIN MAHADEVRAO CHAVAN, 3 Bom. H. C. R. 32. [Couch, C.J., and Newton and Warden, JJ. Oct. 3, 1866.]

HELD that the Magistrate, as President of a Municipal Committee, has no power to issue an order forbidding, as a nuisance, an act not included in the rules passed under Act XXVI. of 1850.—GOVT. *v.* SHAM SOONDER, 1 Agra H. C. R. 34. [Turner, J., and Spankie, Offg. J. Dec. 12, 1866.]

A MINOR, whose property was under the Court of Wards, having been fined by the Magistrate for disobedience by his servants of a lawful order duly promulgated with reference to such property, the order of the Magistrate was reversed, on the ground that the offence was not committed by the minor in person, and that the prosecution was misdirected.—CROWN *v.* SIRDAR DYAL SINGH, Panj. Rec., No. 84 of 1866.

THE accused was fined by the Magistrate for not having closed a drain in pursuance of the verbal order of the Magistrate. *Held* that the Magistrate should have proceeded under ch. 20 of Act XXV. of 1861, inasmuch as the nuisance was not one from which immediate danger was apprehended, and not under s. 62, which empowers the Magistrate to put an immediate determination to the continuance thereof. A written order not

having been given, the procedure was faulty and therefore quashed. Only Magistrates of a district or division can act under ch. 20, s. 308.—GOVT. v. CHOONEE LALL, 2 Agra H. C. R. 1. [Turner, J., and Spankie, Offg. J. Jan. 16, 1867.]

CONVICTIONS and sentences for disobeying an order duly promulgated by a public servant reversed, as the mamlatdar, who stated that he proceeded under Bom. Act V. of 1864, was not thereby empowered to make the order.—REG. v. BHAU BIN VITHU, 3 Bom. H. C. R. 53. [Newton and Tucker, JJ. Jan. 17, 1867.]

IT is not a lawful order to direct a man not to leave his home without informing the lambardar of the village or the police (*Crown* v. *Boolahee*, Panj. Rec., No. 12 of 1868), or without a ticket-of-leave, or the permission of the police.—CROWN v. HURNAM SINGH, Panj. Rec. No. 45 of 1867.

CONVICTION and sentence for disobeying an order made by a mamlatdar, under Bom. Act V. of 1864, directing the accused to keep a gateway open, reversed, as the mamlatdar was not empowered under that Act to make the order.—REG. v. KHANDOGI BIN TANAJI, 5 Bom. H. C. R. 21. [Couch, C.J., and Newton, J. Mar. 10 1868.]

A CONVICTION under s. 188 of the Penal Code for disobedience of an order duly promulgated by a public servant will not stand where the evidence fails to show that the disobedience caused, or tended to cause, obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any person lawfully employed, or that it caused, or tended to cause, danger to human life, health, or safety, or caused, or tended to cause, a riot or affray.—PRO., Mar. 16, 1868, 4 Mad. H. C. R., Ap. 5.

IN a case of public nuisance under s. 290 of the Penal Code, it must be proved that injury, danger, or annoyance has been caused either in regard to the enjoyment of property, or the exercise of a public right on the part of a portion of the community or of any particular class of people. The fact that there is a special law to meet a particular offence (in this case cattle-trespass) does not prevent the punishment of the offenders under the Penal Code, if an offence which could have been rightly punished under the Penal Code was established.—ONOORAM v. LAMESSOR; WEBSTER v. KEENA, 9 W. R 70. [Phear and Hobhouse, JJ. May 23, 1868.]

HELD that an order passed by a mamlatdar, under Bom. Act V. of 1864, directing the accused to keep open a right-of-way to a privy, being in reality an injunction to refrain from disturbing the possession of the parties, was, therefore, within the jurisdiction of the mamlatdar.—REG. v. KRISHNASHET BIN NARAYANSHET, 5 Bom. H. C. R. 46. [Couch, C.J., and Newton, J. June 17, 1868.]

HELD that a Magistrate cannot proceed to pass an order for the removal of a nuisance, under s. 308 of the Code of Criminal Procedure (Act XXV. of 1861), without calling on the party to show cause why the order should not be passed against him, and without hearing the objections, even if they are filed after the time fixed for their presentation, but before he takes up the case. A Magistrate's power to fill up a tank is, by s. 308, limited to having it fenced in; but where the tank is proved to be injurious to the community, he may, under that section, treat it as public nuisance, and cause it to be filled up.—IN THE CASE OF BISTOO CHUNDER CHUCKERBUTTY, 10 W. R. 27. [Loch and Glover, JJ. Aug. 13, 1868.]

S. 62 of the Code of Criminal Procedure (Act XXV. of 1861), does not authorize a Magistrate summarily to direct the owner of a tank in a dry bed of a river to destroy the banks, on the ground that they are an obstruction to the public in the lawful enjoyment of the river, and that the stopping of the water interferes with the health of the public.—REFERENCE IN THE CASE OF GHOLAM DURBESH, 10 W. R. 36. [Jackson and Hobhouse JJ. Sep 10, 1868.]

THE powers of a Magistrate and the procedure to be observed by him in issuing orders under ss. 62 and 308 of the Code of Criminal Procedure (Act XXV. of 1861), discussed, and the difference between these sections pointed out.—IN THE MATTER OF (1) HURIMOHAN MALO; (2) JAYAKRISHNA MOOKERJEE, 10 W. R 53; 1 B. L. R. A. Cr. 20 [Phear and Hobhouse, JJ. Nov. 20, 1868.]

WHERE accused was convicted, under Act (XXV. of 1850), of disobedience of an order made by the Municipal Commissioners of Puna, and was sentenced to pay a fine of twenty rupees, and (eight days time being allowed him within which to comply with the order) a further fine of two rupees for each day during which he should continue wilfully to disobey such order, the latter part of the sentence was reversed by the High Court as being illegal.—REG v JAGANNATHBHAT BIN APPABHAT, 5 Bom H C. R. 103. [Newton and Tucker, JJ Dec. 3, 1868.]

ORDERS by Sub-Magistrates, in one case directing the removal of a house, on the ground that it was in a dangerous and dilapidated condition, and in the other directing the removal of a granary, on the ground

that it had been improperly erected upon land required to be kept unoccupied for common purposes, were set aside by the High Court because the Sub-Magistrate acted without jurisdiction.—PRO., Feb. 12, 1869, 4 Mad. H. C. R. Ap. 34.

IT is competent to a Magistrate to issue an order to certain persons in possession and management of a Hindu temple to widen the doorway in order to give the necessary ventilation and to afford proper means of ingress and egress to the pilgrims. Even if the temple were private property, the order could be passed, as the building was open to the Hindu public.—REG. v. RAMCHUNDRA EKNATH, 6 Bom. H. C. R. 36. [Couch, C.J. and Newton, J. April 21, 1869.]

THERE is nothing in s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), to justify a Magistrate in making an order for the removal of a bund, or other obstruction or nuisance on the mere report of a police-constable; and before making such order he ought to take evidence from the defendants, and, if necessary, on both sides.—QUEEN v. BHYROO DYAR SINGH, 11 W. R. 46; 3 B. L. R. A. Cr. 4. Norman and Jackson, JJ. May 3, 1869.

WHERE an order under s. 318 of the Criminal Procedure Code (Act XXV. of 1861), was made between A on the one side, and B and the then tenants of B on the other, declaring that A was in possession of the property in dispute, *held* that this order was only binding on the actual parties to the case before the Magistrate, and that subsequent tenants of B could not be criminally punished for disobeying the order in question.—IN THE MATTER OF GOPAL BURNAWAR, 3 B. L. R. A. Cr. 13. [Norman and Jackson, JJ. May 10, 1869.]

THE order contemplated by s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), is a particular and specific order addressed to a particular person or particular persons to do or abstain from a particular act or particular acts. That section does not empower a Magistrate to pass a general order to persons not to allow their cattle or horses to run at large on the public roads; nor can such an order be passed under Act III. of 1857, which applies only to injury done by cattle to crops &c., and to the sides of public roads and embankments.—QUEEN v. AMEERUDDEEN, 12 W. R. 36; 3 B. L. R. A. Cr. 45; 6 B. L. R. 78n. [Norman and Jackson, JJ. July 26, 1869.]

A MAGISTRATE issued an order warning owners of cattle to take proper care of them, and that, in case of disobedience or neglect, they would be punished according to law, and did punish them for disobedience under s. 188 of the Penal Code. *Held* that the Magistrate was not competent, under s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), to pass such an order. The order contemplated under this section is in the nature of an injunction, and such an order passed by a Magistrate would not be legal. That the conviction under s. 188 of the Penal Code was illegal.—*In re* AMIRADDI, 3 B. L. R. A. Cr. 45. [Norman and Jackson, JJ. July 26, 1869.]

THE power of issuing orders to prevent breaches of the peace, &c., conferred on a Magistrate by s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), extends only to immoveable property of the description set forth in ch. 22 of that Code.—QUEEN v. GOLUCK CHUNDER GOHOO, 12 W. R. 38. [Jackson and Markby, JJ. July 27, 1869.]

AN order issued by a Magistrate under s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), in consequence of a mahazirnama signed by certain persons, but without any notice to the defendant or inquiry by the Magistrate, is illegal.—PRO., Aug. 16, 1869, 4 Mad. H. C. R. Ap. 67.

BEFORE a conviction can be had under s. 188, Penal Code, it must be proved that the accused knew that an order had been promulgated by a public servant directing such accused person to abstain from a certain act.—QUEEN v. RAMTONOO SINGH, 12 W. R. 49. [Kemp and Glover, JJ. Aug. 28, 1869.]

A MAGISTRATE issued a notification that all persons desirous of carrying arms should take out a license enabling them to do so under s. 26 of Act XXXI. of 1860; and certain persons were, in consequence of this notification, arrested and brought before him, charged in a police-report with carrying arms without license. No summons or warrant had been applied for, or any complaint lodged before the Magistrate, previous to the arrest of the prisoners. No charge in writing was framed as required under ss. 250 to 251 of the Criminal Procedure Code (Act XXV. of 1861). No evidence was taken, but the prisoners admitted carrying the fire-arms. The Magistrate convicted them, under s. 188 of the Penal Code, of disobedience to an order duly promulgated by a pulic servant. There was no evidence that the disobedience would cause, or tend to cause, annoyance, obstruction, or injury to human life, health, or safety. *Held* that the convictions must be quashed. Necessity of observing the rules laid down in the Criminal Procedure Code remarked on.—QUEEN v. NANDKUMAR BOSE, 3 B. L. R. Ap. 149. [Markby and Glover, JJ. Sep. 14, 1869.]

S. 62 of the Code of Criminal Procedure (Act XXV. of 1861), does not apply to disputes connected with lands, but refers specially to nuisances and other similar matters in which immediate action is necessary in order to avoid the risk of illegal consequences. — RAJBULLUB ADDHYA *v.* GOBIND CHUNDER MOITRO, 12 W. R. 66. [Kemp and Glover, JJ. Oct. 27, 1869.]

OOMRA was convicted of stealing a heifer. Moola bought the stolen heifer from accused No. 1, and was ordered by the Deputy Commissioner to give notice of the purchase at the thana. This Moola omitted to do, and he was tried and convicted under s. 188, Penal Code. *Held* that Moola had not committed an offence under that section, as the order in question was not one which the Deputy Commissioner was lawfully empowered to promulgate within the meaning of that section.—OOMRA *v.* CROWN, Panj. Rec., No. 17 of 1869.

THE Sub-Magistrate issued an order to two persons directing them to remove a certain embankment, whereby the adjacent lands of the complainant were in danger of being flooded. *Held* that the act of the defendant was not an act which could be prohibited by the Sub-Magistrate under s. 62 of the Code of Criminal Procedure (Act XXV. of 1861). —PRO., Feb. 22, 1870, 5 Mad. H. C. R. Ap. 19.

A MAGISTRATE has no power, under s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), to issue any order which is by its very nature irrevocable. All that he has power to compel the owner of property to do is to take certain order with it. Such power does not extend to an order to cut down a large quantity of trees — UTTAM CHUNDER CHATTERJEE *v.* RAM CHUNDER CHATTERJEE, 13 W. R. 72; 5 B. L. R. 131. [Bayley and Markby, JJ. May 14, 1870.

WHERE a Deputy Magistrate, without taking evidence, made an order under s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), changing a day on which a haut used to be held, and, subsequently, on taking evidence, found that his first order was wrong, and passed without jurisdiction, he was held to have acted properly in recalling his first order. — MOHUN SIRDAR ON BEHALF OF BUNWAREE LALL *v.* OBHOY CHURN MUKHOPADYAH, NAIB OF BABOO DEBENDER NATH TAGORE, 13 W. R. 72. [Kemp and Jackson, JJ. May 14, 1870.]

A MAGISTRATE cannot pass an order under s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), directing a person to abstain from a certain act, or to take certain order with certain property, unless he is satisfied that such direction on his part is likely to prevent, or tends to prevent, a riot or affray; nor can he pass an order under that section, or under s. 282 or any other section of the law, calling upon a person to enter into recognizances not to collect certain cesses, though under s. 282 the Magistrate may bind him to keep the peace, if there is sufficient evidence to show that a breach of the peace is imminent through his act.—IN THE MATTER OF LUCHMEEPUT SINGH, 14 W. R. 3. [Loch and Hobhouse, JJ. June 11, 1870.]

A MAGISTRATE cannot pass an order under s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), without first calling on the defendant to show cause why the order should not be passed, and taking any evidence which the defendant may adduce — RAI LUCHMEEPUT SINGH, 14 W. R. 17; 5 B. L. R. Ap. 81. [Loch and Glover, JJ. July 9, 1870.]

HELD (Phear J., dissenting) that an order passed by a Magistrate under s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), is not of the nature of a judicial proceeding, and therefore cannot be interfered with by the High Court under s. 404 of that Code.—ABBAS ALI CHOWDHRY *v.* ILLIM MEAH, 14 W. R. 46; 6 B. L. R. 74. [Couch, C.J., and Bayley Kemp, Jackson, and Phear, JJ. Aug. 17, 1870. *Contra*—*Sheeb Chunder Bhattacharjee* v. *Sadut Ally Khan*, 4 W. R. 12, which has been overruled by *Bykuntram Shaha Roy* v. *Meajan*, 18 W. R. 47: 10 B. L. R. 434. But followed in *Sheikh Laloo* v. *Adam Sirkar*, 17 W. R. 37, *infra*: and in *Lalla Mitterjeet Singh* v. *Rajcoomar Sirkar*, 18 W. R. 22, *infra*.

WHERE an order had been made by a Magistrate under s. 318 of the Code of Criminal Procedure (Act XXV. of 1861), in favour of A in respect of certain land, and B subsequently obtained an order from the Collector declaring him entitled to the same land, in pursuance of which he was put into possession by an officer of the Collector, it was held that, before B could be convicted under s. 188 of the Penal Code of disobeying an order made by a public officer, it should be proved that B was aware of the order under s. 318 and that, having that knowledge, he disobeyed it.—ABELAKH LALL *v.* SIRNAN SINGH, 15 W. R. 50. [Jackson and Macpherson, JJ. April 14, 1871.]

WHERE a complaint was made by A that timber belonging to his master, which had been cut and stacked in a certain place, had been removed by B, who said that the timber was cut, not by A's master, but by himself, and that he had stacked it in a place where he always put his timber, it was held that the Magistrate could not proceed under s. 62 of

the Code of Criminal Procedure (Act XXV. of 1861), but was bound to try the charge brought against B, and either restore the timber to A, or leave it where it was according to the result of the investigation.—KARTICK CHUNDER PAL v. CHUNDER NATH CHUCKERBUTTY, 15 W. R. 56. [Jackson and Mookerjee, JJ. April 24, 1871.]

THE purchaser of an interest in land at a sale in execution of a decree obtained an order for possession under s. 263 or 264, Act VIII. of 1859, and a dispute arose between him and another person, who had some interest in the land, as to what passed under the sale-certificate. Without ascertaining the rights of the parties, the Magistrate made certain orders, the effect of which was to exclude the auction-purchaser for some time from exercising the right alleged to have passed to him under the purchase. *Held* that the Magistrate ought to have made no order at all with reference to the property, leaving it to the parties to determine their rights in the Civil Court, and that he had ample power under the section to do what was necessary to prevent a breach of the peace. The High Court may interfere with and quash any order passed by a Magistrate under s. 62, Code of Criminal Procedure (Act XXV of 1861), when the order is such that it was beyond the power and out of the jurisdiction of the Magistrate to make it. *Quære*—Whether pleaders have a right to be heard in such case.—SHEIKH LALOO v. ADAM SIRKAR; GOVT v. SURJAKANT ACHARJIA; DENGOO SHEIKH v. ADAM SIRKAR, 17 W. R. 37. [Bayley and Markby, JJ. Mar. 9, 1872.] Approves *Abbas Ali Chowdhry* v. *Illim Meah*, 14 W. R. 46, *supra*. Dissented from in *Lalla Mitterjeet Singh* v. *Rajcoomar Sirkar*, 18 W. R. 22, *infra*.

AN order in writing under s. 62 of the Code of Criminal Procedure (Act XXV of 1861), is necessary to sustain a charge under s. 188 of the Penal Code. *Quære*—Whether a Magistrate has not power to proceed under the former section instead of under s. 308 against a party for disobeying an order issued by him directing the party to clean a privy pronounced to be a nuisance.—IN THE MATTER OF PITAMBUR DEY, 17 W. R. 57. [Couch, C.J., and Ainslie, J. April 27, 1872.]

WHERE a new haut was established about half a mile from a long-established market, and the Deputy Magistrate was of opinion that the holding of the two hauts on the same days of the week would induce a breach of the peace, *held* that the order passed by the Deputy Magistrate, under s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), directing petitioner to abstain from holding his haut on certain days, was not beyond his power, or out of his jurisdiction, to pass, and therefore was one with which the High Court could not interfere under s. 404 of the Code of 1861.—LALLA MITTERJEET SINGH v. RAJCOGMAR SIRKAR, 18 W. R. 22. [Kemp and Glover, JJ. June 25, 1872.] Dissents from *Sheikh Laloo* v *Adam Sirkar*, 17 W. R. 37, *supra*. Follows *Abbas Ali Chowdhry* v. *Illim Meah*, 14 W. R. 46, *supra*, p. 176.

WHERE, by direction of Government, the Magistrate promulgated an order under s. 62, Code of Criminal Procedure (Act XXV. of 1861), directing all persons to abstain from hook-swinging or other self-torture in public, and from the abetment thereof, and no such order was upon the record, the High Court annulled the conviction of the prisoners by the Deputy Magistrate under ss. 188, 114, Penal Code, for having knowingly disobeyed that order.—IN THE MATTER OF DWARICK MISSER, 18 W. R. 30. [Kemp and Glover, JJ. July 19, 1872.]

A MAGISTRATE, or other officer exercising the powers of a Magistrate, is legally competent, under s. 62, Code of Criminal Procedure (Act XXV. of 1861), to issue an order prohibiting a landholder from holding a haut on any particular spot on his estate on particular days on the ground that such an order is likely to prevent a riot or an affray.—BYKUNTRAM SHAHA ROY v. MEAJAN, 18 W. R. 47; 10 B. L. R. 434. [Couch, C.J., and Bayley, Kemp, Mitter, and Ainslie, JJ. Sep. 9, 1872.] Overrules *Sheeb Chunder Bhuttacharjee* v. *Saadut Ally Khan*, 4 W. R. 12.

ACCUSED was convicted, under s. 188 of the Penal Code, of exposing beef for sale in the city of Amritsar, and thereby disobeying an order duly promulgated. He was sentenced to rigorous imprisonment for two months, and his knife and scales were ordered to be confiscated. The Chief Court, on the revision-side, cancelled the order of confiscation, as being unauthorized by law.—CROWN v. IMAMI, Panj. Rec., No. 13 of 1872.

THE words, "or to do any act that may probably occasion a breach of the peace," in s. 282, Code of Criminal Procedure (Act XXV of 1861), were construed to mean a wrongful act, and not one which the person may lawfully do. It was not intended that a person should be prevented by a Magistrate from exercising his right of property, because another person would be likely to commit a breach of the peace if he did so. Therefore, where a Magistrate issued an order preventing a householder from building a wall to his own house, the order was set aside as illegal.—CASHI CHUNDER DAS v. HURRIKISHORE DASS, 19 W. R. 47; 10 B. L.

R. 441. [Couch, C.J., and Birch, J. Mar. 19, 1873.]

IN a case in which the Magistrate passed an order under s. 518, Code of Criminal Procedure (Act X. of 1872), for closing a haut on the ground that it was only a mile apart from another haut, and a breach of the peace was not unlikely, the Sessions Judge recommended that the order should be set aside, s. 518 applying only when a breach of the peace was imminent. *Held* that, under expl. 2, s. 518, the order could be made in all cases upon such information as satisfied the Magistrate; and as the order was one which the Magistrate had power to make, and was not contrary to law, the High Court could not, under s. 297, Code of Criminal Procedure, 1872, set it aside. Orders made under s. 518 are not judicial proceedings, and therefore are not within s. 297.—BHOLANATH BOSE *v.* KOMURUDDIN, 20 W. R. 53. Couch, C.J., and Birch, J. July 18, 1873.

A SECOND-CLASS MAGISTRATE who issues an order under s. 518 of the Code of Criminal Procedure (Act X. of 1872), has no jurisdiction to punish for its disobedience by reason of s. 487 of the Criminal Procedure Code (or ss. 131 and 132 of the new Code).—REG. *v.* RANCHOD DAYAL, 10 Bom. H. C. R. 424. [Melvill and Nanabhai Haridas, JJ. Oct. 29, 1873.]

THE accused were convicted by the Deputy Commissioner of Rohtak, under s. 188 of the Penal Code, of disobeying an order issued by the Lieutenant-Governor, and dated 7th April 1865. Para. 3 of the order was as follows: "His Honor desires that, in the case of every *kacha* road in this province which has to support a traffic carried on carts, one side may be assigned to the carts, and one reserved for light traffic." The accused drove heavy carts on that part of a road which was set apart for light traffic. *Held* that the order of the 7th April 1865 was not legal, and the conviction could not stand.—CROWN *v.* UNNIR, Panj. Rec. No. 8 of 1873.

THE accused were caught fishing in the canal near Dinanager, in the Gurdaspur district, with nets, the meshes of which were smaller than one-inch and-a-quarter square or six inches all round, the minimum size fixed by the Financial Commissioner's Circular No. 40 of 1870. The accused did not hold licenses for fishing. The Magistrate convicted the accused under s. 188 of the Penal Code. *Held* (by Lindsay, J.) that the Financial Commissioner's circular was not authorized by law, and the conviction must be quashed. *Held* (by Campbell, J.) that the facts did not disclose an offence under s. 188.—CROWN *v.* KANHAYA, Panj. Rec., No. 11 of 1873.

THE operation of s. 518, Code of Criminal Procedure (Act X. of 1872), is confined to cases where, in the opinion of the Magistrate, the delay which would be caused by adopting a different procedure from that specified in the explanation to that section would occasion a greater evil than that suffered by the person upon whom the order is made, or would defeat the intention of this (the 39th) chapter. Where a Magistrate, without hearing the petitioner, or giving him an opportunity of being heard, and simply upon the foundation of a police-officer's report, directed the petitioner to abstain from holding a haut upon his land on a certain day, because another party had long been accustomed to hold a haut upon his land adjacent to the petitioner's haut on the day following that in which the petitioner held his haut, it was *held* that his order passed under s. 518 was *ultra vires*, the police-officer's report being vague and insufficient, and the private interest of this kind not affording a ground for making an order under s. 518 or any other order under the Criminal Procedure Code.—BANEE MADHUB GHOSE *v.* WOOMA NATH ROY CHOWDHRY, 21 W. R. 26. [Phear and Morris, JJ. Jan. 18, 1874.]

THE pay of G, a servant of a Railway Company, fell due on the 1st April. On the 31st March, the Civil Court granted a prohibitory order under Act VIII of 1859, attaching G's pay, and the order was served on the Auditor of the Company on the 1st April. The Auditor returned the order, having endorsed on it that it was dated March 31st, and G's pay was not due till the 1st April. The order was again served on the 1st April, and the Auditor again returned it with the remark that, since the first service, the pay due to G had been made over to him. The Auditor was convicted under s. 183 for resisting the taking of property by the lawful authority of a public servant. *Held* that the conviction was bad under s. 183, and could not be sustained under s. 188, as on the 31st March there was no debt due to G on which the prohibitory order could operate, and the Auditor was, therefore, not bound to obey such an order.—LIGHTFOOT *v.* CROWN, Panj. Rec., No. 9 of 1874.

To support a conviction under s. 188, Penal Code, there must be evidence that the order has been promulgated by a public servant lawfully empowered to promulgate such order; s. 518 of the Code which relates to local nuisances, has no application to a case like this, which refers to the collection of market-dues.—QUEEN *v.* SOBUN SINGH, 23 W. R. 57. [Kemp and Birch, JJ. April 5, 1875.]

AN order which declares that, as between the parties to a contention, certain land in dispute does not belong to the public, is not one the contravention of which can form the subject of an order under the Penal Code, s. 188.—UNNODA PERSHAD DUTT *v.* RANEE SHAMA SOONDUREE, 24 W. R. 20. [Glover and Mitter, JJ. June 28, 1875.]

THE extraordinary powers conferred on the High Court by the Letters Patent, s. 15, extend to the revising of orders passed under section 518 of the Code of Criminal Procedure (Act X. of 1872). When a Magistrate makes an order under this section, on the ground that he has received information, and is satisfied with it, no interference is possible; but when he states the nature of the information, the High Court can see whether such information justifies the order made. Before a prohibitory order under s. 518 can be made, there ought to be information or evidence before the Magistrate that the act prohibited was likely to cause a riot or affray, and that the stoppage of that act would prevent such riot or affray. After summoning a person to show cause why he should not enter into a bond to keep the peace, the Magistrate cannot bind over that person until he adjudicates on evidence before him that such person is likely to commit a breach of the peace.—GOSHAIN LUCHMAN PERSHAD POOREE *v.* POHOOP NARAIN POOREE, 24 W. R. 30. [Glover and Mitter, JJ. Aug. 2, 1875.]

UNDER Act XXV. of 1861, s. 62, it is necessary that the direction should be addressed to a particular person, or particular persons, and not to the public generally, and with reference to a particular occasion only, not for a continuance.—*Pro.*, Aug. 17, 1875, 8 Mad H. C. R. Ap. 9.

IN a civil suit to which accused was a party the decree was that the marriage of a certain girl should be arranged for by A, another party to the suit, and that accused, her maternal uncle, should, in the meantime, have her custody only. Notwithstanding this decree, accused gave her away in marriage to B. A prosecuted accused, and the latter was convicted of disobeying a lawful order of a public servant. *Held* that the conviction could not stand.—CROWN *v.* NAND LALL Panj Rec., No. 3 of 1876.

A PERSON plying a boat for hire at a distance of three miles from a public ferry cannot be said, with reference to such ferry, to commit "criminal trespass" within the meaning of that term in s. 441 of the Penal Code. If, when directed by the order of a public servant, duly promulgated to him, to abstain from plying a boat for hire at or in the immediate vicinity of a public ferry, a person disobeys such direction, he renders himself liable to punishment under the Penal Code.—MUTHRA *v.* JAWAHIR, I. L. R., 1 All. 527. [Spankie, J. Dec. 15, 1877.]

WHERE a Magistrate made an order under s. 518 of the Code of Criminal Procedure (Act X of 1872), directing one of two rival haut-proprietors to remove his haut to such a distance as to render it useless for the purposes for which it was established, it was *held* that the order came within the purview of the Full Bench decision in *Gopi Mohun Mullick* v. *Taramoni Chowdhrani* (I. L. R., 5 Cal. 7; 4 C. L. R. 309), and might be set aside as in excess of jurisdiction.—SHARUT CHUNDER BANERJEE *v.* RAMACHURN MOOKERJEE, 4 C. L. R. 410. [Morris and White, JJ. Mar. 19, 1879.]

A MAGISTRATE is not empowered to pass an order under s. 518 of Act X. of 1872 which has more than a temporary operation. The grant of what is, in effect, an order for a perpetual injunction is entirely beyond his powers. When a plaintiff alleged that he had held a haut on his own land for many years on Tuesdays and Fridays: that the defendant had set up a rival haut on these days, and prevented persons from attending the plaintiff's haut; that this led to disturbances which ended in an order being made by the Magistrate prohibiting the plaintiff from holding his haut on the said days, and that the plaintiff suffered loss and damage in consequence: *Held* that, assuming these facts to be true, the plaintiff was entitled to a decree, declaring, as against the defendant, that the plaintiff had a right to hold his haut on Tuesdays and Fridays.—GOPI MOHUN MULLICK *v.* TARAMONI CHOWDHRANI, I. L. R., 5 Cal. 7; 4 C. L. R. 309 [Garth, C.J., and Jackson, Pontifex, Ainslie, Birch, Morris, White, Mitter, McDonell, Prinsep, Wilson, and Broughton, JJ. April 17, 1879.]

WHERE an executive officer makes an order, or issues a notification under the provisions of the Code of Criminal Procedure, it is not within the province of judicial authority to question the propriety or legality of such order or notification until an attempt is made to enforce the exaction of a penalty against a person committing a breach of such order or notification. It then becomes the duty of the judicial authority to consider whether the order is properly made or not.—IN THE MATTER OF SURJANARAIN DASS: EMPRESS *v.* SURJANARAIN DASS, I. L. R., 6 Cal. 88. [Jackson and Tottenham, JJ. June 15, 1880.]

A MAGISTRATE directed a landholder "to find a clue" in a case of theft "within fifteen days and to assist the police." *Held* that such order was not authorized by ss. 90 and

91 of Act X. of 1872, and the conviction of such landholder, under ss. 187 and 188 of the Penal Code, for disobedience of such order, was not maintainable.—EMPRESS v. BAKSHI RAM, I. L. R., 3 All. 201. [Pearson, J. Aug. 18, 1880.]

IN the absence of evidence that an order under s. 530 of the Code of Criminal Procedure (Act X. of 1872), was, in fact, directed to the accused, he cannot legally be convicted under s. 188 of the Penal Code for disobeying such order. *Quære.*—Whether an order under s. 530 can be directed to others than the unsuccessful party to the proceedings under the section, or whether such an order could properly be directed to the public at large.—*In re* NOBOKISHORE CHUCKERBUTTY, 7 C. L. R. 291. [Mitter and Maclean, JJ. Sep. 4, 1880.]

S. 188 of the Penal Code applies to orders made by public functionaries for public purposes, and not to an order made in a civil suit between party and party. The proper remedy for disobedience of an order of injunction passed by a Civil Court is committal for contempt.—IN THE MATTER OF CHANDRAKANTA DE, I. L. R., 6 Cal. 445; 7 C. L. R. 350. [Garth, C.J., and Maclean, J. Nov. 9, 1880.]

IN a case of a dispute between rival parties as to the payment of rents by tenants, a Magistrate has *no* power, under s. 518 of Act X. of 1872, to make an order that no rents should be collected until such time as the right and title of both parties should have been established by order of a competent Court, and a conviction under s. 188 of the Penal Code for disobeying such an order cannot be sustained.—PROSUNNO COOMAR CHATTERJEE v. EMPRESS, 8 C. L. R. 231. [Mitter and Maclean, JJ. Jan. 19, 1881.]

AN omission or neglect by a zemindar, when called upon under s. 11 of Reg. XX. of 1817, to nominate some one to fill the office of village-watchman which had become vacant, is not an offence under either s. 187 or s. 188 of the Penal Code.—IN THE MATTER OF KALI PROSUNNO GHOSE, 7 C. L. R. 575. [Morris and Prinsep, JJ. Jan. 19, 1881.]

WHERE a dispute arises as to the right of the possession of lands and buildings, a Magistrate, if he considers a collision between the parties, and a serious breach of the peace, imminent, may properly proceed under ch. 39, instead of ch. 40, of the Criminal Procedure Code (Act X. of 1872). If the Magistrate had jurisdiction, the proceedings, not being judicial, cannot be revised by the High Court. An order to abstain from interference with a temple and its property is an order to abstain from a "certain act within the meaning of s. 518 of the Criminal Procedure Code (Act X. of 1872).—E. V. RAMANUJA JEEVARSVAMI v. V. RAMANUJA JEEYAR, I. L. R., 3 Mad. 354. [Innes and Muttusami Ayyar, JJ. Aug. 4, 1881.]

ON the 7th of June 1881, the Assistant Commissioner of Hylakandi, in Sylhet, passed an order under s. 518 of the Criminal Procedure Code (Act X. of 1872), that the manager of a certain tea garden should discontinue holding a market on Thursday until further notice. On the 25th August 1881, the Assistant Commissioner reviewed this order, and, having come to the conclusion that he had no power to issue a permanent injunction, struck the case off the file, at the same time referring the matter to the Deputy Commissioners. The latter declined to interfere, informing the Assistant Commissioner that he saw no illegality in his order. Thereupon the Assistant Commissioner passed an order, declaring that his order of the 7th of June 1881 remained in full force. On a reference to the High Court made by the Officiating Sessions Judge of Sylhet under s. 297 of the Code of Criminal Procedure (Act X. of 1872), *held* that the Magistrate having, on the 25th of August 1881, set aside his order of the 7th of June 1881, and struck the case off the file he had no power to revive it without a fresh proceeding.—BRADLY v. JAMESON, I. L. R., 8 Cal. 580. [Cunningham and Tottenham, JJ. Mar. 6, 1882.]

AN order given by an officer superior in rank to an officer in charge of police-stations, commanding an assembly of five or more persons likely to cause a disturbance of the public peace to disperse, is a lawful order within the meaning of s. 480 of the Code of Criminal Procedure (Act X. of 1872).—EMPRESS v. TUCKER, I. L. R., 7 Bom. 42. [Kemball and Pinhey, JJ. Sep. 28, 1882.]

IN affording special protection to persons assembled for religious worship or religious ceremonies, the law points to congregational rather than private worship; and it may fairly be required of congregations that they should inform the Magistrate or police at what hours they customarily assemble for worship, in order that the rights of other persons may not be unduly curtailed. No sect is entitled to deprive others for ever of the right to use the public street for processions, on the plea of the sanctity of their place of worship, or on the plea that worship is carried on therein day and night. The duties of a Magistrate in cases where the public peace is likely to be disturbed by one sect attempting

to prevent another from using the public streets for procession discussed. The principles laid down in *Muthialu Chitti* v. *Bapun Said* (I. L. R., 2 Mad. 140) examined, explained, and approved.—SUNDRAM *v.* QUEEN, I. L. R., 6 Mad. 203. [Turner, C.J., and Innes and Kindersley, JJ. Jan. 9, 1883.]

THE accused was convicted under the Penal Code of disobedience to a general order of the Magistrate, directing the public not to frequent the roads and public places at the village of P between certain hours. *Held* that the conviction was bad.—*In re* KOMUL KRISTO BONICK, 12 C. L. R. 231. [Mitter and Field, JJ. Feb. 28, 1883.]

A DISPUTE having arisen between the Mahomedan and Hindu inhabitants of a town as to the right of the latter to carry corpses along a certain public street to the burning-ground, the Magistrate passed an order, purporting to be under s. 539 of the Code of Criminal Procedure (Act X of 1872), directing that the Hindus should carry corpses by the nearest route to the burning-ground, and not by the street to the use of which for such purposes the Mahomedans objected. *Held* that the order of the Magistrate was illegal.—*In re* NARAYANA, I. L. R., 7 Mad. 49. [Turner, C.J., and Muttusami Ayyar, J. May 26, 1883.]

A PERSON attempted to obtain his recruitment in the police of a district by giving certain information which he knew to be false to the District Superintendent of Police. *Held* that such person had not thereby committed an offence punishable under s. 177 or s. 188 of the Penal Code, or the offence of attempting to "cheat" within the meaning of s. 415 of that Code.—EMPRESS *v.* DWARKA PRASAD, I. L. R., 6 All. 97. [Tyrrell, J. Sep. 25, 1883.]

ON the 29th of March 1883, the Municipal Commissioners of Commillah, at a meeting, issued an order under s. 256 of the Bengal Municipal Act of 1876. The accused was tried and convicted before the District Magistrate under s. 188 of the Penal Code, and fined Rs 100 for having disobeyed that order. The Magistrate who tried and convicted the accused was present as Chairman of the Municipal Commissioners at the meeting of the 29th of March, when the order was passed, for disobedience of which the accused was tried and convicted. *Held* that the conviction was illegal, and must be set aside. *Sergeant* v. *Dale* (L. R., 2 Q. B. D. 558) cited and followed.—KHARAK CHAND PAL *v.* TARACK CHUNDER GUPTA, I. L. R., 10 Cal. 1030. [Prinsep and Macpherson, JJ. Aug. 22, 1884.]

IN May 1883 the District Magistrate of Tipperah held an inquiry as to the possession of certain lands claimed by A and B, and, having found on the evidence taken by him that A was in possession, he passed an order on the 21st of May 1883, declaring that A was entitled to hold possession of the disputed land until evicted in due course of law, and forbidding B and all others to disturb A's possession until such disturbance should be effected in due course of law. Previously to November 1885, B sold an eight-anna share of its interest in the disputed land to C, who, at the time of his purchase, had notice of the order of the 21st of May 1883. In November 1885, B and others went to the disputed lands, and attempted to turn A out of possession by force, and to compel the tenants of the lands to pay rent, and give kabuliyats to B and C. At the time that B and his companions went to the disputed land, the latter were aware of the order of the 21st of May 1883, though none of them was a party to the inquiry then made by the District Magistrate. In December 1885, they were all tried and found guilty of disobedience to an order duly promulgated by a public servant. *Held* that the conviction was right. *Semble*.—That a reference by a Magistrate to the police-report, which clearly sets out the probability of a breach of the peace, is a sufficient statement of the reasons for the Magistrate's being satisfied of the existence of a dispute likely to cause a breach of the peace within the meaning of s. 145 of the Code of Criminal Procedure.—GOLUCK CHANDRA PAL *v.* KALI CHARAN DE, I. L. R., 13 Cal. 175. [Prinsep and Grant, JJ. April 30, 1886.]

IN 1876 a Magistrate passed an order under s. 518 of Act X. of 1872 (Criminal Procedure Code), directing the Saraogis of Etah to take one of their annual religious processions along a particular route and at a particular hour. In 1885, in which year there was no fresh promulgation of the order, the Saraogis took their procession along another route and at a different hour, and for so doing some of them were convicted and sentenced under s. 188 of the Penal Code. *Held* that the conviction was wrong, the order of 1876 having a temporary operation only. *Gopi Mohun Mullick* v. *Taramoni Chowdhrani* (I. L. R., 5 Cal. 7) referred to.—QUEEN-EMPRESS *v.* SHEODIN, I. L. R., 10 All. 115. [Mahmood, J. Nov. 25, 1887.]

A DISTRICT MAGISTRATE, by an order made under s. 144 of the Criminal Procedure Code, after stating that it appeared that one "GCS has recently established a hât at S in the vicinity of K. an old-established hât, held it on the same days, and that, in consequence of the establishment of the new hât, and the endeavours made to induce or force people to frequent the new hât instead of the old one, a

serious breach of the peace or riots are imminent," ordered "that the said GCS and all other persons abstain from holding such hât" on those days. The order was duly made and promulgated, but not strictly in accordance with s. 134 of the Code and the orders of Government made thereunder. Notwithstanding the order, one PCA was found exposing goods for sale as a trader at the hât on one of the prohibited days, and he was thereupon charged with disobeying the order of the Magistrate, and convicted of an offence under s. 188 of the Penal Code. *Held* that the conviction was bad, as PCA did not come within the description of the persons intended by the order to be prohibited from "holding" the hât, which referred to "holding" as owner or manager, not as a trader. *Held* also that the terms of s. 134 of the Code, and the notification made by Government thereunder as to promulgation and issue of an order, are directory, but an omission to follow strictly such direction, though it is an irregularity, does not invalidate the order: where, therefore, it is shown that the order has been brought to the actual knowledge of the person sought to be affected by it, such omission does not prevent the case coming within s. 188 of the Penal Code.—IN THE MATTER OF PARBUTTY CHARAN AICH: PARBUTTY CHURN AICH *v.* QUEEN-EMPRESS, I. L. R., 16 Cal. 9 [Wilson and Rampini, JJ. Aug. 6, 1888.]

A MAGISTRATE made an order under s. 133 of the Code of Criminal Procedure requiring N to fence a certain well in a public street, or to appear before him, and move to have the order set aside. A copy of this order was affixed to the house of N, but he did not appear. The Magistrate then adopted the procedure prescribed by ss. 136, 140, and made an order requiring N to fence the well by a certain date. N, who was personally served with notice of the above order, did not comply with it. The Magistrate then sanctioned the prosecution of N under s. 188 of the Penal Code. N appeared and produced evidence to prove that he was not liable to fence the well. *Held* that the accused was guilty of the offence of disobedience to an order duly promulgated by a public servant, and was not entitled to go behind the order, and show that it was one which ought not to have been made. The mode of service of notice of an order under s. 133 considered.—QUEEN-EMPRESS *v.* NARAYANA, I. L. R., 12 Mad. 475. [Muttasami Ayyar and Shephard, JJ. May 3, July 10, 1889.] Approved in *Queen-Empress v. Bishambar Lal*, I. L. R., 13 All. 577, *infra*. Distinguished in *Queen-Empress v. Jusoda Nand*, I. L. R., 20 All. 501, *infra*.

A PERSON against whom an order under s. 133 of the Code of Criminal Procedure is passed, who neglects to take any steps whatever in respect of such order within the time therein specified, either by way of compliance therewith, or by way of objection thereto in the manner prescribed by law, renders himself liable to be proceeded against under s. 188 of the Penal Code without its being necessary to wait until the order has been made absolute. If such order is made absolute under s. 140 of the Code of Criminal Procedure, further proceedings can then be had, under s. 188 of the Penal Code, against the person disobeying the order absolute. When an order under s. 133 of the Code of Criminal Procedure has been made absolute under s. 140, *ib.*, its validity cannot subsequently be questioned. *Queen-Empress v. Narayana* (I. L. R., 12 Mad. 475) approved.—QUEEN-EMPRESS *v.* BISHAMBAR LAL, I. L. R., 13 All. 577. Straight, J. July 27, 1891.

ON the 11th August 1894, the District Magistrate promulgated an order prohibiting the people of the village of Thirukodikaval from using their burning-grounds situated on the southern bank of the Cauvery, and directing them to use other burning-grounds which had been provided. On the 11th May 1895, certain persons in defiance of this order, cremated a corpse at the spot interdicted, and were convicted under ss. 188, 290, Indian Penal Code, but the conviction under s. 188 was reversed on appeal. *Held* that when persons entitled to use a particular spot dedicated for the communal purpose of cremation, use it for that purpose in a manner neither unusual nor calculated to aggravate the inconveniences necessarily incident to such an act as it is generally performed in this country, they cannot be convicted of a public nuisance on the ground that their act caused material annoyance and discomfort to persons near the place on the occasion referred to. *Held*, further, that the order of the District Magistrate was not warranted by s. 143, Criminal Procedure Code, or by any other law, and must, therefore, be set aside.—QUEEN-EMPRESS *v.* SAMINADHA PILLAI, I. L. R., 19 Mad. 464. [Subramania Ayyar and Davies, JJ. Aug. 13, 14, 25, 1896.]

THE President of a Local Board, acting under Act V. of 1884, issued a notice calling upon a person to remove certain encroachments on a public road within ten days. *Held* that such a notice was not an order within the meaning of s. 188 of the Indian Penal Code, and a person neglecting to obey it could not be convicted under that section.—QUEEN-EMPRESS *v.* SUBRAMANIAN, I. L. R., 20 Mad. 1. [Subramania Ayyar and Davies, JJ. Sep. 11, 1896.]

S. 133 of the Code of Criminal Procedure, 1882, does not empower a Magistrate to order

the owner of a house standing apart from any public road in its own compound to repair such house. By "persons living or carrying on business in the neighbourhood," injury to whom the power to pass orders under s. 133 is intended to prevent, are meant, not the persons who, in the exercise of their private rights, may use a building supposed to be in a dangerous condition, but unascertained members of the public whose ordinary avocations may take them to the neighbourhood of such building. *Queen-Empress* v. *Narayana* (I. L. R., 12 Mad. 475) and *Queen-Empress* v. *Bishamber Lal* (I. L. R., 13 All. 577) distinguished. — QUEEN-EMPRESS v. JASODA NAND, I. L. R., 20 All. 501. [Blair and Aikman, JJ. July 5, 1898.]

Pres. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

**189.** Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Threat of injury to public servant.

IN a prosecution for an offence under s. 189 of the Penal Code, the witnesses differed as to the exact words used by the prisoner in threatening the public servant, though they agreed as to the general effect of those words. The Magistrate, however, considered that the offence was clearly proved, and convicted the prisoner. The Sessions Judge, on appeal, affirmed the conviction, observing that it was immaterial what the words used were, and that the intention and effect of the words were plain. *Held* that the Judge was mistaken in regarding it as immaterial what the words used actually were, and that, on the contrary, it was most material that those words should be before the Court to enable it to ascertain whether, in fact, a threat of injury to the public servant was really made by the accused.—QUEEN-EMPRESS v. MAHESHRI BAKHSH SINGH, I. L. R., 8 All. 380. [Straight, Offg. C.J. May 22, 1886.]

Ditto.

**190** Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Threat of injury to induce person to refrain from applying for protection to public servant.

WHERE the exercise of ecclesiastical jurisdiction is plainly *ultra vires*, or otherwise unsanctioned by the ordinances of a religious society, or where such ordinances controvert the general law, and, in either case, consequences result which the criminal law was intended to restrain, the Criminal Courts are not at liberty to decline jurisdiction. A Roman Catholic complained to a Magistrate that he had been threatened with an illegal sentence of excommunication, and had been excommunicated by the Ecclesiastical authorities, with a view to prevent him from asserting his his legal rights in defending a civil suit concerning the property of a church. *Held* that, under the circumstances, the proper course was for the Magistrate to postpone the trial till the complainant proved in a Civil Court the illegality of the action of the Ecclesiastical authorities.—*In re* DECRUZ, I. L. R., 8 Mad. 140. [Turner, C.J., and Brandt, J. Oct. 6 and Dec. 2, 1884.]

## CHAPTER XI.*

### OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

**Giving false evidence.**

**191.** Whoever, being legally bound by an oath, or by any express provision of law, to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, is said to give false evidence.

*Explanation 1.*—A statement is within the meaning of this section, whether it is made verbally or otherwise.

*Explanation 2.*—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

*Illustrations.*

(*a.*) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(*b*) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and, therefore, gives false evidence.

(*c.*) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z, A, in good faith, believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(*d.*) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence, whether Z was at that place on the day named or not.

(*e.*) A, an interpreter or translator, gives or certifies, as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly, that which is not, and which he does not believe to be, a true interpretation or translation. A has given false evidence.

WHERE a witness was, at the beginning of the day, solemnly affirmed, once for all to speak the truth in all the cases coming before the Court that day. *Held* that he might be convicted, under section 193 of the Penal Code, of giving false evidence in a suit which came on that day, although he was not affirmed to speak the truth in that suit after it was called on for hearing, and the names of the cases in the day's list were not mentioned when the affirmation was administered.—QUEEN *v.* VENKATACHALAM PILLAI, 2 Mad. H. C. R. 43. Scotland and Bittleston, JJ. Mar. 15, 1864.

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* As to the application of ss. 194, 195, 201 to 203, 211 to 214, 216, 221 to 225 to offences under special or local laws, see s. 40, *supra*.

As to authority for instituting prosecutions under ss. 193 to 196, 199, 200, 205 to 211, and 228, see the new Code of Criminal Procedure (Act V. of 1898), s. 195 (*b*).

As to procedure in case of the offences described in ss. 193, 196, 199, 200, and 205 to 210, see the Code of Civil Procedure (Act XIV. of 1882), s. 643; and in case of the offence described in s. 228, see the new Code of Criminal Procedure (Act V. of 1898), ss. 480, 481, 482, and the Presidency Small Cause Courts Act (XV. of 1882), Ch. XII.

As to whipping for offences punishable under s. 193, or defined in ss. 194, 195, and 211, see the Whipping Act (VI. of 1864), ss 4-6.

As to punishment for offences under ss. 193 to 196, 201, 211, and 212, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

AN oath or solemn affirmation is not a *sine qua non* in the offence of giving false evidence defined in s. 191 of the Penal Code. This offence may be committed by a person who, "being bound by law to make a declaration upon any subject, makes *any statement* which is false, or does not believe to be true." So that, if the prisoner made such a false statement before the Registrar of Deeds, even though no oath or solemn affirmation had not been administered to him, he was clearly guilty of having given false evidence.—2 W. R. Cr. L. 9. [Trevor, P.J. Jan. 27, 1865.] See also *Gobind Chandra* v. *Queen-Empress*, I. L. R., 19 Cal. 355, under s. 193.

THE making of a false statement, without knowledge as to whether the subject-matter of the statement is false or not, is legally a giving of false evidence.—QUEEN v. ECHAN MEERAH, 2 W. R. 47. [Glover, P. J. Mar. 20, 1865.

A STATEMENT taken by a Third-class Magistrate under s. 164 of the Code of Criminal Procedure (Act X. of 1882), such Magistrate not having authority to carry on the preliminary inquiry in the case, is not evidence in a stage of a judicial proceeding within the meaning of ss. 191 and 193 of the Penal Code, such that, when the statement is contradicted afterwards before the Magistrate having jurisdiction, and exercising it in the preliminary inquiry, it will form a sufficient basis for an alternative charge of giving false evidence in a judicial proceeding.—QUEEN-EMPRESS v. BHARMA I. L. R., 11 Bom. 702. [Sergeant, C.J., and West and Nanabhai Haridas, JJ. Dec. 20, 1886.

AN accused was charged with giving false evidence upon an alternative charge, one statement having been made to a police-officer investigating a case of arson, and the other having been made when he was examined as a witness before the Joint-Magistrate when the case was being inquired into. The two statements were contradictory, and no evidence was given to show which of them was false. It was not proved that the statement made to the police-officer was made in answer to questions put by him, and the only evidence given at the trial with regard to the inquiry upon which the police-officer was engaged, was to the effect that an inquiry was being made about the burning of a house. The jury acquitted the accused, and the case was referred to the High Court by the Sessions Judge, who disagreed with the verdict of acquittal. *Held* that the verdict was right. Before a conviction in such a case can be sustained, it must, having regard to the provisions of s. 161 of the Criminal Procedure Code, be *clearly proved* by the evidence that the statement made to the police-officer was a statement in answer to questions put to the accused by the investigating police-officer, and in the absence of such evidence, even though the statement were proved to be false, a conviction could not be sustained. *Held*, further, that in such a case it is also necessary for the prosecution to establish that the police-constable was making an investigation under ch. 14 of the Criminal Procedure Code. — EMPRESS *v.* BAIKANTA BAURI, I. L. R., 16 Cal. 349. [Mitter and Macpherson, JJ. Mar. 4, 1889.]

SANCTION under s. 195 of the Code of Criminal Procedure should be given only on application made for it by some person, who may desire to complain of the particular offence, and whose complaint could not be entertained without such sanction. *In the Matter of Banarsi Das* (I. L. R., 18 All. 213) and *Baperain Surma* v. *Gouri Nath Dutt* (I. L. R., 20 Cal. 474) referred to. The expression "the Court" in the Land Acquisition Act does not include a Collector, nor is there any authority given to the Collector to administer an oath or to require a verification. It is a false statement made under a verification that constitutes an offence under s. 193 of the Penal Code, not a verification oath or solemn affirmation. The Deputy Collector acting under the Land Acquisition Act is not a Judicial Officer he cannot properly be regarded as a Revenue Court within the terms of s. 476 of the Code of Criminal Procedure, his proceedings under the former act are not regulated by the Code of Civil Procedure, nor is he right in requiring a petition put in before him to be verified in accordance with that Code, so as to make any false statement punishable as perjury. The Deputy Collector is not in a position to pass any final order in the matter of value of the land or the right to claim the price fixed A party dissatisfied can claim a reference to the Civil Court, whose duty it is to settle the matter in dispute judicially, therefore, to subject parties, who claimed the right to such a reference to a criminal prosecution, when the matters on which the Deputy Collector had formed an opinion as a Revenue Officer under the Land Acquisition Act must be submitted to the determination of a Court is obviously premature and improper, and is almost certain to operate very prejudicially towards them in the trial before the Civil Court of the same matter. In proceedings under the Land Acquisition Act what may be found to be an exaggeration or over-estimate of the value of land cannot properly constitute a false statement, which would demand a prosecution for perjury, and the fact that some years before the land was offered for sale at a much lower price is no sufficient ground for imputing such an offence. Discretion of the High Court in revi-

sion at the hearing of a rule to consider and decide matters in respect to which a rule had been prayed for, but not granted.—DURGA DASS RUKHIT *v.* QUEEN-EMPRESS, I. L. R., 27 Cal. 820. [Prinsep and Stanley JJ. Nov. 30, 1899, and Jan. 9, 1900.]

HELD, that where an accused person was examined by a Magistrate for the sake of obtaining information on which proceedings could be taken, the Magistrate, although he might examine him to obtain information, could not legally examine him on oath nor could the accused be said at that stage of the proceedings to be a witness, even though he were examined on oath. There was no authority that being so examined the accused was bound by any express provision of law to state the truth. Consequently any charge for giving false evidence founded on this statement was bad, and it therefore followed that a conviction and sentence founded on this statement as being contrary to another statement made by the accused when examined as a witness at the trial, without any proof of finding that the second statement was false, could not be maintained.—HARI CHARAN SINGH *v.* QUEEN-EMPRESS, I. L. R., 27 Cal. 455. [Prinsep and Stanley, JJ. Jan. 11, 1900.]

**192.** Whoever causes any circumstance to exist, or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry, or false statement, may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry, or false statement, so appearing in evidence, may cause any person, who, in such proceeding, is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence."

**Fabricating false evidence.**

*Illustrations.*

(*a.*) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(*b.*) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(*c.*) A, with the intention of causing Z to be convicted of a criminal conspiracy writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the police are likely to search. A has fabricated false evidence.

THE term of imprisonment for attempting to fabricate false evidence for the purpose of being used in a stage of judicial proceeding cannot extend beyond one-half of seven years. —QUEEN *v.* SOONDUR PUTNAICK 3 W. R., 59. [Kemp and Seton-Karr, JJ. Aug. 7, 1865.]

THE accused put in an application, which he verified, before a Judge of a Court of Small Causes, praying for a re-hearing of his case under s. 119, Act VIII. of 1859, and alleging that he was not aware that a suit had been instituted, or a decree given, against him, though he had authorized a pleader to defend the suit. *Held* by Loch, J., that the accused was not guilty of an offence under s. 192 of the Penal Code, nor liable to punishment under s. 24, Act VIII. of 1859. The offence contemplated by the former law requires that the document containing the false statement should be made with the intention that it may appear in evidence. The latter law does not require that an application under s. 119, Act VIII. of 1859, such as the accused made, should be verified. *Held* by Glover, J., *contra*.—HARAN MUNDUL, 10 W. R. 31; 2 B. L. R. A. Cr. 1. Loch and Glover, JJ. Aug. 10, 1868.

WHERE an accused person is charged with fabricating false evidence, it should be proved that such evidence might cause some one "to form an erroneous opinion touching any point material to the result;" and it has been held that, in false declarations and certificates, the falsity must be in some material point.—REG. *v.* DAMODHAR RAMCHANDRA KULKARNI, 5 Bom. H. C. R. 68 [Newton and Tucker, JJ. Aug. 13, 1868.]

THE prisoner, a vakil, presented a vakalatnama in the District Munsif's Court, signed by the defendant in a civil suit, authorizing the prisoner to appear for the defendant. The vakalatnama falsely purported to have been

executed before the adighari of the village, and to bear the signature of the adighari. The prisoner was convicted under s. 193 of the Penal Code. *Held* that the case was not brought within the section, and that the prisoner was entitled to his discharge from custody. —*In re* KEILASUN PUTTER, 5 Mad. H. C. R. 373. [Scotland, C.J., and Innes, J. July 11, 1870.] Referred to in *Queen-Empress* v. *Zakir Husain*, I. L. R., 21 All. 159. *infra*.

A, INTENDING to procure a forged document purporting to be executed by one Chotak, applied to K to accompany A to Gorakhpur, where A said Chotak would be found, and there to draw out a bond for execution by Chotak. In pursuance of this invitation, K, believing that Chotak would execute the bond, accompanied A to Gorakhpur. A took with him his ploughman, named Chetoo, and directed Chetoo to purchase a stamp-paper for the bond, and to give his name and description to the stamp-vendor as Chotak. Chetoo complied with this direction, and the stamp-vendor wrote on the stamp-paper an endorsement to the effect that the purchaser was Chotak, with the description which would apply to that person, but, suspecting false personation, arrested Chetoo, and took him to the Magistrate. On the above facts, the Sessions Judge convicted A of attempt to forge a valuable security, and, under ss. 467 and 511, sentenced him to be rigorously imprisoned for five years. *Held* that to constitute the offence of attempt under s. 511, Penal Code, there must be an act done with the intention of committing an offence, and for the purpose of committing that offence, and it must be done in attempting the commission of the offence. The provisions of s. 511, Penal Code, do not extend to make punishable as attempts acts done in the mere stage of preparation. Although such are doubtless done towards the commission of the offence, they are not done in the attempt to commit the offence within the meaning of the word "attempt" as used in the section.—QUEEN *v.* RAMSARUN CHOWBEY, 4 N.-W. P. 46. Turner, J. Mar. 13, 1872.] Distinguished in *Empress* v. *Mula*, I. L. R., 2 All. 105, *infra*.

THE making-up falsely of accounts with the intention of producing them before a forest-officer not empowered by law to hold an investigation and take evidence, is not a fabrication of false evidence within the meaning of s. 193 of the Penal Code.—REG. *v* RAMAJIRAV JIVBAJIRAV, 12 Bom. H. C. R. 1. [West and Nanabhai Haridas, JJ. Feb. 10, 1875.]

WHERE the petitioner was convicted of having voluntarily assisted in concealing stolen railway-pins in a certain person's house and field, with a view to having such innocent person punished as an offender, *held* that the Magistrate was right in convicting and punishing the petitioner for the two separate offences of fabricating false evidence for use in a stage of a judicial proceeding under s. 193 of the Penal Code, and of voluntarily assisting in concealing stolen property under s. 144, Penal Code.—EMPRESS *v.* RAMESHAR RAI, I. L. R., 1 All. 379. [Spankie, J. April 23, 1877.]

M INSTIGATED Z to personate C, and to purchase in C's name certain stamped paper, in consequence of which the vendor of the stamped paper endorsed C's name on such paper as the purchaser of it. M acted with the intention that such endorsement might be used against C in a judicial proceeding. *Held* that the offence of fabricating false evidence had been actually committed, and that M was properly convicted of abetting the commission of such offence. *Queen* v. *Ramsarun Chowbey* (4 N.-W. P. 46) distinguished and observed on.—EMPRESS *v.* MULA, I. L. R., 2 All. 105. Turner, J. Jan. 24, 1879.]

WHERE the Magistrate of the district discharged an accused person upon the ground that the fabrication of false evidence by him to be used in his defence on a criminal charge was not an offence falling within s. 192, the Chief Court, on the revision side, set aside the Magistrate's order, and directed him to continue the proceedings, which his order discharging the accused had terminated.—EMPRESS *v.* JIWAN SINGH, Panj. Rec., No. 10 of 1880.

S. 35 of the Evidence Act, which provides "that any entry in an official public book, which is duly made by a public servant in the execution of his duty, is of itself a relevant fact," does not make the public book evidence to show that a particular entry has not been made in it. S. 466 of the Penal Code is not intended to apply to cases where a public officer, or a person acting for a public officer, whose duty it is to make entries in a public book, knowingly makes a false entry, but to cases where a certificate or other document is forged by some unauthorized person with a view to make it appear that it was duly issued by a public officer. The accused, in order to save an estate from forfeiture, made a false entry of rent received in a public book kept by him for the purpose of informing the Collector as to the rents which had been paid into the Collectorate, and as to what estates the rents were in arrear, so that he might take steps to enforce payment, and was convicted by the Sessions Judge of an offence under s. 465 of the Penal Code. *Held*, on appeal, that the accused ought properly to have been convicted under s. 192 of the Code, the provisions of that section not being confined to false evidence to be used in judicial proceedings.—IN THE MATTER OF JUGGUN LALL, 7

C. L. R. 356. [Garth, C.J., and Field, J. Nov. 17, 1880.]

WHERE the date of a document, which would otherwise not have been presented for registration within the time, is altered for the purpose of getting it registered, the offence committed is not forgery, where there is nothing to show that it was done "dishonestly or fraudulently" within cl. 2, s. 464 of the Penal Code, but fabricating false evidence within s. 192.—*In re* MIR EKRAR ALI: EMPRESS *v.* MIR EKRAR ALI, I. L. R., 6 Cal. 482. [Garth, C.J., and Field, J. Dec. 3, 1880.]

A POLICE-OFFICER, who had suppressed a document entrusted to him to forward to his superior officer, made a false entry in his official diary that the document had been so forwarded, intending that, if he were prosecuted under the Police Act for suppressing the document, such entry might be used as evidence in his behalf that he had so forwarded the document. *Held* that, inasmuch as to constitute the offence of fabricating false evidence, defined in s. 192 of the Penal Code, the evidence fabricated must be admissible evidence, and as, if such police-officer had been prosecuted under the Police Act, the entry in the diary would not have been admissible in his behalf, though, contrary to his intention, it might have been used against him, such police-officer was improperly convicted, in respect of such entry, of fabricating false evidence punishable under s. 193 of the Penal Code. *Held* also that such police-officer's intention in making such entry being to screen himself from punishment, he was not punishable under s. 218 of the Code.—EMPRESS *v.* GAURI SHANKAR, I. L. R., 6 All. 42. [Straight, J. July 24, 1883.] Referred to in *Queen-Empress* v. *Zakir Husain*, I. L. R., 21 All. 159, *infra*.

L BROUGHT a suit upon a bond and at the trial sought to support his claim by a letter fabricated probably for the purpose of enabling L to get the bond registered. L was convicted under s. 196 of the Penal Code. *Held* that if the letter was fabricated for use before the Registrar, it was no valid objection to the conviction.—LAKSHMAJI *v.* QUEEN-EMPRESS, I. L. R., 7 Mad. 289. [Kindersley and Hutchins, JJ. Jan. 18, 1884.]

HELD that a police-officer, who made a false entry in the special diary relating to a case which was being investigated by him, could not be convicted therefor of the offence of fabricating false evidence as defined in s. 192 of the Penal Code, inasmuch as the document in which the alleged false entry was made was not one which was admissible in evidence. *Empress* v *Gauri Shankur* (I. L. R., 6 All 42) and *Keilasum Putter* (5 Mad. H. C. R. 373) referred to.—QUEEN-EMPRESS *v.* ZAKIR HUSAIN, I. L. R., 21 All. 159. [Banerji, J. Dec. 21, 1898.]

**193.** Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

Punishment for false evidence.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp. Sanction.

and whoever intentionally gives or fabricates false evidence in any other case shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

*Explanation 1.*—A trial before a Court-martial* is a judicial proceeding.†

*Explanation 2.*—An investigation directed by law preliminary to a proceeding before a Court of Justice is a stage of a judicial proceeding,† though that investigation may not take place before a Court of Justice.

*Illustration.*

A, in an inquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

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* In explanation 1 to s. 193, the words, "or before a Military Court of Request," have here been omitted, having been repealed by the Cantonments Act (XIII. of 1889).

† For definition of "judicial proceeding" in explanations (*1*) and (*2*) to s. 193, see the new Code of Criminal Procedure (Act V. of 1898), s. 4 (*m*).

*Explanation 3.*—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding,* though that investigation may not take place before a Court of Justice.

***Illustration.***

**A, in an inquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.**

FABRICATION.

THE term "fabrication" in s. 193 refers to the fabrication of false documentary evidence to be used in a suit, so that to convict under this section it is essential to aver and to prove that the fabricated documents were intended for that purpose. The illegal concealment by act or omission contemplated by s. 120 of the Code has reference to the existence of a design on the part of third persons to fabricate evidence.—QUEEN v. RAJCOOMAR BANERJEE, 1 Ind. Jur. O. S. 105. [Trevor and Seton-Karr, JJ. Sep. 27, 1862.]

BARGAIN TO ABSTAIN FROM PROSECUTION.

A COURT cannot take cognizance of a bargain to abstain from the prosecution of a person who has committed such an offence as that of wilfully giving false evidence.—QUEEN v. BALKISHIN, 3 N.-W. P. 106. [Morgan, C.J., and Turner, Spankie, and Turnbull, JJ. July 1, 1871.]

CHARGE, FORM OF.

THAT you, on or about the day of , at , in the course of the trial of , before , stated in evidence that " ," which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under s. 193 of the Indian Penal Code, and within my cognizance [*or* the cognizance of the Court of Session, *or* High Court].—Crim. Pro. Code (Act V. of 1898), Sch. V., Form XXXIII.

CHARGE IN THE ALTERNATIVE.

THAT you, on or about the day of , at , in the course of the inquiry into before , stated in evidence that " ," and that you, on or about the day of , at , in the course of the trial of , before , stated in evidence that " " one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under s. 193 of the Indian Penal Code, and within my cognizance [*or* the cognizance of the Court of Session, *or* High Court].—Crim. Pro. Code (Act V. of 1898), Sch. V., Form XXVIII. (II 4).

CHARGE AGAINST, AND TRIAL OF, TWO OR MORE PERSONS TO BE SEPARATE.

IN cases of giving false evidence a separate charge against each prisoner must be framed, and a separate trial held of each charge.—PRO., Mar. 15, 1867, 3 Mad. H. C. R. Ap. 32.

A CONVICTION for false evidence was upheld in a case where the false statement was to stop the prosecution of certain Brahmins on a charge of riot or dacoity and murder. The commitment and trial of several persons on separate charges, each man's statement forming a distinct offence, approved.—QUEEN v. BHAIRO MISSER, 7 W. R. 51. [Norman, J. April 1, 1867.]

A PERSON accused of perjury is entitled to have the specific charge made against him tried quite independently of a like charge against another person, and the Court of Session must find judicially whether all, or, if not all, which of the particular charges of perjury, where there is more than one charge, is made out against each prisoner. A conviction for perjury, moreover, should not be sustained on the bare testimony of one witness.—QUEEN v. KHOAB LALL, 9 W. R. 66. [Phear and Hobhouse, JJ. May 12, 1868.]

A PERSON accused of giving false evidence in a stage of a judicial proceeding is entitled to have the specific charge made against him tried independently of a like charge against another person.—REG. v. BHAVANISHANKAR HARIBHAI, 5 Bom. H. C. R. 55. [Warden and Gibbs, JJ. July 11, 1868.]

THE commitment and trial together of several persons who are charged with having given false evidence in the same proceedings should be avoided.—QUEEN v. KURREM, 11 W. R. 16. [Jackson and Markby, JJ. Mar. 4, 1869.]

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* **For definition of "judicial proceeding" in explanation (3) to s. 193, see the new Code of Criminal Procedure (Act V. of 1898), s. 4 (*m*).**

**ON a charge of perjury, each of the accused should be separately charged and tried in respect of the alleged perjury.—QUEEN *v.* RUTTEE RAM, 2 N.-W. P. 21. [Turner and Spankie, JJ. Jan. 14, 1870.]**

**IT is wholly incorrect to charge a number of persons jointly with intentionally giving false evidence under s. 193, Penal Code. A charge under that section should show what the statement is which the accused persons, or any of them, are alleged to have made, and it should disclose the exact date on which the offence charged was committed, and the Court or officer before whom the false evidence was given.—QUEEN *v.* MOHARAJ MISSER, 16 W. R. 47; 7 B. L. R. Ap. 66. [Macpherson and Glover, JJ. Sep. 18, 1871.]**

WHERE several persons are accused of having given false evidence in the same proceeding, they should be tried separately. A, S, B, D, and P were jointly tried, A in respect of three receipts for the payments of money, produced by him in evidence in a judicial proceeding, on three charges of falsely using as genuine a forged document, and on three charges of using evidence known to be false; S, B, D, and P on charges of giving false evidence in the same judicial proceeding as to such payments. The Court (Straight, J.), being unable to say that the accused persons had not been prejudiced in their defence by having been improperly tried together, set aside the convictions, and ordered a fresh trial of each of the accused separately.—EMPRESS *v.* ANANT RAM, I. L. R. 4 All. 203. [Straight, J. Feb. 13, 1882.]

S. 51, ch. 6 of Act I. of 1879, enacts that, "subject to such rules as may be made by the Governor-General in Council as to the evidence which the Collector may require, allowance shall be made by the Collector for impressed stamps spoiled in the cases hereinafter mentioned," &c. According to a rule made with reference to that section, "the Collector may require every person claiming a refund under ch. 6 of the said Act, or his duly-authorized agent, to make an oral deposition on oath," &c. *Held*, therefore, that the Collector himself is the officer, and no other, to whom power is given by law to make inquiries into applications for allowances for spoiled stamps, to take evidence on oath in reference thereto, and to grant or refuse such applications, and he cannot delegate his authority in the matter. *Held*, therefore, where a person had applied for a refund under ch. 6 of Act I. of 1879, and the Collector made over the application for inquiry to a Deputy Collector, that the Deputy Collector was not entitled to put the witnesses produced by the applicant on their oaths, and consequently, in reference to the statements of such witnesses, no charge under s. 181 or s. 193 of the Penal Code was sustainable. In prosecutions for giving false evidence under s 193 of the Penal Code, the case of each person accused should be separately inquired into, and, if committed for trial, separately tried. It is wholly erroneous to include them in one joint charge. It is not of itself sufficient to warrant a conviction for giving false evidence that an accused person has made one statement on oath at one time, and a directly contradictory one at another. The charge must not only allege which of such statements is false, but the prosecutor must be prepared with confirmatory evidence, independent of the other contradictory statement, to establish the falsity of that which is impeached as untrue.* *R.* v. *Jackson* (Lewis C. C. 6, 270), *Reg.* v. *Wheatland* (8 C. & P. 238), and *Rex.* v. *Harris* (5 B. & Ald. 926) referred to. S. 455 of Act X. of 1872 (Criminal Procedure Code) is no authority for framing against a person accused of giving false evidence, who has made one statement on oath on one occasion, and a directly contradictory one on oath on another occasion, a charge in the "alternative," that word, as used in that section, meaning that where the facts which can be proved make it doubtful what particular description of offence an accused person has committed, the charge may be so varied or alternated as to guard against his escaping conviction through technical difficulties. *Held*, therefore, where three persons were committed for trial jointly charged with "having, on or about the 26th September 1881, or the 18th October 1881, being legally bound upon oath to state the truth, knowingly on those days, regarding the same subject, made contradictory statements upon oath," and thereby committed an offence punishable under s. 193 of the Penal Code, and such persons were jointly tried on such charge that such charge was bad for being single and joint against the three accused persons, instead of several and specific in regard to each of them; that it was further bad, because it did not distinctly and in terms allege which of the statements was false; that, assuming a committal upon so faulty a charge should be allowed to stand, the Court of Session should have prepared a fresh charge against each of the accused persons, specifically setting forth the statement alleged to be false, and should

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* Overruled by *Empress* v. *Ghulet*, I. L. R., 7 All. 44, *infra*, under the heading—"Contradictory Statements—Alternative Charge."

then have proceeded to try each of them separately; and that, there being no evidence that either of the statements made by two of such persons was false, except that it was contradicted by the other, the charge against such persons was not sustainable, there being no sufficient evidence that either of the statements was false.—EMPRESS *v.* NIAZ ALI, I. L. R., 5 All. 17. [Stuart, C.J., and Straight, J July 24, 1882.]

WHERE three persons, of whom one was a pleader, were tried together and convicted under s. 181 of the Penal Code of having made false statements on solemn affirmation about the same matter in the course of an inquiry into the conduct of the pleader under the provisions of the Legal Practitioners Act, *held* that the conviction of the pleader was bad, as his statement was improperly taken from him on solemn affirmation. *Held* also that the trial of the three prisoners together was a grave error of procedure vitiating the trial. *Held* further that, an inquiry under the Legal Practitioners Act being a judicial proceeding, false statements on solemn affirmation made by the witnesses therein should be charged and tried separately under s. 193 of the Penal Code.—SUBBA *v.* QUEEN, I. L. R., 6 Mad. 252. [Innes and Kernan, JJ. Feb. 23, 1883.]

INTENTIONAL omission on the part of the decree-holder to make the statement in his application of any adjustment between the parties after decree, whether such adjustment has or has not been previously certified to the Court, amounts to an offence under s. 193 of the Indian Penal Code (XLV. of 1860). *Paupayya* v. *Narasannah* (I. L. R., 2 Mad 216) followed.—QUEEN-EMPRESS *v.* BAPUJI DAYARAM, I. L. R., 10 Bom. 288. [Birdwood and Jardine, JJ. Feb. 18, 1886.]

CHARGE, NATURE OF EVIDENCE NECESSARY TO PROVE.

HELD by the majority of the Court (Campbell, J., dissenting) that the evidence of one witness uncorroborated is not legally sufficient for a conviction of perjury.—QUEEN *v.* LAL CHAND COWRAH CHOWKEEDAR, 5 W. R. 23, 1 Ind. Jur. N. S. 83. [Peacock, C.J., and Bayley, Norman, Pundit, and Campbell, JJ. Feb. 7, 1866.]

IN a case of giving false evidence the strictest and most accurate proof is necessary, and the testimony of a single witness unsupported by corroborative evidence is insufficient for a conviction. — QUEEN *v.* MOHIMA CHUNDER CHUCKERBUTTY, 5 W. R. 77. [Seton-Karr and Macpherson, JJ. May 7, 1866.]

COMPARISON of signatures is one kind of corroboration which should justify conviction on the testimony of a single witness in a case of false evidence.—QUEEN *v.* BAKHOREE CHOWBEY, 5 W. R. 98. [Seton-Karr, J. June 5, 1866.]

UNSATISFACTORY conviction for perjury, where the evidence was balanced as to numbers, and where the story for the prosecution was improbable, reversed.—QUEEN *v.* POOSA RAM, 6 W. R. 11. [Jackson and Markby, JJ. June 25, 1866.]

IN a case of false evidence it is necessary to prove the deposition alleged to contain the false statement.—QUEEN *v.* BHAKOAS TUTTUM, 7 W. R. 13 [Norman, J. Jan. 14, 1867.]

A PRISONER'S inability to say where his son was on the 4th Pous is no evidence on which to direct a jury to convict him of false evidence, for saying that on the day previous (3rd Pous) his son was ill at home.—QUEEN *v.* SHEIKH TUFANI, 8 W. R. 26. [Jackson and Hobhouse, JJ. June 24 1867.]

IT is essential to a charge under s. 193 of the Penal Code that the prosecution should make out that there was, on the day stated in the charge, a judicial proceeding pending, and that the prisoner, in the course of that proceeding, made the statement alleged to be false. The particular stage of the proceeding should be mentioned in the charge. Evidence should be given that the accused really made the statement which he is charged to have made. The knowledge by the Sessions Judge of the handwriting of the presiding officer of the Court in which the statement was made is not legal evidence of such statement having been made.—QUEEN *v.* FUTTICK *alias* FUTEAH BISWAS, 10 W. R. 37; 1 B. L. R. A. Cr. 13. [Phear and Hobhouse, JJ. Sep. 10, 1868.]

THE true rule in a case of giving false evidence is that no man can be convicted of such offence except on proof of facts which, if accepted as true, show, not merely that it is incredible, but that it is impossible that the statements of the party accused made on oath can be true. If the inference from the facts proved falls short of this, there is nothing on which a conviction can stand, because, assuming all that is proved to be true, it is still *possible* that no crime was committed. —QUEEN *v.* AHMED ALLY, 11 W. R. 25. [Norman and Jackson, JJ. April 5, 1869.]

IN the case of giving false evidence under s. 193 of the Penal Code, the statement which the accused is charged with having made before the Magistrate should be clearly proved to have been made by him. The procedure in the case of a charge under this section pointed out.—QUEEN *v.* SIDDHOO, 13 W. R. 56. [Loch and Hobhouse, JJ. April 9, 1870.]

THE evidence of one witness in cases of perjury is sufficient to establish the *factum* of the statement which is charged as being false. The measure of punishment is a matter entirely in the discretion of the Court of Session.—QUEEN *v.* ISSEN CHUNDER GHOSE PATTRI, 14 W. R. 53. [Jackson and Mitter, JJ. Sep. 12, 1870.] But see rulings, *supra*.

To establish the offence of giving false evidence, direct proof of the falsity of the statement on which the perjury is assigned is essential. But, as legitimate evidence for the purpose, the law makes no distinction between the testimony of a witness directly falsifying such statement and the contradictory statement of the person charged, although not made on oath. Such a statement, when satisfactorily proved, is quite as good evidence in proof of the charge as the criminatory statement of a person charged with any other offence, and on precisely the same ground—that it is an admission of the accused person inconsistent with his innocence. As to the weight to be given to contradictory statements, the sound rule is that a charge of perjury is not maintainable upon proof of one such statement not on oath, or more than one if proved by a single witness only, unless supported by confirmatory evidence tending to show the falsity of the statement in the charge. With respect to the kind or amount of confirmatory proof required, it must be considered in each case whether the particular evidence offered is sufficient to induce a belief in the truth of the contradictory statement or direct testimony.—REG *v.* ROSS, 6 Mad. H. C. R. 342. [Scotland, C.J., and Innes, J. Aug. 4, 1871.]

IT is a mistaken view of the law to suppose that prisoners in appeal ought to have the benefit of any doubt with reference to any portion of the evidence. The doubt shown must be of the strongest kind before the Appellate Court should be justified in interfering.—QUEEN *v.* RAMLUCHUN SINGH, 18 W. R. 15. [Kemp and Glover, JJ. June 11, 1872.]

IN a case of giving false evidence the English record written by the Magistrate was put in to prove what the accused had stated before him. The document was not interpreted to the accused in the language in which it was given, or which he understood; nor was it read over in accordance with the requirements of s. 339, Code of Criminal Procedure (Act X. of 1872) in the presence of the person then accused. *Held* that the English record of the Magistrate was not legal evidence under the Evidence Act (I. of 1872), s. 91, of what the prisoner said before the Magistrate. Charges of perjury ought to be based strictly upon the exact words which are used by the person who is charged; and no evidence which does not profess to give those exact words can alone be a safe foundation for a conviction.—QUEEN *v.* MUNGUL DAS, 23 W. R. 28. [Phear and Morris, JJ. Jan 28, 1875.]

IN a prosecution for intentionally giving false evidence in a judicial proceeding under the Penal Code, s 193, it is for the prosecution to show clearly that the prisoner's statements were false.—QUEEN *v.* SARJAN MIYA, 25 W. R. 23. [Glover and McDonell, JJ. Feb. 28, 1876.]

WHERE the accused was charged under s. 193 of the Penal Code with having given false evidence, in that he denied having made certain statements which he was alleged to have made to the Inspector of Police, that officer was examined, and merely put in two documents containing the statements alleged as the records of what had taken place. *Held* that these documents being inadmissible in evidence under s 119 of the Code of Criminal Procedure (Act X. of 1872), evidence ought to have been given as to what was actually stated by the accused to the Inspector of Police.—IN THE MATTER OF SHEIKH DABU, 6 C. L. R. 47. [Tottenham and Maclean, JJ. Feb. 20, 1880.]

FAILURE to comply with the provisions of ss. 182 and 183, Act X of 1877 (Civil Procedure Code) in a judicial proceeding is an informality which renders the deposition of an accused inadmissible in evidence on a charge of giving false evidence based on such deposition, and, under s. 91 of Act I. of 1872 (Evidence Act), no other evidence of such deposition is admissible.—IN THE MATTER OF MAYADEB GOSSAMI: EMPRESS *v.* MAYADEB GOSSAMI, I. L. R., 6 Cal. 762; 8 C. L. R. 292. [Cunningham and Maclean, JJ Feb. 22, 1881.]

NEITHER the words, "shall answer all questions," in s. 118 of the Code of Criminal Procedure (Act X. of 1872), nor the words, "shall be bound to answer all questions," in s. 119 of the same Code (corresponding with s. 161 of the new Code), constitute "an express provision of the law to state the truth" within the meaning of s. 191 of the Penal Code. Ss. 118 and 119 are merely intended to oblige persons to give such information as they can to the police in answer to the questions which may be put to them, and they impose no legal obligation on those persons to speak the truth.—EMPRESS *v.* KASIM KHAN AND EMPRESS *v.* MUSSAMUT DAHIA, I. L. R., 7 Cal. 121; 8 C. L. R. 300 [Garth, C.J., and Pontifex, Morris Mitter, and McDonell, JJ. April 13, 1881.] But see the following ruling:—

S. 161 of the Code of Criminal Procedure (Act X. of 1882) makes it obligatory on a person examined in the course of a police-investigation under ch. 14 to answer truly all questions put to him (other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture); and such person, if he knowingly answers falsely, commits the offence of giving false evidence in a stage of judicial proceeding under s. 193 of the Penal Code.—QUEEN-EMPRESS *v.* PARSHRAM RAYSING, I. L. R., 8 Bom. 216. [Pinhey and Scott, JJ. Nov. 29, 1883.]

CHARGE, PARTICULARS TO BE SET OUT IN.

THOUGH a charge does not distinctly specify the false statement on which the evidence of perjury is attempted to be established, the omission is not material if the accused has not been prejudiced thereby.—QUEEN *v.* BHUTTOO LALLJEE, 2 W. R. 51. [Jackson, J. Mar. 23, 1865.]

A CHARGE of giving false evidence should specify the false evidence which the prisoners are supposed to have given.—QUEEN *v.* FAZUL MEEAH, 5 W. R. 71. [Norman and Campbell, JJ. April 17, 1866.]

IN charges of false evidence under s. 193, Penal Code, the charge should specifically state what words or expressions the accused is charged with having uttered, and in what respect they are supposed to be false.—IN THE MATTER OF DOWLUT MUNSHEE, 8 W. R. 95. [Kemp and Seton-Karr, JJ. Dec. 14, 1867.]

IN framing a charge for giving false evidence under s. 193 of the Penal Code, the charge should be precise, and where the accused is charged with giving false evidence on three different occasions, each occasion should form the subject of a distinct head in the charge. Amendments in a charge ought to be made formally, and should appear on the face of the record.—QUEEN *v.* FROJDAR ROY, 9 W. R. 14. [Seton-Karr and Macpherson JJ. Feb. 8, 1868.]

IN a case of giving false evidence the charge should show the particular matter in respect of which the accused is put on his trial; and only so much of the prisoner's statement ought to be set out as is necessary in order to show the particular false statements relied on by the prosecution.—QUEEN *v.* SOONDER MOHOORAE, 9 W. R. 25 [Macpherson and Jackson, JJ. Mar. 2, 1868.]

CHARGES of perjury should contain a distinct assertion with regard to *each* statement intended to be characterized as perjury, that it was made, that it is untrue in fact, and that the accused knew it to be so when he made it; and the investigation of the Court should be directed to each of those points singly. It does not follow that all contradictions on oath by opposing witnesses necessarily involve perjury, nor is the making of a document without authority always forgery.—QUEEN *v.* KALICHURN LAHOOREE, 9 W. R. 54. [Kemp and Phear, JJ. April 3, 1868.]

IN a case under s. 193, as it is essential that the charge should show, not only the judicial proceeding in which the prisoner is accused of having given false evidence, but the particular stage of the proceeding at which the evidence was given, the proper way to prove that judicial proceeding took place is to produce the record thereof.—QUEEN *v.* FUTTICK *alias* FUTTEAH BISWAS, 10 W. R. 37; 1 B. L. R. A. Cr. 13. [Phear and Hobhouse, JJ. Sep. 10, 1868.]

A CHARGE under s. 193 should specify the judicial proceeding in a stage of which the alleged false evidence was given, and should contain the exact words as definitely and specifically as possible which constitute the false evidence.—MEWA SINGH *v.* CROWN, Panj. Rec., No. 36 of 1869.

A PERSON who is called upon to answer to a charge of giving false evidence, should know exactly what is the false evidence imputed to him. A charge "that he, on or about the 15th April 1871, gave false evidence," is not sufficiently specific. Although the verification of plaints containing false statements is punishable according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence, still it is not quite the same thing as giving false evidence. Three separate offences should not be lumped together in a single charge, but each offence should form a separate head of charge, with reference to which there should be a distinct finding and a distinct sentence.—QUEEN *v.* SHEO CHURUN, 3 N.-W. P. 314. [Pearson, J. Sep. 4, 1871.]

A MAGISTRATE making a commitment for giving false evidence must set out the *precise words*, recorded as used by the accused, containing the statement which he undertakes to prove false and not state the *effect* on those words. In the High Court it is the practice to set out in the charge the substance and, as nearly as possible, the words of the statement alleged to be false. Where a charge did not distinctly set out the statement alleged to be false, but it appeared that the accused perfectly understood what was the alleged statement, and was not prejudiced in his defence, the Court refused to interfere.—QUEEN *v.* BOODHUN AHIR, 17 W. R. 32. [Loch and Ainslie, JJ. Feb. 12, 1872.]

WHEN certain charges did not set out the exact statements made by witnesses which the Magistrate intended to prove false, but the defect was not such as to mislead the accused, the High Court declined to interfere under s. 426 of the Code of Criminal Procedure (Act X. of 1872), but warned the Magistrate to be careful for the future.—QUEEN *v.* ABHYA THAKOOR, 17 W. R. 33. [Loch and Amslie, JJ. Feb. 24, 1872.]

CHARGES of perjury ought to be based strictly upon the exact words which are used by the person who is charged; and no evidence which does not profess to give those exact words can alone be a safe foundation for a conviction.—QUEEN *v.* MUNGAL DAS, 23 W. R. 28. [Phear and Morris, JJ. Jan. 28, 1875.]

S. 455 of Act X. of 1872 applies to cases in which, not the facts are doubtful, but the application of the law to the facts is doubtful. Judgment in the alternative cannot be passed in cases in which it is doubtful whether the accused person is guilty of any one of the several offences charged, but where it is doubtful of which of those offences he is guilty. The accused persons were committed for trial under an erroneous and untenable alternative charge under s. 193 of the Penal Code. The Court of Session amended the charge under s. 193, and added charges under ss 201 and 203. It was doubtful whether the amendment and addition were not likely to prejudice the accused in their defence. The alleged false evidence, and not its assumed substance and purport, should be set forth in a charge under s. 193.—QUEEN *v.* JAMURHA, 7 N.-W. P. 137. [Pearson, J. Feb. 4, 1875.]

IF a Court of Session proceeds to take action under s. 477 of the Code of Criminal Procedure, it must, in the first instance, frame a charge so as to enable the accused to know the exact nature of the offence he is alleged to have committed. A charge is a precise formulation of the specific accusation made against a person who is entitled to know its nature at the earliest stage. After the accusation has been formulated in the shape of a charge, the Sessions Court may then either commit the accused for trial before itself upon the charge so framed, or admit him to bail for the same purpose. R was examined as a witness by the Sessions Judge in a case. On the 15th of February the Sessions Judge delivered judgment in that case, and on the same day purporting to act under s. 477 of the Code of Criminal Procedure, had R arrested and committed to jail on charges under ss. 193, 466, and 471 of the Penal Code. The 25th of February was fixed for commencing the preliminary inquiry. No proceeding was drawn up or charges framed on the 15th. On the 16th of February an order was recorded by the Sessions Judge as follows: "In the course of the Sessions trial decided yesterday, I came to the opinion, for reasons stated in my judgment then delivered, that R has committed offences under ss. 193, 466, and 471 of the Penal Code, and that it is my duty to hold an inquiry preliminary to committing him to the High Court to be tried for those offences. R was yesterday arrested and committed to jail. There was then no time owing to the lateness of the hour to draw up this formal proceeding. He will be produced before me, as directed in the warrant, on the 25th of February, when evidence will be taken." *Held* that the proceeding of the 16th of February contained no particulars of the statements made and acts done by R, upon which perjury and forgery were charged against him, and was not in any sense a charge or order of commitment, and was not warranted by law.—REILY *v.* KING-EMPEROR, I. L. R., 28 Cal. 434. [Ameer Ali and Pratt, JJ. April 26, 1901.]

CHARGE, WHERE THERE ARE SEVERAL FALSE STATEMENTS.

IN framing a charge for giving false evidence under s. 193 of the Penal Code, the charge should be precise, and, where the accused is charged with giving false evidence on three different occasions, each occasion should form the subject of a distinct head in the charge. Amendments in a charge ought to be made formally, and should appear on the face of the record.—QUEEN *v.* FEOJDAR ROY, 9 W. R. 14. [Seton-Karr and Macpherson, JJ. Feb 8, 1868.]

THE making of any number of false statements in the same deposition is one aggregate case of giving false evidence. Charges of false evidence cannot be multiplied according to the number of false statements contained in the depositions.—PRO., May 1, 1871; 6 Mad. H. C. R. Ap. 27.

CIVIL COURT, FALSE EVIDENCE BEFORE.

WHEN a Civil Court directs that criminal proceedings be taken against a party to a suit before it for perjury or forgery, the High Court has no power, on an appeal being preferred against the decision of that Court, to direct that such proceedings be stayed until the appeal shall have been heard and determined.—IN THE MATTER OF RAM PRASAD HAZRA, B. L. R. Sup. Vol. 426. [Peacock, C.J., and Bayley, Seton-Karr, Pundit, and Macpherson, JJ. Feb. 12, 1866.]

THE discretion vested in a Civil Court under s. 169. Code of Criminal Procedure (Act XXV. of 1861), of sanctioning a criminal charge of perjury, is one that should be most carefully exercised. Remarks on the present case in which the discretion was improperly

exercised.—QUEEN *v.* POOSA RAM, 6 W. R. 11. [Jackson and Markby, JJ. June 25, 1866.]

THE failure of the Civil Court in a case of perjury to make a memorandum of the evidence of the accused when examined before it does not vitiate the depositions, if the evidence itself was duly recorded in the language in which it was delivered in such Court.—IN THE CASE OF BEHAREE LAL BOSE, 9 W. R. 69. [Loch and Kemp, JJ. May 16, 1868.]

WHERE a Civil Court sends an offence under section 193 of the Penal Code to a Magistrate for investigation and commitment, if necessary, the Magistrate cannot return the case to the Civil Court; nor can the Civil Court, after it has sent a case to the Magistrate, commit it to the Sessions. The Magistrate should himself proceed with the case, and take evidence therein.—QUEEN *v.* JAN MAHOMED, 12 W. R. 41; 3 B. L. R. A. Cr. 47. [Kemp and Markby, JJ. Aug 3, 1869.]

A CIVIL COURT has no power to order the commitment of persons for offences under ss. 471, 465, and 193 of the Penal Code without holding the preliminary inquiry required by s. 474 of the Criminal Procedure Code (Act X. of 1872).—QUEEN *v.* RUNGATOONEE, 22 W. R. 52. [Markby and Mitter, JJ. Aug. 5, 1874.]

ALTHOUGH s. 16 of Act XXIII. of 1861 gives Civil Courts powers similar to those conferred on Civil and Criminal Courts alike by s. 471 of the Criminal Procedure Code (Act X. of 1872), the whole law as to the procedure in cases within those sections is now embodied in s. 471 of the Criminal Procedure Code. In a suit brought to recover possession of certain property, the Judge decided one of the issues raised in the plaintiff's favour, but, on the important issue as to whether the plaintiff ever had possession, he found for the defendant. The plaintiff was not examined, but on the issue as to possession he called two witnesses. The Judge disbelieved their statements, and considering that the plaintiff had failed to prove his case, he gave judgment for the defendant without requiring him to give evidence on that issue. In the concluding paragraph of his judgment, the Judge directed the depositions of the two witnesses above referred to, together with the English memoranda of their evidence, to be sent to the Magistrate, with a view to his inquiring whether or not they had voluntarily given false evidence in a judicial proceeding: and he further directed the Magistrate to inquire whether or not the plaintiff had abetted the offence of giving false evidence, on the ground that, as the witnesses were the plaintiff's servants, he must personally have influenced them, and also to inquire whether the plaint which the plaintiff had attested contained averments which he knew to be false. On a motion to quash this order, *held* that, under s. 471 of the Criminal Procedure Code, the Judge has no power to send a case to a Magistrate, except when, after having made such preliminary inquiry as may be necessary, he is of opinion that there is sufficient ground (*i.e.*, ground of a nature higher than mere surmise or suspicion) for directing judicial inquiry into the matter of a specific charge, and that the Judge is bound to indicate the particular statements or averments in respect of which he considers that there is ground for a charge into which the Magistrate ought to inquire, and that the order was bad, because the Judge had made no preliminary inquiry, and because it was too vague and general in its character.—IN THE MATTER OF BAIJOO LALL: REG. *v.* BAIJOO LALL, I. L. R., 1 Cal. 450. [Macpherson and Morris, JJ. Aug. 23, 1876.]

THE power of a Civil Court to commit a case to the Court of Session, after completing the preliminary inquiry, is given by s. 474 of the Code of Criminal Procedure (Act X. of 1872), and is restricted to the class of cases provided in that section, *viz.*, where offences exclusively triable by a Court of Session are committed before the Civil Court. S. 471 of the Code of 1872 (or s. 476 of the Code of 1882) deals with a more extended class of cases, *viz.*, all those mentioned in ss. 467, 468, and 469 of the Code of 1872 in which, not merely a Civil Court, but any Court, Civil or Criminal, and whether possessing or not possessing the power to commit to the Court of Session, is of opinion that there is sufficient ground for holding an inquiry; and it enacts the procedure to be followed by the Court, which may elect to adopt one of two courses, that is to say, it may either commit a case to the Court of Session, if and where it has the power to do so, or, if it has not that power, or is not disposed to exercise it, it may send the case to a Magistrate having power to try, or commit for trial, the accused person for the offence charged.—IMPERATRIX *v.* POPAT NATHU, I. L. R., 4 Bom. 287. [Pinhey and Melvill, JJ. Dec. 17, 1879.]

AN order made under s. 471 of Act X. of 1872, sending a case for inquiry to a Magistrate, is not necessarily bad, because the Court did not make a preliminary inquiry before making such order. The law requires only such preliminary inquiry "as may be necessary." *Held*, therefore, where a Munsif, being of opinion that both the parties to a suit tried by him had given false evidence therein on certain points, sent the case for inquiry to the Magistrate under s. 471 of Act X. of

1872, with a proceeding embodying the facts of the case, and charging the parties respectively with giving false evidence on such points, and there was nothing to show that any inquiry that the Munsif could have made was necessary, or would have put the Magistrate into a better position for dealing with the case than he was in, that the Munsif's proceedings were not bad, because he did not hold a preliminary inquiry.—EMPRESS *v.* JUALA PRASAD, *I. L. R.*, 5 All. 62. [Tyrrell, J. July 29, 1882.]

COMMITMENT.

A MAGISTRATE, to whom the case of a person charged with giving false evidence in a judicial proceeding is transferred for investigation, cannot commit to the Sessions without himself recording evidence, and examining the complainant and his witnesses in the presence of the accused.—QUEEN *v.* RAMDHUN SINGH, 11 W. R. 22. [Jackson and Markby, JJ. Mar. 17, 1869.]

THE Sessions Judge has no power to commit a man for having given false evidence before the Magistrate, but he can commit him for having given false evidence in his own Court.—QUEEN *v.* HARDYAL, 3 B. L. R. A. Cr. 35. [Norman and Jackson, JJ. July 13, 1869.]

A COURT OF SESSION is competent and ought to proceed to the trial of a prisoner who is brought before it upon a charge exhibited by a Magistrate who is authorized to make a commitment, notwithstanding any irregularity or defect of form in recording the complaint.—*In re* NARAIN, 14 W. R. 34: 5 B. L. R. 660. [Couch, C J., and Bayley, Kemp, Jackson and Phear, JJ. Aug 23, 1870.] Overrules *Queen* v. *Mahim Chandra Chuckerbutty*, 3 B. L. R. A. Cr. 67.

THE Criminal Procedure Code does not authorize the Sessions Judge to quash a commitment on the ground of illegality. If the Sessions Judge is of opinion that the order or commitment should be annulled as illegal, he should move the High Court to annul the same.—QUEEN *v.* MATA DYAL, 4 N.-W. P. 6. [Pearson, J. Jan. 13, 1872.]

GIVING false evidence is "an offence committed in contempt of the authority" of a Court within the meaning of s. 473 of Act X. of 1872. *Reg.* v. *Naranbeg* (10 Bom. H. C. R. 73) and the ruling in 7 Mad. H. C. R. Ap. 17, followed. *Queen* v. *Kultaran Singh* (I. L. R., 1 All. 129) and *Queen* v. *Jagat Mull* (*Ibid*, 162) dissented from. Where the accused was, by a Magistrate, First Class, committed for trial by the Sessions Court on a charge of having given false evidence in a judicial proceeding before the Sessions Judge, there being no Assistant Sessions Judge or Joint Sessions Judge, *held* that the commitment could not be quashed, there being no error in law, and the case must, therefore, be transferred for trial to another Court of Session. In such a case as the above, the better course would be for the Magistrate to try the case himself, and, if he is incompetent to pass a sufficient sentence, for the Sessions Judge to refer the case to the High Court for enhancement of sentence.—REG. *v.* GAJIKOM RANU, I. L. R., 1 Bom. 311. [Melvill and Nanabhai Haridas, JJ. Aug. 24, 1876.]

L MADE a complaint against S by petition, in which he only charged S of having committed offences punishable under ss. 193 and 218 of the Penal Code, but in which he also accused S of acts which, if the accusation had been true, would have amounted to an offence punishable under s. 466 of that Code with seven years' imprisonment. The Magistrate inquired into the charges against S under ss. 193 and 218 of the Penal Code, and directed his discharge. L then applied to the Court of Session to direct S to be committed for trial on the ground that he had been improperly discharged, which the Court of Session did, and S was committed for trial charged under s. 218 of the Code, and was acquitted by the Court of Session. The Court of Session then, under s. 472 of Act X. of 1872 charged L with offences punishable under ss. 193, 195, 211, and 211 and 109 of the Penal Code, and committed him for trial. *Held* that such commitment was not bad by reason that an offence under s. 193 of the Penal Code is not exclusively triable by a Court of Session. *Held* also *per* Stuart C.J. (Spankie, J., doubting).—That the High Court is competent in the exercise of its power of revision under s. 297 of Act X. of 1872 to quash a commitment made by a Court of Session under the provisions of s. 472 of that Act (or s. 477 of the new Act). *Held* also *per* Spankie, J.—That the Court of Session was competent, notwithstanding that L had only charged S with offences under ss 193 and 218 of the Penal Code, to charge L with offences under ss. 195 and 211, if such offences had come under its cognizance. — EMPRESS *v.* LACHMAN SINGH, I. L. R., 2 All 398. [Stuart, C.J., and Spankie, J. June, 11, 1879.]

COMPENSATION.

A MAGISTRATE having jurisdiction is authorized by law in making an order under s. 270, Code of Criminal Procedure (Act XXV. of 1861), directing the complainant to make amends to the accused, notwithstanding that the complainant is to take his trial for perjury.—QUEEN *v.* ROOPUN RAI, 15 W. R. 9; 6 B. L. R. 296. [Jackson and Ainslie, JJ. Jan. 26, 1871.]

THE complainant was directed to pay Rs. 50 as compensation to the accused, or, in default, to suffer simple imprisonment for one month under s. 560 of the Code of Criminal Procedure, and sanction was also granted to prosecute him for offences under ss. 211 and 193 of the Penal Code. *Held* that, if the Magistrate thought that this was a case in which a prosecution under ss. 211 and 193 of the Penal Code should be sanctioned, he ought not to have taken action under the provisions of s. 560 of the Code of Criminal Procedure. *Held* also that the order for imprisonment in default of payment of the compensation awarded was illegal. *Ramjeevan Koormi* v. *Durga Churn Sadhu Khan* (I. L. R., 21 Cal. 979) followed.—SHIB NATA CHONG v. SARAT CHUNDER SARKAR, I. L. R., 22 Cal 586. [Petheram, C.J., and Beverley, J. April 1, 1895.]

CONTRADICTORY STATEMENTS—ALTERNATIVE CHARGE.

IT being impossible to decide which of the prisoner's two statements was false, and which true, the prisoners were convicted on the alternative charge.—QUEEN v. NARAIN DOSS, 1 W. R. 15. [Glover, J. Sep. 20, 1864.]

DISCUSSION as to the propriety of a conviction on a charge of false evidence, one of the statements charged having been made to the police under compulsion.—QUEEN v. NAGENA OURUT, 3 W. R. 6 [Campbell, Jackson, and Glover, JJ May 3, 1865.]

THE prisoner, who, as a witness in a former case, had made one statement before the Magistrate, and a contrary one before the Sessions Judge, was tried and convicted of having either given false evidence before the Judge, or given false evidence before the Magistrate. *Held* (Norman and Campbell, JJ., doubting, that the conviction was right. *Held* also (Campbell, J., differing) that the evidence taken before the Judge was admissible on the charge of having given false evidence before the Magistrate — QUEEN v. MUSSAMAT ZAMIRAN, B. L. R. Sup Vol. 521, 6 W. R. 65. [Peacock, C.J., and Norman, Kemp, Seton-Karr, and Campbell, JJ. Aug. 31, 1866.] Followed by *Empress* v. *Ghulet*, I. L. R., 7 All. 44, *infra*.

A CONVICTION on a charge of giving false evidence was set aside, the alleged conflicting statements having been made after a lapse of four years, and there being no proof of deliberate intention to give false evidence, which was held to be the gist of the offence.—QUEEN v. NAGBUNSEE LALL, 6 W. R. 89. [Kemp and Markby, JJ. Dec. 10, 1866.]

WHERE a person makes one statement before the Magistrate, and a directly different statement before the Civil Court, his commitment on an alternative charge, after the consent of the Civil Court has been obtained under s. 169 of the Code of Criminal Procedure (Act XXV. of 1861), is strictly legal.—QUEEN v. OOTTUR NARAIN SINGH, 8 W. R. 79. [Glover and Hobhouse, JJ. Nov. 4, 1867.]

IN a case of giving false evidence, the charge should show the particular matter in respect of which the accused is put upon his trial; and only so much of the prisoner's statements ought to be set out as is necessary in order to show the particular false statements relied on by the prosecution. The mere fact that a person has made a statement which contradicts a previous statement is not itself necessarily sufficient to bring him within s 193, Penal Code. The circumstances under which, and the intention with which, the particular statement relied on by the prosecution is made must, in each case, be considered before it can be held that the offence has been committed.—QUEEN v. SOONDER MOHOOREE, 9 W. R 25. [Macpherson and Jackson, JJ Mar. 2, 1868.]

BEFORE an accused person can be convicted of giving false evidence, it must be proved that he made the statements which are the basis of the charge, and, further, that he made them with the necessary criminal intention. The mere fact that a man has made contradictory statements does not necessarily prove that he has committed an offence under s. 193. The Court must be satisfied as to the intention with which the statements were made.—QUEEN v. DENONATH BUZZAR, 9 W. R. 52. [Macpherson and Glover, JJ. Mar. 30, 1868.]

IT does not follow that all contradictions on oath by opposing witnesses necessarily involve perjury.—QUEEN v. KALICHURN LAHOOREE, 9 W. R. 54. [Kemp and Phear, JJ. April 3, 1868.]

PROOF of contradictory statements on oath or solemn affirmation, without evidence as to which of them is false is sufficient to justify a conviction, upon an alternative finding, of the offence of giving false evidence under s. 72 of the Penal Code and ss. 242, 381, and 382 of the Criminal Procedure Code (Act XXV. of 1861). The English law upon the subject stated.—*In re* PALANY CHETTY, 4 Mad. H. C. R. 51. [Scotland, C.J., and Collett, J. May 18, 1868. Followed by *Empress* v. *Ghulet*, I. L. R., 7 All 44, *infra*.

WHERE a person makes two contradictory statements in the course of a judicial proceeding, he may be tried and convicted of giving false evidence on a single charge, if there is evidence to show which statement is false.—REG. v. GANOJI BIN PANDJI, 5 Bom. H. C.

R. 49. [Couch, C.J., and Newton, J. June 25, 1868.]

AN alternative finding under s. 381 of the Code of Criminal Procedure (Act XXV. of 1861), should not be resorted to until both the committing officer and the Sessions Judge are satisfied that no reliable evidence is procurable in support of one or other of the charges; and such a finding cannot be based in a case of giving false evidence upon two statements which are not absolutely contradictory, the one of the other, nor when in one of them the accused gives only hearsay evidence. Every presumption in favour of the possible reconciliation of the statements must be made.—QUEEN *v.* BEDOO NOSHYO, 12 W R. 11; 13 B. L. R. 325n. [Norman and Hobhouse, JJ. June 24, 1869.]

S. 242, Code of Criminal Procedure (Act XXV. of 1861), points out how the charge is to be drawn up in a case in which it is doubtful which of two statements made by the accused is false.—QUEEN *v.* KALKA KHAN, 12 W. R 23. Jackson and Mitter, JJ July 5, 1869.

IN the trial of a prisoner for murder, a witness stated on oath before the Sessions Court that another had committed the murder, whereas before the Magistrate he had stated, as was the fact, that the prisoner had committed the murder. *Held* that such witness was guilty under s. 193, and not under s. 194, of the Penal Code, as he did not know that he would cause a conviction for murder. —QUEEN *v.* HARDYAL, 3 B. L. R. A. Cr. 35. [Norman and Jackson, JJ. July 13, 1869

WHERE a person is charged with making two contradictory statements, it must be proved by direct evidence that both statements were made, and there must be an inquiry as to which statement is untrue, and whether the accused wilfully made the statement which is supposed to be false, knowing it to be false. —QUEEN *v.* MOTI KHOWA, 12 W. R. 31: 3 B. L. R. A. Cr. 36. [Norman and Jackson, JJ. July 13, 1869.] But see *Empress* v. *Ghulet*, I. L. R., 7 All. 44, *infra*: and the cases therein cited.

IN a case of giving false evidence by making contradictory statements, one of which the accused knew to be false, it is not sufficient to support the falseness of either story by the other deposition, but there must be *independent* evidence of the falseness of either story. —QUEEN *v.* KOLA, 12 W. R. 66; 4 B. L. R. A. Cr. 4. [Norman and Kemp, JJ. Oct. 8, 1869.] But see *Empress* v. *Ghulet*, I. L. R., 7 All. 44, *infra*; and the cases therein cited.

IN a case of giving false evidence by making contradictory statements, a Court of Session cannot, without making further inquiry, commit a person for trial under s. 172 of the Code of Criminal Procedure (Act XXV. of 1861), when both contradictory statements are not made before it. By the words, "under its own cognizance," in that section it is meant to provide for a case where it is brought under the notice of the Court of Session in the course of a judicial proceeding that the crime with which the party is to be charged has been committed by him. The following important observations were made by Norman, J., in the case: "It is one thing to show that a particular statement made by a witness is inaccurate or even false, and another to say that the witness has intentionally given false evidence. . . . To overlook the difference between the making of contradictory statements by a witness under examination and the giving of intentional false evidence is to shut one's eyes to the infirmities of human memory, to fail to understand how slow are the intellects and how imperfect the powers of expression of uneducated peasants . . . . I firmly believe that, if a witness could be convicted upon alternative charges of giving false evidence on contradictions of such a character as those supposed to exist in the present case, no native witness of the lower classes subjected to cross-examination by an adroit and, perhaps, not over-scrupulous advocate would be safe."—QUELN *v.* NOMAL, 12 W. R. 69, 4 B L. R. A. Cr. 9. [Norman and Kemp, JJ. Nov. 26, 1869.]

TO establish the offence of giving false evidence, direct proof of the falsity of the statement on which the perjury is assigned is essential. But, as legitimate evidence for the purpose, the law makes no distinction between the testimony of a witness directly falsifying such statement, and the contradictory statement of the person charged, although not made on oath. Such a statement, when satisfactorily proved, is quite as good evidence in proof of the charge as the criminatory statement of a person charged with any other offence, and on precisely the same ground—that it is an admission of the accused person inconsistent with his innocence. As to the weight to be given to contradictory statements, the sound rule is that a charge of perjury is not maintainable upon proof of one such statement, not on oath, or more than one if proved by a single witness only, unless supported by confirmatory evidence tending to show the falsity of the statement in the charge With respect to the kind or amount of confirmatory proof required, it must be considered in each case whether the particular evidence offered is sufficient to induce a belief in the truth of the contradictory statement or direct testimony.—REG. *v.* ROSS, 6 Mad. H.

C. R. 342. [Scotland, C.J., and Innes, J. Aug. 4, 1871.]

WHERE a prisoner is charged separately for having given false evidence with regard to two statements directly opposed to each other, a plea of guilty on one of the charges does not involve an acquittal on the other. A Sessions Court is bound to take evidence, and try a charge, before it can acquit a prisoner of that charge.—QUEEN *v.* HOSSAIN ALI, 8 B. L. R. Ap. 25. [Ainslie, J. Aug. 15, 1871.]

HELD by the majority (Jackson, J., dissenting) that a charge, framed on the model given in ch. 3 of the Code of Criminal Procedure (Act X. of 1872), charging the accused upon two charges with having made contradictory statements in the course of judicial proceedings under s. 193, Penal Code, is a good charge, and that (Phear and Jackson, JJ., dissenting) the Court or jury, if convicting, need not, by direct evidence, find which of the two statements is false; all that is necessary being that the Court or jury should find that the allegations made in the charge are proved.—QUEEN *v.* MAHOMED HOOMAYOON SHAH, 21 W. R. 72; 13 B. L. R. F. B. 324 [Couch, C.J., and Kemp, Jackson, Phear, Markby, Glover, Ainslie, Pontifex, Birch, and Morris, JJ. April 11, 1874.] Followed by *Empress* v. *Ghulet*, I. L. R., 7 All. 44, *infra*.

To support a finding upon an alternative charge of perjury, there must be legal evidence of the truth of each branch of the charge. The deposition of the prisoner given in Hindustani, but taken in English by the Magistrate, and the memorandum at the foot of the deposition that it was read to the witness, and was by him acknowledged to be correct, though held not to be quite satisfactory (as the person who took down in English what the prisoner had said in Hindustani was not examined as a witness, and the prisoner had no opportunity of cross-examining him), was admitted as a proper deposition within the provisions of the Code of Criminal Procedure, and the memorandum was taken under s. 80 of the Evidence Act (I. of 1872), as evidence of the facts stated in it, and as affording some evidence that the translation was correct.—QUEEN *v.* GONOWRI, 22 W. R. 2. [Phear and Morris, JJ. April 21, 1874.] Follows *Queen* v. *Mahomed Hoomayoon Shah*, 21 W. R. 72: 13 B. L. R. 324, which again is followed by *Empress* v. *Ghulet*, I. L. R., 7 All. 44, *infra*.

A PRISONER who had made certain contradictory statements on oath before a Magistrate and a Court of Session, respectively, was convicted by the same Court of Session on a charge, in the alternative, of giving false evidence, either before a Magistrate or before the Court of Session. *Held* that the Court was precluded, by s. 473 of the Criminal Procedure Code (Act X. of 1872), from trying the charge.—SUNDRIAH *v.* REG., I. L. R., 3 Mad. 254. [Turner, C.J. Aug. 8, 1881.]

IN prosecutions for giving false evidence under s. 193 of the Penal Code, the case of each person accused should be separately inquired into, and, if committed for trial, separately tried. It is wholly erroneous to include them in one joint charge. It is not of itself sufficient to warrant a conviction for giving false evidence that an accused person has made one statement on oath at one time, and a directly contradictory one at another. The charge must not only allege which of such statements is false, but the prosecutor must be prepared with confirmatory evidence, independent of the other contradictory statement, to establish the falsity of that which is impeached as untrue.* *R.* v. *Jackson* (1 Lewis C. C. 270), *Reg.* v. *Wheatland* (8 C. and P. 238), and *Rex.* v. *Harris* (3 B. and Ald. 926) referred to. S. 455 of Act X. of 1872 (or s. 236 of Act X. of 1882) is no authority for framing, against a person accused of giving false evidence, who has made one statement on oath on one occasion, and a directly contradictory one on oath on another occasion, a charge in the "alternative;" that word, as used in that section, meaning that, where the facts which can be proved make it doubtful what particular description of offence an accused person has committed, the charges may be so varied or alternated as to guard against his escaping conviction through technical difficulties *Held*, therefore, where three persons were committed for trial jointly charged with "having, on or about the 26th September 1881 or the 18th October 1881, being legally bound upon oath to state the truth, knowingly, on those days, regarding the same subject, made contradictory statements upon oath," and thereby committed an offence punishable under s. 193 of the Penal Code, and such persons were jointly tried on such charge, that such charge was bad for being single and joint against the three accused persons, instead of several and specific in regard to each of them; that it was further bad, because it did not distinctly and in terms allege which of the statements was false; that, assuming a committal upon so faulty a charge should be allowed to stand, the Court of Session should have prepared a fresh charge against each of the accused persons specifically, setting forth

* Overruled by *Empress* v. *Ghulet*, I. L. R., 7 All. 44, *infra*, p. 200.

the statement alleged to be false, and should then have proceeded to try each of them separately; and that, there being no evidence that either of the statements made by two of such persons was false, except that it was contradicted by the other, the charge against such persons was not sustainable, there being no sufficient evidence that either of the statements was false.—EMPRESS *v.* NIAZ ALI, I. L. R., 5 All. 17. [Stuart, C.J., and Straight, J. July 24, 1882.]

S. 161 of the Code of Criminal Procedure (Act X. of 1882) makes it obligatory on a person examined in the course of a police-investigation under ch. 14 to answer truly all questions put to him (other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture), and such person, if he knowingly answers falsely, commits the offence of giving false evidence in a stage of judicial proceeding under s. 193 of the Penal Code. The accused was convicted by the Sessions Court on an alternative charge of having given false evidence in a judicial proceeding under s. 193 of the Penal Code, one statement being made before a head-constable of police, and the other before the Magistrate (F. C.). There was no evidence to prove which of the two statements was false. The prisoner appealed to the High Court, which delivered the following judgment: "S. 161, Criminal Procedure Code, 1882, says that any person, being under examination in the course of the police-investigation under Ch. XIV. (s. 155) of the Code shall be bound to *answer truly* all questions put to him (with certain exceptions not applicable to the present case). This provision is new. Under the previous law the obligation 'to answer truly' in a police-investigation was not enforced by any express provision. S. 191 of the Penal Code says that, if a person, who is bound by any express provision to state the truth, states knowingly what is false, he is said to give false evidence. The appellant in this case has therefore, as the law now stands, given false evidence. S. 193 of the Penal Code says that, whoever intentionally gives false evidence in any stage of a judicial proceeding shall be punished, &c. And under expl. 2 of the same section a police-investigation under Ch. XIV. of the Criminal Procedure Code is a stage of a judicial proceeding. We therefore think that the District Judge's decision is right under the present law, and reject the petition of appeal."—QUEEN-EMPRESS *v.* PARSHRAM RAY SING, I. L. R., 8 Bom. 216. [Pinhey and Scott, JJ. Nov. 29, 1883.]

IN order to sustain any conviction for giving false evidence upon an alternative charge when no evidence is offered to prove the falsity of either statement in particular, it must be clear that the two statements are contradictory. The law laid down by the Full Bench in the case of *Empress* v. *Kassim Khan* (I. L. R., 7 Cal. 121) has been altered by the provisions of s. 161 of the Code of Criminal Procedure (Act X. of 1882); and a witness who makes a false statement to a police-officer in reply to a question which he is bound to answer would be guilty of intentionally giving false evidence. When four persons were accused of having given false evidence in the same proceeding, and the Sessions Judge, while professing to try each accused separately, heard the evidence of the witnesses only once, *held* that this was substantially trying the four prisoners together, and was an improper mode of procedure.—NATHU SHEIKH *v.* EMPRESS, I. L. R., 10 Cal. 405. [McDonell and Field, JJ. Feb. 7, 1884.]

A PRISONER was convicted on an alternative charge in the form provided by sch. 5 xxviii., ii. (4), of the Criminal Procedure Code, of having given false evidence, such evidence consisting of contradictory statements contained in *one* deposition while he was under cross-examination and re-examination as a witness in a judicial proceeding. There was no finding as to which of the contradictory statements was false. *Held* (Norris, J., dissenting) that s. 233 of the Criminal Procedure Code did not affect the matter, and that the conviction was good. *Semble*, *per* Wilson, J.—The decision in *Queen* v. *Bedoo Noshyo* (12 W. R. 11), though a guide to the discretion of Courts in framing and dealing with charges, was not intended to and does not affect the law applicable to the matter.—HABIBULLAH *v.* EMPRESS, I. L. R., 10 Cal. 937. [Wilson, Tottenham, and Norris, JJ. July 7, 1884.]

IN a charge under s. 193 of the Penal Code it is not necessary to allege which of two contradictory statements upon oath is false, but it is sufficient (unless some satisfactory explanation of the contradiction should be established) to warrant a conviction of the offence of giving false evidence to show that an accused person has made one statement upon oath at one time and a directly contradictory statement at another. *R.* v. *Zumeerun* (6 W. R. 65), *R.* v. *Palany Chetty* (4 Mad. H. C. R. 57), and *R.* v. *Mahomed Hoomayoon Shah* (13 B. L. R. 324) followed. *Empress* v. *Nias Ali* (I. L. R., 5 All. 17) overruled. *Per* Duthoit, J.—Every possible presumption in favour of a reconciliation of the two statements should be made, and it must be found that they are absolutely irreconcilable before a conviction can be had upon

the ground that one of them is necessarily false. The English cases upon this subject are irrelevant to the interpretation of the law of India, since the Indian Legislature has not followed the law of England in regard to perjury. *Trimble* v. *Hill* (L. R. Ap. Cas. 342) and *Kathama Natchiar* v. *Dorasinga Tever* (L. R., 2 Ind. Ap. 159) referred to. —QUEEN-EMPRESS v. GHULET, I. L. R., 7 All. 44. [Straight, Offg. C.J. and Duthoit, J. July 31, 1884.]

THE accused was charged, in the alternative, by the trying Magistrate, as follows: "I, W. W. Drew, Magistrate, First Class, hereby charge you, Ramji Sajabarao, as follows: 'That you, on or about the 13th day of October 1882, at Nandarpada, stated that you had seen Vishnu Vaman and Mahadu Lakshman carrying teakwood from Gohe Forest to Narayan Ramchandra, range forest officer, and on 14th February 1885 you stated on oath before the First-class Magistrate at Pen, at the trial of these persons, that you did not see where they had brought the wood from, and thereby committed an offence punishable under s. 182 or s. 193 of the Penal Code (Act XLV. of 1860), and within my cognizance; and I hereby direct that you, Ramji Sajabarao, be tried by the said Court on the same charge.'" At the trial the accused asserted the truth of the former of these two statements, and denied having made the other. The Magistrate was unable to find which of them was false, and convicted the accused, in the alternative, either under s. 182 or s. 193 of the Penal Code (Act XLV. of 1860). *Held* that the charge was bad in law, being an alternative charge in a form forbidden by s. 233 of the Criminal Procedure Code (Act X. of 1882), which directs that for every distinct offence of which any person is charged there shall be a separate charge. Nor could the accused be tried upon a charge framed in the alternative as in the form given in sch. 5-28 (4) of the Criminal Procedure Code Act X. of 1882). For, upon the facts alleged, there was no way of charging him with one distinct offence on the ground of self-contradiction. He could not successfully be charged, under s. 193 of the Penal Code (Act XLV of 1860), on contradictory statements, because he only made one deposition, in which there were no discrepancies; and, similarly, he could not be charged under s. 182 of the Penal Code, for he only once gave information to a public servant. *Held* also that, having regard to ss. 225, 232, and 537 of the Criminal Procedure Code (Act X. of 1882), the accused, convicted upon such a charge, must be held to have been misled in his defence, and his conviction and sentence reversed. In charges founded upon supposed contradictory statements, every presumption in favour of the possible reconciliation of the statements must be made. Under s. 172 of the Forest Act (VII. of 1878), a forest-officer is a public servant within the meaning of the Penal Code (Act XLV. of 1860). Any information given to him with the intent mentioned in s. 182 of the Penal Code is punishable under that section, whether that information is volunteered by the informant, or is given in answer to questions put to him by that officer.—QUEEN-EMPRESS v. RAMJI SAJABARAO, I. L. R., 10 Bom. 124. [Nanabhai Haridas and Wedderburn, JJ. Sep. 7, 1885.]

AN accused was charged with giving false evidence upon an alternative charge, one statement having been made to a police-officer investigating a case of arson, and the other having been made when he was examined as a witness before the Joint-Magistrate when the case was being inquired into. The two statements were contradictory, and no evidence was given to show which of them was false. It was not proved that the statement made to the police-officer was made in answer to questions put by him, and the only evidence given at the trial with regard to the inquiry upon which the police-officer was engaged was to the effect that an inquiry was being made about the burning of a house. The jury acquitted the accused, and the case was referred to the High Court by the Sessions Judge, who disagreed with the verdict of acquittal. *Held* that the verdict was right. Before a conviction in such a case can be sustained, it must having regard to the provisions of s. 161 of the Criminal Procedure Code, be clearly proved by the evidence that the statement made to the police-officer was a statement in answer to questions put to the accused by the investigating police-officer; and in the absence of such evidence, even though the statement were proved to be false, a conviction could not be sustained. *Held*, further, that in such a case it is also necessary for the prosecution to establish that the police-constable was making an investigation under ch. 14 of the Criminal Procedure Code.—THE EMPRESS v. BAIKANTA BAURI, I. L. R., 16 Cal. 349. [Mitter and Macpherson, JJ. Mar. 4, 1889.]

IT is not necessary that the statement of a witness recorded under s. 161 of the Code of Criminal Procedure, 1882, should be elicited and recorded in the form of alternate question and answer. It is sufficient if such statement is substantially an answer to one or more questions addressed to the witness before the statement is made. The provisions of ss. 191 and 193 of the Penal Code do apply to the case of false statements made under s. 161 of the Code of Criminal Procedure, 1882.

It is not illegal, though unnecessary, for a police-officer recording a statement under s. 161 of the Code of Criminal Procedure, 1882, to obtain the signatures of persons present at the time to authenticate his record of such statement.—QUEEN-EMPRESS *v.* BHAGWANTIA, I. L. R., 15 All. 11. [Edge, C.J., and Tyrrell, J. July 9, 1892.]

WHERE a person has made two contradictory statements, one to a police-officer making an investigation under Ch. XIV. of the Code of Criminal Procedure (Act X. of 1882), and the other to a Magistrate holding a preliminary inquiry, he cannot be charged, and still less convicted, on an alternative charge. In such a case, if there is no other evidence at the trial, but the contradictory statements made by the accused, separate charges cannot be framed. — QUEEN-EMPRESS *v.* MUGAPA, I. L. R., 18 Bom. 377. [Sargent, C.J., and Telang, Candy, and Fulton, JJ. July 3, 1893.]

HELD that a report made by an amin of a Civil Court deputed to give possession of certain property in execution of a decree as to his having been obstructed in so doing to the Court executing the decree, and a similar report made to the police, would not, even if false, amount to the fabrication of false evidence within the meaning of s. 193 of the Penal Code, and consequently, where such amin was charged in the alternative with making the two reports as above and also a third and inconsistent statement in respect of which he might have been charged under s. 193, that he was wrongly charged, and that it was necessary to prove the falsity of the third statement.—QUEEN-EMPRESS *v.* AJUDHIA PRASAD, I. L. R., 17 All. 436. [Edge, C.J., and Banerji, J. Mar. 16, 1895.

HELD that where a witness had made one statement on oath or solemn affirmation before a third-class Magistrate under s. 164 of the Code of Criminal Procedure, and again another and totally inconsistent statement at the trial of the case before a Magistrate of the first class, he might properly be convicted under the second—if not under the first—paragraph of s. 193 of the Indian Penal Code. *Queen-Empress* v. *Bharma* (I. L. R., 11 Bom. 702), considered and distinguished.—QUEEN-EMPRESS *v.* KHEM, I. L. R., 22 All. 115. [Knox and Aikman, JJ. Nov. 14, 1899.]

FALSE EVIDENCE, ABETMENT OF.

UNDER s. 193 it is an offence to suppress evidence. Thus, where the accused asked a witness to suppress certain facts in giving his evidence before a Magistrate on a charge of defamation, it was held that this constituted abetment of the offence of giving false evidence in a stage of a judicial proceeding.—*In re* ANDY CHETTY, 2 Mad. H. C. R. 438. [Frere and Innes, JJ. Aug. 12, 1865.]

WHERE C falsely represented himself as U, the writer of a document signed by U, and T, knowing that C was not U, and had not written such document, produced C as U, and as the writer of the document, it was held that T ought to be convicted on a charge of abetting the giving of false evidence.—QUEEN *v.* CHUNDI CHURN NAUTH, 8 W. R. 5. [Jackson and Hobhouse, JJ. June 4, 1867.]

IT is not necessary to constitute the offence of abetment that the act abetted should be committed.—DINONATH BURDOA, 18 W. R. 32. [Kemp and Glover, JJ. July 24, 1872.]

THERE can be no offence of the abetment of giving false evidence unless the person charged with abetment intended, not only that the statement should be made, but intended that the statement should be made falsely.—QUEEN *v.* NIM CHAND MOOKERJEE, 20 W. R. 41. [Markby and Birch, JJ. June 27, 1873.]

THE Magistrate convicted accused of abetting the giving of false evidence in a judicial case proceeding before himself. *Held* that, as by the proceedings of 24th March 1873, the Magistrate could not have tried the person who gave false evidence, he could not try the abettor.—PRO., Nov. 6, 1873, 7 Mad. H. C. R. Ap. 28. According to s 487 of the new Code of Criminal Procedure (Act V. of 1898), no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court, the Recorder of Rangoon, and the Presidency Magistrates, can try any person for the offence of giving false evidence when such offence is committed before himself.

FALSE EVIDENCE, WHAT IS A GIVING OF.

A WITNESS falsely deposing in another's name should be charged with giving false evidence under s. 193, and not with cheating by personation under ss. 415 and 419 of the Penal Code.—REG *v.* PREMA BHIKA, 1 Bom. H. C. R. 89. [Forbes, Westropp, and Tucker, JJ. Nov. 5, 1863.]

THE making of a false statement without knowledge as to whether the subject-matter of the statement is false or not is legally a giving of false evidence. — QUEEN *v.* ECHAN MEEAH, 2 W. R. 47. [Glover, J. Mar. 20, 1865.]

A SUB-REGISTRAR is competent, for any purpose contemplated by Act XX. of 1866, to examine any person; and any statement made by such person before an officer in any proceedings or inquiries under the Act, if intentionally false, renders such person liable to a criminal prosecution.—QUEEN *v.* JUGGUT CHUNDER DUTTA, 6 W. R. 81. [Kemp and Markby, JJ. Oct. 5, 1866.]

THE making of a false return of service of summons is an offence punishable not under s. 181, but under s. 193 of the Penal Code.—QUEEN v. SHAMA CHURN ROY, 8 W. R. 27. [Jackson and Hobhouse, JJ. June 25, 1867.]

IN trying a prisoner charged with giving false evidence, a Sessions Judge rejected facts which were proved by the evidence of certain witnesses, because a medical officer gave it as his opinion that what the witnesses deposed to could not be true. *Held* that it was not the proper way to try a case to rely on mere theories of medical men or skilled witnesses of any sort against facts positively proved. Norman, J., in delivering the judgment of the Court, observed: "It appears to us that the true rule is that no man can be convicted of giving false evidence, except upon proof of facts which, if accepted as true, show, not merely that it is incredible, but that it is impossible that the statement of the party accused made upon oath can be true. If the inference from the facts proved falls short of this, it seems to us that there is nothing on which a conviction can stand; because, assuming all that is proved to be true, it is still possible that no crime was committed."—QUEEN v. AHMED ALLY, 11 W. R. 25. [Norman and Jackson, JJ. April 5, 1869.]

A CONVICTION may be had for giving false evidence under s. 193, Penal Code, even if the evidence given in matters not judicial (such as before the Collector acting in his fiscal capacity under Reg XIX. 1814), but it must be proved that the false statement was made under the sanction of the law.—IN THE MATTER OF AUDHEEN ROY, 14 W R 24. [Bayley and Kemp, JJ. July 30, 1870.]

WHEN an offence under s. 193 of the Penal Code is established, a conviction under s. 181 is illegal. When the accused made, on solemn affirmation, a statement before an Income-tax Commissioner, which statement the accused new, or had reason to believe, to be incorrect, it was held that such statement amounted to the offence of giving false evidence in a judicial proceeding under s. 193 of the Penal Code, and was, therefore, not cognizable by a Full-power Magistrate, as it could not be treated as constituting an offence triable under s. 181 of the Penal Code (making a false statement to a public servant).—REG. v. DAYALJI ENDARJI, 8 Bom. H. C. R. 21. [Lloyd and Kemball, JJ. April 25, 1871.]

THE examination of a complainant in reference to the matter of his petition of complaint is an investigation directed by law, and therefore a stage of a judicial proceeding. Consequently, if in the course of that examination false evidence is intentionally given by the complainant, he is legally chargeable with the offence described in s. 193 of the Penal Code. If the charge of voluntarily causing hurt, contained in a petition of complaint, is wilfully false, and made with intent to injure, then the complainant is legally chargeable with the offence described in s. 211 of the Penal Code.—QUEEN v. MATA DYAL, 4 N.-W. P. 6. [Pearson, J. Jan. 13, 1872.]

A STATEMENT, untrue to the prisoner's knowledge, made upon oath in the course of a judicial proceeding, amounts to perjury, notwithstanding the fact that the statement itself is immaterial to the matter before the Court.—QUEEN v. SHIB PROSAD GIRI, 19 W. R. 69. [Phear and Glover, JJ. April 29, 1873.]

A PETITION not bearing the signature of the accused, and therefore not a declaration made or subscribed by him, cannot be made the foundation of a charge or conviction under s. 199 of the Penal Code; but a deposition on oath supporting such a petition, if false, justifies a charge under s. 193 of the Code.—IN THE MATTER OF RAM REEVAY KOOWAR, 7 C. L. R. 536. [Garth, C.J., and Maclean, J. Oct. 22, 1880.]

PERSONS giving false answers to questions put by a police-officer conducting an inquiry preliminary to a proceeding before a Court of Justice may be convicted of giving false evidence under ss. 191 and 193 of the Penal Code.—IN THE MATTER OF JUGGERNATH SAHAI, 8 C. L. R. 236. [Cunningham and Prinsep, JJ. Feb 15, 1881.]

A CHARGE of giving false evidence under s. 193 of the Penal Code cannot be sustained in respect of a statement made to a police-officer engaged in making an investigation under the provisions of the Criminal Procedure Code. Ss. 118 and 119 of the latter Code impose no legal obligation on the persons examined thereunder to speak the truth.—EMPRESS v. KASSIM KHAN; EMPRESS v. MUSST. DABI, 8 C. L. R. 300 (F. B.). But see the new provision in the corresponding section of the Criminal Procedure Code of 1898 (s. 161), which makes it compulsory on persons to answer truly all questions. See *Queen-Empress* v. *Purshram Ruysing*, I. L. R., 8 Bom. 216, under the heading "Contradictory Statements—Alternative Charge."

A PERSON filing a written statement in a suit is bound by law to state the truth, and if he makes a statement which is false to his knowledge or belief, or which he believes not to be true, he is guilty of giving false evidence within the meaning of s. 191 of the Penal Code.—QUEEN-EMPRESS v. MEHRBAN SINGH, I. L. R., 6 All. 626. [Straight, Offg. C.J. July 14, 1884.]

FALSE STATEMENT BEFORE OFFICER NOT HAVING JURISDICTION.

WHERE a plaintiff before a Munsif came and petitioned the Judge, complaining that the Munsif had improperly refused to examine his witnesses, and had dismissed his suit, although informed that witnesses were in attendance, and the Judge, upon examining the petitioner upon solemn affirmation, and finding the charge unproved, ordered proceedings to be taken against the petitioner for giving false evidence, *held* that the Judge had no authority to examine the petitioner upon oath in such a case, and that the oath having been made, and the evidence given *coram non judice*, could not form the subject of a prosecution for false evidence.—QUEEN v. CHOTA JADUB CHUNDER BISWAS, W. R. Gap. 1864, 15. [Seton-Karr and Jackson, JJ. Mar. 2, 1864.]

WHERE a Subordinate Magistrate conducted an inquiry in a case of murder and riot, without having received the necessary authority under s. 192, Act X. of 1882, it was held that an untrue statement made by a witness in the course of such inquiry was not "false evidence" within s. 193, as the subordinate Magistrate was acting without jurisdiction.—KHUSHI KHAN v. CROWN, Panj Rec., No. 24 of 1870.

HELD by the Division Bench that, where the Assistant Commissioner had no jurisdiction to entertain a suit against one R K, he had, therefore, no authority under Act X. of 1873 to administer an oath or affirmation to him in the course of the trial; that therefore R K was never legally bound to state the truth, and was therefore not liable to be convicted of giving false evidence in respect of any statement made by him in the trial of the said case upon the merits.—NARINJAN DAS v. RAM KISHEN, Panj. Rec., No. 32 of 1879

A STATEMENT taken by a Third-class Magistrate under s. 164 of the Code of Criminal Procedure (Act X. of 1882), such Magistrate not having authority to carry on the preliminary inquiry in the case, is not evidence in a stage of a judicial proceeding within the meaning of ss. 191 and 193 of the Penal Code, such that, when the statement is contradicted afterwards before the Magistrate having jurisdiction, and exercising it in the preliminary inquiry, it will form a sufficient basis for an alternative charge of giving false evidence in a judicial proceeding. — QUEEN-EMPRESS v. BHAKMA, I. L. R., 11 Bom. 702. [Sargent, C.J., and West and Nanabhai Haridas, JJ. Dec. 20, 1886.]

A DEPUTY MAGISTRATE has no power to administer an oath to a person making a declaration in the shape of an affidavit; and such person cannot, on the facts stated in such declaration, be prosecuted for committing an offence, either under s. 193 or s. 199 of the Penal Code.—IN THE MATTER OF ISWAR CHUNDER GUHO, I. L. R., 14 Cal. 653. [Petheram, C.J., and Ghose, J. June 13, 1887.]

IT is no offence to make a false statement before a person purporting to act in execution of the Registration Act, but not legally authorized so to do.—RADHIKA MOHUN KURI v. LAL MOHAN SHA, I. L. R., 20 Cal. 719. [Trevelyan and Rampini, JJ. Mar. 23, 1893.]

FALSE STATEMENT TENDING TO CRIMINATE.

WHEN a party makes a false statement, being legally bound by solemn affirmation, the fact that the statement was one tending to criminate himself will not justify his acquittal on a charge of giving false evidence. — PRO., Feb. 21, 1867, 3 Mad. H. C. Rep. Ap. 30.

ALTHOUGH a person, under examination as a witness, is bound by his affirmation to tell the truth, if he is examined on a point on which he is likely to criminate himself, his position should be explained to him by the Magistrate, as otherwise he may be induced, through ignorance of the state of the law, to deny the existence of the facts for fear of penal consequences. Although, without such a warning, he may make a false denial, and thereby become guilty of the offence of intentionally giving false evidence, his offence will not be deserving of severe punishment.—IN THE MATTER OF JADOONATH DUTT, 2 C. L. R. 181. [Markby and Prinsep, JJ. April 18, 1878.

INTENTION.

CORRUPT intention in giving false evidence may be inferred from circumstances.—QUEEN v. RHUTTEN RAM, 2 W. R. 63. [Glover, J. April 20, 1865.]

A CONVICTION on a charge of giving false evidence was set aside, the alleged conflicting statements having been made after a lapse of four years, and there being no proof of deliberate intention to give false evidence, which was held to be the gist of the offence.—QUEEN v. NAGBUNSEE LALL, 6 W. R. 89. [Kemp and Markby, JJ. Dec. 10, 1866.]

THE intention is an essential ingredient in the offence contemplated by s. 218 of the Penal Code. The making of a false return of service of summons is an offence punishable, not under s. 181, but under s. 193, of the Penal Code, and is cognizable by the Court of Session alone.—QUEEN v. SHAMA CHURN ROY, 8 W. R. 27. [Jackson and Hobhouse, JJ. June 25, 1867.]

THE mere fact that a person has made a statement which contradicts a previous state-

ment is not itself necessarily sufficient to bring him within s. 193, Penal Code. The circumstances under which, and the intention with which, the particular statement relied on by the prosecution is made, must, in each case, be considered before it can be held that the offence has been committed.—QUEEN v. SOONDER MOHOOREE, 9 W. R. 25. [Macpherson and Jackson, JJ. Mar. 2, 1868.]

IN a case of giving false evidence by making contradictory statements, the Court must be satisfied as to the intention with which the statements were made.—QUEEN v. DENONATH BUZZAR, 9 W. R. 52. [Macpherson and Glover, JJ. Mar. 30, 1868.]

UPON a prosecution for giving false evidence, the law does not require proof of a corrupt intention. It is sufficient that there is proof of intention; and if the statement was false, and known by the accused to be false, it may be presumed that, making it, the accused *intentionally* gave false evidence.—QUEEN v. AMEER ALI KHAN, 3 N.-W. P. 133. [Turner, J. June 16, 1871.]

THE rule of civil procedure contained in the last clause of s. 258 of the Civil Procedure Code (Act XIV. of 1882)—that uncertified adjustments of a decree are not to be recognized by "any Court"—does not affect the substantive criminal law. The words "any Court" in that clause have no application to a Criminal Court investigating a charge of fraudulently executing a decree under s. 210 of the Penal Code. Those words do not bar any criminal remedy which an injured judgment-debtor may have against a fraudulent decree-holder, whether by a prosecution under s. 193, 210, 406, or any other section of the Penal Code. In s. 210 of the Penal Code the word "satisfied" is to be understood in its ordinary meaning, and not as referring to decrees, the satisfaction of which has been certified to the Court. Under s. 235 of the Code of Civil Procedure (Act XIV. of 1882), the decree-holder, or the party who applies for execution, is bound to state in his application any adjustment between the parties after decree, whether such adjustment has or has not been previously certified to the Court. *Paupayya* v. *Narrasannah* (I. L. R., 2 Mad. 216) followed. Intentional omission to make such statement amounts to an offence under s. 193 of the Penal Code. S. 199 of the Penal Code does not apply to applications for execution containing false averments. — QUEEN-EMPRESS v. BAPUJI DAYARAM, I. L. R., 10 Bom. 288. [Birdwood and Jardine, JJ. Feb. 18, 1886.]

THE maxim, *Ignorantia juris non excusat*, cannot be applied to a declaration, though in fact false, made under s. 18 of Act XV. of 1872, inasmuch as the declaration required by that section to be made is a declaration as to the belief only of the person making it; and further, in order to entail the penal consequences provided for by s. 66 of the said Act, such false declaration must be made "intentionally."—QUEEN-EMPRESS v. ROBINSON, I. L. R., 16 All. 212. [Tyrrell and Blair, JJ. Jan. 23, 1894.]

JUDICIAL PROCEEDING, WHAT IS NOT A STAGE OF.

AN inquiry by an Assistant Magistrate, with a view to tracing the writer of an anonymous letter addressed to him, charging certain persons with murder, and without reference to the truth or otherwise of the charge of murder, is not a stage of a judicial proceeding in which the giving of false evidence is punishable under s. 193 of the Penal Code.—QUEEN v. BYKUNT NATH BANNERJEE, 5 W. R. 72. [Jackson and Glover, JJ. April 23, 1866.]

THE prisoner was convicted of perjury by wilfully making a false statement in a verified petition presented under s. 19 of the Income Tax Act (IX. of 1869) to a Tahsildar. *Held* that the Tahsildar was not an officer competent to receive such a petition, and that no offence was committed.—IN THE MATTER OF MONIAPPA OODIAN, 5 Mad. H. C. R. 326. [Scotland, C.J., and Collett, J. Mar. 11, 1870.]

THE prisoner, a vakil presented a vakalatnama in the District Munsif's Court, signed by the defendant in a civil suit, authorizing the prisoner to appear for the defendant. The vakalatnama falsely purported to have been executed before the adhikari of the village, and to bear the signature of the adhikari. The prisoner was convicted under s. 193 of the Penal Code. *Held* that the case was not brought within the section, and that the prisoner was entitled to his discharge from custody.—*In re* KEILASUM PUTTER, 5 Mad. H. C. R. 373. [Scotland, C.J., and Innes, J. July 11, 1870.]

THE accused was convicted of intentionally giving false evidence in a judicial proceeding, in having as a witness therein made, on solemn affirmation, a false statement. The proceedings in the trial at which the alleged false evidence was given were subsequently annulled in consequence of the sanction for the prosecution being insufficient. *Held* that the conviction of the accused must be reversed, as the false statement was not made in a stage of judicial proceeding. The proceedings in a criminal trial, when necessary to be proved, should be proved by their production.—REG. v. RAVJI VALAD TAJU, 8 Bom. H. C. R. 37. [Gibbs and West, JJ. June 15, 1871.]

A MAN died leaving some money due to him in the hands of the Telegraph Authorities. P wrote a letter to those authorities, claiming the money as the sole heir of the deceased. This letter was sent to the District Judge for verification and orders. P supported his claim before the Judge by the evidence on oath of C. C's evidence being, in the opinion of the District Judge, false, the District Judge, in his capacity as Sessions Judge, tried him for giving false evidence, and convicted him of that offence. *Held* that, as the reference to the District Judge by the Telegraph Authorities of P's letter for verification, and the subsequent action in regard thereto, did not constitute a "judicial proceeding," and as the District Judge had not any authority to administer an oath to C, the conviction was illegal. *Held*, also, that the District Judge had no jurisdiction, under s. 477 of the Criminal Procedure Code, to try C.—EMPRESS *v.* CHAIT RAM, I. L. R., 6 All. 103. [Straight, J. Oct. 27, 1883.]

A STATEMENT taken down in the course of a police-investigation by a police-constable under s. 161 of the Criminal Procedure Code (Act X. of 1882) is not evidence at any stage of a judicial proceeding.—QUEEN-EMPRESS *v.* ISMAI VALAD FATARU, I. L. R., 11 Bom. 659. [West and Birdwood, JJ. April 5, 1887.]

AT a preliminary enquiry held by a Sub-divisional Magistrate, at the direction of the District Magistrate, into the circumstances of a complaint against the police, a witness made a false statement on oath. Notice was subsequently issued calling upon the said witness to show cause why sanction should not be granted for his prosecution. The Magistrate having held that the witness was bound to tell the truth at the said enquiry and having granted sanction for his prosecution under s. 193 of the Indian Penal Code:—*Held* that the enquiry before the Magistrate in the course of which the alleged offence was committed was not a judicial proceeding within the meaning of s. 193 of the Indian Penal Code, and the witness could not be convicted under that section.—QUEEN-EMPRESS *v.* VENKATARAMANNA, I. L. R., 23 Mad. 223. [Boddam and Moore, JJ. Aug. 31 and Sep. 1, 1899.]

HELD that where an accused person was examined by a Magistrate for the sake of obtaining information on which proceedings could be taken, the Magistrate, although he might examine him to obtain information, could not legally examine him on oath, nor could the accused be said at that stage of the proceedings to be a witness even though he were examined on oath. There was no authority that being so examined the accused was bound by any express provision of law to state the truth. Consequently any charge for giving false evidence founded on this statement was bad, and it therefore followed that a conviction and sentence founded on this statement as being contrary to another statement made by the accused when examined as a witness at the trial, without any proof of finding that the second statement was false, could not be maintained.—HARI CHARAN SINGH *v.* QUEEN-EMPRESS, I. L. R., 27 Cal. 455. [Prinsep and Stanley, JJ. 4 Jan. 11, 1900.]

LOCUS PŒNITENTIÆ.

HELD by the majority of the Court (Jackson, J., *dissentiente*) that there ought to be *locus pœnitentiæ* for witnesses who have deposed falsely to retract their false statements.—QUEEN *v.* GOLLIE MULLICK, W. R., Gap. 1864, 10. [Steer, Seton-Karr, and Jackson, JJ. Feb. 18, 1864.]

MAGISTRATE BEFORE WHOM FALSE STATEMENT MADE NOT TO TRY CASE.

WHERE a false statement is made in a stage of a judicial proceeding before a Magistrate, he ought not to convict under s. 181 of the Penal Code, but should commit to the Sessions under s. 193 of that Code.—QUEEN *v.* NUSSUROODDEEN SHAZWAL, 11 W. R. 24. [Norman and Jackson, JJ. Mar. 25, 1869.]

THE Magistrate before whom the offence of intentionally giving false evidence in a judicial proceeding is committed may himself try and commit the persons so offending.—QUEEN *v.* RAMLOCHUN SINGH, 18 W. R. 15. [Kemp and Glover, JJ. June 11, 1872.]

WITH the exception of cases triable by the Court of Session exclusively, a Court cannot try any offence described in ss. 467, 468, and 469 of the Code of Criminal Procedure (Act X. of 1872), when committed before itself.—PRO., Mar. 24, 1873, 7 Mad. H. C. R. Ap 17.

THE offence of intentionally giving false evidence in a judicial proceeding cannot be tried by the Magistrate before whom the false evidence is given. This offence, being an attempt to pervert the proceedings of a Court to an improper end, is a contempt of its authority (ss. 435, 436, 471, 472, and 473 of the Code of Criminal Procedure).—REG. *v.* NAVRANBEG DULABEG, 10 Bom. H. C. R. 73. [Bayley and West, JJ. May 21, 1873.]

HELD (Stuart, C.J., dissenting) that an offence under s. 193 of the Penal Code, being an offence in contempt of Court within the meaning of s. 473 of Act X. of 1872 cannot, under that section, be tried by the Magistrate before whom such offence is committed.

*Queen* v. *Kultaran Singh* (I. L. R., 1 All. 129) and *Queen* v. *Jagat Mal* (I. L. R., 1 All. 162) overruled. *Per* Stuart, C.J.—A Magistrate before whom such an offence is committed, if competent to try it himself, is not precluded from so doing by the provisions of s. 471 of Act X. of 1872.—EMPRESS v. KASHMIRI, I. L. R., 1 All. 625. [Stuart, C.J., and Pearson, Turner, Spankie, and Oldfield, JJ. Aug. 22, 1877.]

UNDER s. 487 of the Code of Criminal Procedure (Act V. of 1898), Judges of High Courts, the Recorder of Rangoon, and Presidency Magistrates are empowered to try cases under s. 193 of the Penal Code, even though the false evidence has been given before themselves, and they have sanctioned the prosecution; but this power has not been extended to Mofussil Magistrates.

MATERIALITY.

THE materiality of the subject-matter of the statement is not a substantial part of the offence of giving false evidence in a judicial proceeding; and an indictment, under ss. 191, 193 of the Penal Code, though it does not allege materiality, is good if it alleges sufficiently the substance of the offence.—REG. v. AIDRUS SAHIB, 1 Mad. H. C. R. 38. [Scotland, C.J., and Bittleston, J. Oct. 30, 1862.]

IN a case of false evidence it is not necessary for the Judge in his charge to show how the false statements, even if made intentionally, are material in the case.—QUEEN v. PARBUTTY CHURN SIRCAR, 6 W. R. 84. Loch, J. Nov. 20, 1866.]

To constitute the offence of giving false evidence under s. 191 of the Penal Code, it is not necessary that the false evidence given should be material to the case in which it is given. *Aliter* under s. 192. Where the Senior Assistant Sessions Judge without taking evidence, acquitted the accused after calling upon him to plead, the prosecutor being unable to say that the alleged false statements of the accused were material to the trial on which they were made, the High Court reversed the order of acquittal, and directed the trial to be proceeded with.—REG. v. DAMODHOR RAMCHANDRA KULKARNI, 5 Bom. H. C. R. 68. [Newton and Tucker, JJ. Aug. 13, 1868.]

OATH OR AFFIRMATION.

WHERE a witness was, at the beginning of the day, solemnly affirmed, once for all, to speak the truth in all the cases coming before the Court that day, *held* that he might be convicted, under s. 193 of the Penal Code, of giving false evidence in a suit which came on that day, although he was not affirmed to speak the truth in that suit after it was called on for hearing, and the names of the cases in the day's list were not mentioned when the affirmation was administered.—REG. v. VENKATACHALAM PILLAI, 2 Mad. H. C. R. 43. [Scotland, C.J., and Bittleston, J. Mar. 15, 1864.]

A CHARGE of perjury held unproved without proof that the statement on which it was founded was given on solemn affirmation under Act V. of 1840 instead of on oath.—QUEEN v. MANWAR KHAN, 4 W. R. 24. [Loch and Glover, JJ. Nov. 11, 1864.]

A HINDU, who has become a convert to Christianity, is not under a legal obligation to speak the truth, unless his evidence be given under the sanction of an oath on the Holy Gospels, so as to justify a conviction under s. 193 of the Penal Code. A statement made by a witness in a criminal trial, not upon oath or solemn affirmation, is not a declaration within the meaning of s. 199 of the Penal Code, nor is the witness bound to make a declaration under s. 191.—*In re* A. VEDAMUTTU, 4 Mad. H. C. R. 185. [Scotland, C.J., and Ellis, J. Dec. 21, 1868.]

No omission to take any oath or make affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding, or render inadmissible any evidence whatever in or in respect of which such omission, substitution, or irregularity took place, or shall affect the obligation of a witness to state the truth.—Oaths Act (X. of 1873) s. 13. And a Full Bench of the Calcutta High Court has ruled (Jackson, J., dissenting) that the evidence of a witness who was examined on simple affirmation under the direction of the Judge is admissible as evidence, and that the word "omision" in s. 13 of the Oaths Act (X. of 1873) includes any omission, and is not limited to accidental or negligent omissions.—QUEEN v. SEWA BHOGTA, 23 W. R. 12; 14 B. L. R. 294. [Couch, C.J., and Kemp, Jackson, Phear, and Markby, JJ. Dec. 22, 1874.]

V was tried and convicted under s. 193 of the Penal Code for giving false evidence before the Court of a village-munsif in a suit in which V was defendant. The village-munsif sanctioned the prosecution of V under s. 105 of the Code of Criminal Procedure. On appeal the Sessions Judge acquitted V on the grounds that a village-munsif had no power to administer oath to V (the case not being one in which either party was willing to allow the cause to be settled by the oath of the other), and because s. 195 of the Code of Criminal Procedure did not apply. *Held* that both objections to the conviction were

bad in law.—QUEEN-EMPRESS *v.* VENKAYYA, I. L. R., 11 Mad. 375. [Collins, C.J., and Parker, J. Feb. 22 and Mar. 13, 1888.]

THE offence of intentionally giving false evidence referred to in s. 193 of the Penal Code may be committed, although the person giving evidence has neither been sworn nor affirmed.—GOBIND CHANDRA SEAL *v.* QUEEN-EMPRESS, I. L. R., 19 Cal. 355. [Norris and Beverley, JJ. Feb. 15, 1892.]

FALSE EVIDENCE IN CROSS EXAMINATION.

M S was convicted under s. 500 of the Penal Code of defaming S S by making a certain statement when under cross-examination as a witness before a Court of criminal jurisdiction. *Held* that the conviction was bad. The statements of witnesses are privileged; if false, the remedy is by indictment for perjury, and not for defamation.—MANJAYA *v.* SESHA SHETTI, I. L. R., 11 Mad. 477. [Collins, C.J., and Shepherd, J. April 11 and 24, 1888.]

PRELIMINARY ENQUIRY.

When a Magistrate takes action under s. 476 of the Code of Criminal Procedure, it is not necessary to the validity of his order that he should hold a preliminary inquiry. *Baperam Surma* v. *Gouri Nath Dutt* (I. L. R., 20 Cal. 474) followed.—QUEEN-EMPRESS *v.* MATABADAL, I. L. R., 15 All. 392. Aikman, J. June 13, 1893.]

THE provisions of s. 476 of the Criminal Procedure Code, as well as of s. 643 of the Civil Procedure Code, clearly indicate that the Court taking action under either section must not only have ground for inquiry into an offence of the description referred to in those sections respectively, but must also be *primâ facie* satisfied that the offence has been committed by some definite person or persons against whom proceedings in the Criminal Court are to be taken. *Khepunath Sikdar* v. *Grish Chunder Mukerji* (I. L. R., 16 Cal. 730) and *Chowdry Mahomed Izarne Huq* v. *Queen-Empress* (I. L. R., 20 Cal. 349) followed. A Division Bench of the High Court taking the civil business of a particular group has jurisdiction to deal with an order under s. 643 of the Civil Procedure Code made by a Civil Court in any of the districts included in the group.—BHAKKU *v.* QUEEN-EMPRESS, I. L. R., 23 Cal. 532. Banerjee and Gordon, JJ. Feb. 11, 1896.]

PUNISHMENT.

THE denial of one's relationship to his brother, whose witness he was, was held to be a kind of false evidence meriting only a mild punishment.—QUEEN *v.* GOVIND SAHOO, W. R. Gap., 1864, 14. [Steer and Seton-Karr, JJ. Feb. 29, 1864.]

A SENTENCE of five years' imprisonment was not excessive in the case of a man convicted of making a false statement in a judicial proceeding with the intention of defeating the ends of justice by procuring the acquittal of a guilty person.—QUEEN *v.* ANOO, W. R. Gap., 1864, 16. [Loch, Seton-Karr, and Jackson, JJ. Mar. 14, 1864.]

WHAT was held to be a sufficient punishment in a case of false evidence in which the prisoners pleaded guilty before the Sessions Court.—QUEEN *v.* UNNOO PATOONEE, 3 W. R. 15. [Jackson and Glover, JJ. May 18, 1865.]

A FALSE statement by a witness as to his position or character, ought not to be punished so severely as a false charge or a false claim.—QUEEN *v.* REWAH GOLLAH, 5 W. R. 95. [Norman and Campbell, JJ. May 28, 1866.]

A DELIBERATE mis-statement made in a Court of Justice, whether it tends to endanger the life and property of others, or to defeat and impede the progress of justice, is not an offence which should be lightly passed over. But for a simple mis-statement from which no such inferences can be drawn, a comparatively light sentence will suffice, particularly where the prisoner pleads guilty, and throws himself on the mercy of the Court.—QUEEN *v.* GURJOON AHEER, 7 W. R. 37. [Loch and Seton-Karr, JJ. Mar. 6, 1867.]

FALSE charge under s. 211 and false evidence under s. 193 are not cognate offences, nor parts of the same offence, but may be punished separately.—QUEEN *v.* ABDOOL AZEEZ, 7 W. R. 59. Kemp and Glover, JJ. April 27, 1867.] Followed in *Queen-Empress* v. *Pir Mahomed*, I. L. R., 10 Bom. 254, *infra*.

CASE of perjury by females in which the majority of the Court refused to reduce the punishment.—QUEEN *v.* BISHOO BEWA, 7 W. R. 66. [Kemp, Seton-Karr, and Glover, JJ. May 7, 1867.]

A SENTENCE of 24 hours' imprisonment for giving false evidence was held to be quite inadequate.—QUEEN *v.* HOSSAIN ALI, 8 B. L. R. Ap. 25. [Ainslie, J. Aug. 16, 1871.]

UNDER s. 193 of the Penal Code it is obligatory upon the Court, in every case of conviction under that section, to pass some sentence of imprisonment.—EMPRESS *v.* KHOHAI SINGH, 3 C. L. R. 527. [Jackson, Markby, and Prinsep, JJ. July 29, 1878.]

WHERE the accused, who was a head-constable, was found guilty of making a false charge under s. 211, and of giving false evidence under s. 193 of the Penal Code, and the Sessions Judge passed sentences of three

months' simple imprisonment for each offence, and, taking into consideration the accused's past conduct, directed that the sentences should run concurrently, *held* that the sentences were inadequate and illegal. Accordingly, the sentences were enhanced to *three months' rigorous imprisonment for each* offence; and as the two offences were distinct, the High Court directed, under s. 35 of the Criminal Procedure Code (Act X. of 1882), one sentence to commence after the expiration of the other. *Queen v. Abdool Azeez* (7 W. R. 59) followed.—QUEEN-EMPRESS *v.* PIR MAHOMED, I. L. R., 10 Bom. 254. [Birdwood and Jardine, JJ. Dec. 10, 1885.]

SANCTION TO PROSECUTE FOR GIVING FALSE EVIDENCE

THE discretion vested in a Civil Court of sanctioning a criminal charge of perjury is one that should be most carefully exercised. Remarks on the present case, in which the discretion was improperly exercised.—QUEEN *v.* PROSA RAM, 6 W. R. 11. [Jackson and Markby, JJ. June 25, 1866.]

A GENERAL sanction by a Judge to a prosecution for giving false evidence under s. 193 of the Penal Code, and for false verification, is not sufficient. The exact words upon which the prosecution is based, and the exact offences which the Magistrate is to investigate, should be pointed out. The verification of an application filed in the Civil Court, in which it was stated that the applicant did not sign an alleged deed of compromise, does not subject him to punishment for giving false evidence. Such an application falls, not under s. 120, Act VIII. of 1859, but under s. 200 of that Act, and need not therefore, be verified. Documents which were tendered in the civil suit if relied on in a prosecution for giving false evidence, must be proved in the Criminal Court before they can be received as evidence.—QUEEN *v.* KARTICK CHUNDER HAZRAH, 9 W. R. 58. [Kemp and Jackson, JJ. April 14, 1868.]

WHERE the sanction to a prosecution accorded under s. 169, Code of Criminal Procedure (Act XXV. of 1861), extended only to one of the persons charged, the High Court quashed the commitment, and directed the discharge of the persons to whom the sanction did not apply.—QUEEN *v.* WOODBURNUT SINGH, 10 W. R. 24A. [Phear and Hobhouse, JJ. Aug. 4, 1868.]

THE Civil Court, in giving permission to prosecute, should, in a case of forgery, state distinctly what the document is for which a prosecution is to be entertained. The particular act or acts of forgery, and, in a case of perjury, the particular words which constitute the perjury, should be specified.—REFERENCE IN THE CASE OF GOBIND CHUNDER GHOSE, 10 W. R. 41; 7 B. L. R. 28n. [Jackson and Hobhouse, JJ. Sep. 11, 1868.]

THE sanction accorded by a Civil Court in a case under s. 193, Penal Code, need not be more specific than a general sanction to prosecute for any false statement contained in the two depositions given.—QUEEN *v.* KADIR BUX *alias* KADIR MAHOMED, 11 W. R. 17. [Jackson and Markby, JJ. Mar. 4, 1869.] But see s. 195, Code of Criminal Procedure (Act V. of 1898).

WHERE the Magistrate, before whom a witness gives false evidence, himself commits such witness for trial, his sanction of the prosecution will be implied.—REG. *v.* MUHAMMAD KHAN *alias* IMAM KHAN, 6 Bom. H. C. R. 54. [Warden and Lloyd, JJ. Aug. 20, 1869.]

S. 197 of the Code of Criminal Procedure (Act XXV. of 1861), requires that sanction to prosecutions therein mentioned shall be given before any such prosecution is commenced. Until the sanction is obtained, the tribunal by which the offence is triable has no jurisdiction, and a conviction founded on evidence taken without such sanction would be bad. Where a complainant charged a person who was one of the public servants mentioned in s. 197 of the Criminal Procedure Code, with committing acts which, if committed by a private individual, would have constituted the offence of extortion, it was held that it was not illegal to treat the charge as a charge of extortion, and to proceed with the trial without sanction for the prosecution.—REG. *v.* PANDHARAM KESHAV, 7 Bom. H. C. R. 61. [Gibbs and Melvill, JJ. July 28, 1870.]

AN application under s. 169 of the Criminal Procedure Code (Act XXV. of 1861), praying for sanction to institute a prosecution on a charge of perjury, should, as a general rule, be first made to the Court before which the perjury is alleged to have been committed.—*In re* RAJAH OF VANKATAGIRI, 6 Mad. H. C. R. 92. [Scotland, C.J., and Holloway, J. Feb. 27, 1871.]

WHERE sanction under s. 170 of the Code of Criminal Procedure (Act XXV. of 1861), to prosecute a person criminally for fabricating false evidence, was not given, it was held that the error was not cured by s. 426 of that Code (or s. 537 of the new Code) and the person charged was ordered to be discharged. The sanction given by the Sessions Judge after the case was committed to him, and the prisoner had pleaded to the charge, is not a

sanction contemplated by the law.—QUEEN *v.* MOHIMA CHUNDER CHUCKERBUTTY, 15 W. R. 45; 7 B. L. R. 26. [Loch and Macpherson, JJ. Mar. 25, 1871.]

ALTHOUGH the averment on the record of a Magistrate by whom a prisoner is tried, that the accused, before making a confession, was warned that it was optional with him to answer the questions put to him or not, is, on appeal, conclusive as to the fact of such a warning having been given, it is not conclusive to show that such a confession has not been made under the influence of fear engendered by previous maltreatment, or is not otherwise valueless. Allegations made in a regular and proper manner before a Sessions Court on appeal, that a confession made by the accused before the Magistrate who tried the case was made under such circumstances as to preclude its admissibility in, or diminish its value as, evidence, should receive due attention, and be enquired into. A Sessions Court, refusing to make such inquiry, commits a grave error in law and procedure. Upon an inquiry which the High Court directed the Sessions Judge to make into such an allegation, the prisoners were ordered to be, and were solemnly affirmed, and the prosecution neither objected to the form of the order, nor to the affirmation of the prisoners, and moreover cross-examined them, but objected to their evidence being used upon the return of the inquiry. It was held that the objection, though possibly good if taken in time, was too late, and that the evidence of the prisoners might be used, whether the order directing them to be affirmed was correct or otherwise. Where, during such an inquiry, the Sessions Judge accorded his sanction to the prosecution for perjury of some of the witnesses who deposed on behalf of the prisoners, the High Court considered such a proceeding improper, and eminently calculated to defeat the object of the inquiry. *Semble.*—A person cannot be convicted, under s. 201 of the Penal Code, of causing evidence of the commission of an offence by himself to disappear, nor can he be convicted of the abetment of such an act (*per* Lloyd and Kemball, JJ.). Question as to the extent of the privilege of speech accorded to counsel and advocates considered. Important statements made in verified petitions to the High Court, if untrue, should be contradicted on affidavit. Appointment of the Magistrate who, in the first instance, had tried and convicted the accused, to be Crown prosecutor to conduct an inquiry subsequently directed in the same case censured as being unprecedented and objectionable. A public prosecutor should be without a personal interest in the cases which he conducts. Prisoners should be allowed to have free converse with their vakils out of the hearing of the police-officers in charge of such prisoners. It is undesirable that Magistrates whose decisions are under appeal, or who have been engaged in promoting the prosecution or police-officers concerned in a case, should sit on the bench beside, or converse privately in Court with, the Judge who is engaged in trying the prisoner's appeal. If the Appellate Judge wishes to ascertain any facts relating to the case from the Magistrate who convicted the accused, he should examine the Magistrate upon oath or solemn affirmation in the same manner as an ordinary witness. —REG. *v.* KASHINATH DINKUR, 8 Bom. H. C. R. 126. [Westropp, C.J., and Lloyd, Melvill, Green, and Kemball, JJ. April 12, 1871.]

SANCTION for the prosecution of the accused was accorded by an Assistant Sessions Judge in the following terms: "There is no doubt whatever that Tai, Baji, Bala, these three persons, made before me certain statements contradictory of the statements which they had made before the committing Magistrate. Therefore, if from such statements of theirs they may be liable to any charge, there is sanction from here" (*i.e.*, I give my sanction) "for their prosecution." *Held* that this gave sufficient sanction for the prosecution of the accused under s. 193 of the Penal Code, and that it is not necessary that the authority giving the sanction should specify the particular section of the Penal Code under which the accused is permitted to be prosecuted.—REG. *v.* TAI, WIFE OF NANCHAND, 8 Bom. H. C. R. 24. [Westropp, C.J., and Gibbs, Melvill, and Kemball, JJ. April 26, 1871.] But see *Jadunath Hazra v. Annada Prosad Sircar*, 11 C. L. R. 53, *infra*; and s. 195, Act V of 1898.

WHERE a Civil Court, by letter to a Subordinate Magistrate with committing powers, gave sanction for the prosecution of the accused under ss. 463 and 471 of the Penal Code (making and using a false document), and where the Magistrate, in committing the accused for trial, in addition to framing a charge under these sections, added a head of charge under s. 193 (giving false evidence), it was held that the Magistrate had no jurisdiction to commit the accused for trial on the last mentioned head of charge. —REG. *v.* SUBI SANI, 8 Bom. H. C. R. 28. [Westropp, C.J., and Lloyd, J. April 27, 1871.]

A CIVIL COURT has no power to make an order sanctioning a prosecution for an offence committed before the Court of the Principal Sadr Ameen on the Small Cause side, that Court not being subordinate to the Civil

Court.—*Ex-parte* MAHALINGAIYAN, 6 Mad. H. C. R. 191. [Scotland, C.J., and Kindersley, J. May 3, 1871.]

THE words of s. 191 of the Penal Code are very general, and do not contain any limitation that the false statement made shall have any bearing upon the matter in issue. It is sufficient to bring a case within that section if the false evidence is intentionally given, that is to say, if the person making the statement makes it advisedly knowing it to be false, and with the intention of deceiving the Court, and of leading it to be supposed that that which he states is true. The object of the sanction required by s. 169, Code of Criminal Procedure (Act XXV. of 1861), is to ensure that the prosecution should be instituted after due consideration on the part of the Court before whom the false evidence was given, or on the part of a Court to which such Court is subordinate. When a Magistrate perused the papers of a case which had been forwarded to him by a Subordinate Magistrate for consideration, and then sent on the papers to the District Superintendent of Police with an opinion adverse to the prisoner, and the District Superintendent of Police requested the Magistrate to issue a warrant against the prisoner, charging him with giving false evidence, it was *held* that the issue of the warrant was a sufficient sanction under s. 169 on the part of the Magistrate.—QUEEN v. MAHOMED HOSSAIN, 16 W. R. 37. [Macpherson and Ainslie, JJ. Aug. 4, 1871.]

A SESSIONS JUDGE has no authority under the law to interfere with the order of a Magistrate allowing a prosecution for false evidence.—GOPAL MOZUMDAR v. HURRO SOONDERY BOISTOMEE, 16 W. R. 50: 8 B. L. R. Ap. 20. [Jackson and Glover, JJ. Nov. 23, 1871.]

IT would be very undesirable for the High Court, except under very peculiar circumstances, to entertain, in the first instance, an application to authorize a prosecution for perjury.—IN THE MATTER OF SHEEB PERSHAD CHUCKERBUTTY, 17 W. R. 38. [Bayley and Markby, JJ. Mar. 23, 1872.]

WHERE the Judicial Commissioner of Assam, sitting as Sessions Judge, certified in his capacity of Judge of the Chief Civil Court in Assam that a charge of false evidence was entertained with the sanction of the District Court of Assam, to which the Court of the Munsif of Debrooghur, before or against which the offence was committed, was subordinate, *held* that the sanction required by s. 169, Code of Criminal Procedure (Act XXV. of 1861), had been given.—BAPOORAM ALIAM v. GUNGA RAM KACHAREE, 17 W. R. 54. [Couch, C.J., and Ainslie, J. April 22, 1872.]

THE commitment of certain persons charged, under s. 193, Penal Code, with intentionally giving false evidence in a judicial proceeding, was held to be illegal, inasmuch as the sanction of neither the Court before or against which the offence was committed, nor of some other to which such Court is subordinate, was given. It is not necessary to constitute the offence of abetment that the act abetted should be committed.—REFERENCE IN THE CASE OF DINONATH BURODA, 18 W. R. 32. [Kemp and Glover, JJ. July 24, 1872.]

A SUBORDINATE MAGISTRATE refused to grant sanction for a prosecution on the sole ground that the perjury was alleged to have been committed before his predecessor in office. *Held* that the Subordinate Magistrate was wrong in his construction of the section. The Court before which the perjury is alleged to have been committed is to give the permission. The change of incumbent leaves it still the same Court.—PRO., Nov. 12, 1872, 7 Mad. H. C. R. Ap. 12.

THE words, "such sanction may be given at any time," in s. 169, Criminal Procedure Code (Act XXV. of 1861) must be construed reasonably, and "any time" means a time which does not unduly prejudice the party to be prosecuted, or put him in a worse position than he was before. No appeal lies against a Judge's order sanctioning such prosecution.—SITARAM SAHOO v. RAI BABU SHEW GOLAM SAHOO BAHADOOR, 18 W. R. 62. [Glover and Pontifex, JJ. Nov. 13, 1872.] But, under s. 195 of the new Code of Criminal Procedure (Act V. of 1898), no Court shall take cognizance of an offence punishable under s. 193 of the Penal Code, unless sanction has been previously obtained.

WHEN it is intended to charge a person with having made a false statement in the Court of a Magistrate, or (alternatively) a false statement in the Court of a Subordinate Judge, there must be a proper sanction for a prosecution on each branch of the alternative. A sanction for the prosecution must designate the Court where the false statement was alleged to have been made, and the occasion on which it was committed. It is desirable, if not necessary, that in the sanction for prosecution the description of the offence intended to be prosecuted should be stated in general terms, although details may be omitted.—*In re* BALAJI SITARAM, 11 Bom. H. C. R. 34. [West and Nanabhai Haridas, JJ. Mar. 18, 1874.]

IN a case in which the High Court was asked to sanction a prosecution for giving false evidence of a plaintiff in a suit before a Small Cause Court, which Court had refused

such leave to defendant, it was *held* that the High Court would not be justified in exercising the discretion vested in them, unless it appeared very clearly that there were strong grounds for granting the sanction.—MONEY MOHUN DEY *v.* DINONATH MULLICK, 22 W. R. 11. [Kemp and Birch, JJ. April 28, 1874.]

THE Court declined in this case to say that a conviction was bad, because the Judge who tried the case, and the Judge who sanctioned the criminal proceedings, was the same.—QUEEN *v.* SUHAL CHUNDER GANGOOLY, 22 W. R. 16. [Markby and Mitter, JJ. May 18, 1874.]

As soon as it becomes apparent that a complaint is of an offence falling within s. 468 *(b)* of the Code of Criminal Procedure (Act X. of 1872), and that it is made without sanction, the Magistrate is not competent to entertain it.—PRO., Feb. 16, 1875, 8 Mad. H. C. R. Ap. 2.

HELD that the sanction referred to in ss. 468 and 469 of Act X. of 1872, when given by any of the Courts empowered under the Act, cannot be disturbed by a superior Court. *Per* Turner, Offg. C.J., and Pearson and Oldfield, JJ.—When sanction is refused by one of the Courts, the refusal does not deprive the other Courts of the discretion given to them. *Per* Spankie, J.—When sanction is refused by one of the Courts, the refusal does not deprive the superior Courts of the discretion given to them.—BARKATULLAH KHAN *v.* RENNIE, I. L. R., 1 All. 17. Turner, Offg. C.J., and Pearson, Spankie, and Oldfield, JJ. July 3, 1875.

A CONVICTION having been set aside as arrived at without jurisdiction, no sanction to the prosecution having been obtained from the Court against which the offence was committed, formal sanction was obtained the accused re-arrested, and, without being called upon to plead, ordered to undergo the sentence previously passed. *Held* that the whole of these proceedings were illegal.—IN THE MATTER OF EDOO KHANSAMAH, 24 W. R. 64. [Kemp and Glover, JJ. Nov. 9, 1875.]

IN 1872, P and two others obtained a decree against S in the Bombay Court of Small Causes. For the enforcement of this decree, they presented to the District Judge of Thana an application in the form prescribed by s. 212 of the Code of Civil Procedure, alleging that the judgment-debtor had two salt-pans at Trombay, in the Thana district. The application did not, however, on the face of it, state whether it was made under the Civil Procedure Code or under Act IX. of 1850. The Judge entrusted the application for execution to the Subordinate Judge, who ordered an attachment and sale of these salt-pans. In the course of the proceedings which followed, the Subordinate and District Judges considered that J N had given and fabricated false evidence. On the 25th October 1875, the District Judge gave his sanction for the prosecution of J N and others. J N prayed the High Court to annul the sanction, alleging in his petition that the proceedings before the Subordinate Judge were, *ab initio, coram non judice*, as he had no authority to attach and sell immoveable property in execution of a decree of the Bombay Court of Small Causes. *Held* that, although the Court of Small Causes at Bombay has power to enforce its decree against moveable property only, yet, if that decree be transmitted to a Court to which the Code of Civil Procedure applies, the latter can, under s. 287 of that Code, enforce it against immoveable property also. *Quære.*—Whether a Court executing the decree of a Small Cause Court under s. 78 of Act IX. of 1850 could enforce it against immoveable property? *Held*, also, that the District Judge was quite within his province in giving his sanction to the prosecution. *In Reg v. Hayat Bibee* (unreported), West and Nanabhai Haridas, JJ., *held* that the High Court had no authority to interfere with the discretion to grant a sanction for prosecution, even in a case in which the High Court would not have granted the sanction itself. See also on this subject *Barkatullah v. Rennie*, I. L. R., 1 All 17.—*In re* JOGJIVAN NANABHAI, I. L. R., 1 Bom 82. West and Nanabhai Haridas, JJ. Jan 19, 1876.] But see s. 195, Code of Criminal Procedure, 1898.

WHERE the High Court sanctions a prosecution for perjury, it is implied that the proper legal procedure will be adopted, and the proceedings instituted in a Court having jurisdiction to entertain the charge.—KEERUT SINGH *v.* NARAIN PARSEE, 25 W. R. 14. [Glover and Mitter, JJ. Jan. 21, 1876.]

FOR the purposes of s. 498 of the Code of Criminal Procedure (Act X. of 1872), a Magistrate of the first class is subordinate to the Magistrate of the district. A sanction given by the latter to prosecute a person for intentionally giving false evidence before the former is therefore legal and sufficient, notwithstanding the refusal by the former to give such sanction himself. *Semble.*—That the Sessions Court has not power to give such sanction.—IMPERATRIX *v.* PADMANABH PAI, I. L. R., 2 Bom 384. [Melvill and Pinhey, JJ. Oct. 4, 1877.]

SECTION 466 of the Code of Criminal Procedure (Act X. of 1872), extends to all acts ostensibly done by a public servant, *i.e.*, to acts which would have no special signification, except as acts done by a public servant; therefore,

a mahalkari, charged with fabricating the proceedings of a case decided before himself, could not be tried on that charge, except with the sanction specified in that section. Para. 1 of s. 466, which mentions a sanction by Government or its deputy, is intended to apply, at least chiefly, to the cases of persons specially responsible to Government, such as accountants who have failed in their duty; and para. 2, which speaks of sanction by Government alone to persons professing to exercise certain authority, and with that pretext doing an act which is impeached by a subject, on the ground of its being wholly unwarranted, or of an excess or impropriety of some kind. A mahalkari falls within the class of public servants contemplated in para. 1 of s. 466. A sanction for his prosecution by the District Magistrate is therefore sufficient. For the purpose of sanctioning a criminal prosecution under s 468 of the Code of Criminal Procedure (Act X. of 1872), the Court of the Subordinate Judge is subordinate to that of the District Judge, notwithstanding that the subject-matter of the litigation in the former Court involves more than Rs. 5,000, and an appeal lies direct to the High Court from the decision of that Court in that matter. A prosecution commences when a complaint is made, the reception of the complaint being a stage of the judicial proceedings towards conviction.—IMPERATRIX *v.* LAKSHMAN SAKHARAM, I. L. R., 2 Bom 481. [West and Pinhey, JJ. Dec 20, 1877.]

HELD (Oldfield, J., dissenting) that, for the purpose of s 468 of Act X. of 1872, a Magistrate of the first class is subordinate to the Magistrate of the district, and consequently application for sanction to prosecute a person for intentionally giving false evidence before the former may, where such sanction is refused by the former, be made to the latter, and not to the Court of Session, which has not power to give such sanction.—IN THE MATTER OF GUR DAYAL, I. L. R., 2 All. 205. [Stuart, C.J., and Pearson, Spankie, and Oldfield, JJ. Mar 27, 1879.]

L MADE a complaint against S by petition, in which he only charged S of having committed offences punishable under ss 193 and 218 of the Penal Code, but in which he also accused S of acts which, if the accusation had been true, would have amounted to an offence punishable, under s 466 of that Code, with seven years' imprisonment. The Magistrate inquired into the charges against S under ss 193 and 218 of the Penal Code, and directed his discharge. L then applied to the Court of Session to direct S to be committed for trial, on the ground that he had been improperly discharged, which the Court of Session did; and S was committed for trial charged under s. 218 of the Code, and was acquitted by the Court of Session. The Court of Session then, under s. 472 of Act X. of 1872, charged L with offences punishable under ss. 193, 195, 211, and 211 and 109 of the Penal Code, and committed him for trial. *Held* that such commitment was not bad by reason that an offence under s. 193 of the Penal Code is not exclusively triable by a Court of Session. *Held* also *per* Stuart, C.J. (Spankie, J., doubting).—That the High Court is competent, in the exercise of its power of revision under s. 297 of Act X. of 1872 to quash a commitment made by a Court of Session under the provisions of s. 472 of that Act (or s. 477 of the Act of 1862). *Held* also, *per* Spankie, J.—That the Court of Session was competent notwithstanding that L had only charged S with offences under ss. 193 and 218 of the Penal Code, to charge L with offences under ss. 195 and 211, if such offences had come under its cognizance.—EMPRESS *v.* LACHMAN SING, I. L. R., 2 All. 398. [Stuart, C.J., and Spankie, J. June 11, 1879.]

A PERSON who makes a false statement upon oath before a police-patel acting under s. 13 of Bom. Act VIII. of 1867 gives false evidence within the meaning of s. 191 of the Penal Code, and is punishable under s. 193; but his trial for that offence requires no sanction, a police-patel not being a Criminal Court within the definition of s. 4 of the Code of Criminal Procedure (Act X of 1872), although offences under ch 10 of the Penal Code, committed before the same officer, cannot be tried without a sanction.—IMPERATRIX *v.* IBBASAPA, I. L. R., 4 Bom 479 [M. Melvill and F. D. Melvill, JJ. April 29, 1880.]

AN instruction to the Magistrate of the district by the Court of Session, contained in the concluding sentence of its judgment in a case tried by it to prosecute a person for giving false evidence before it in such case, does not amount to sanction to a prosecution of such person for such offence within the meaning of s 468 of Act X. of 1872, that section (468) supposing a complaint, or at least an application for sanction for a complaint. Where a Court thinks that there is sufficient ground for inquiring into a charge mentioned in s 467, 468, or 469 of Act X. of 1872, it should proceed under s. 471 of that Act (or s. 476 of the new Act). Attention of the Court of Session in this case directed to *Queen v. Baijoo Lal* (I. L. R., 1 Cal. 450).—EMPRESS *v.* GOBARDHAN DAS, I. L. R., 3 All. 62. [Pearson, J., June 26, 1880.] Referred to in *In re Banarsi Lal*, I. L. R., 18 All. 213, *infra*.

THE Courts that have jurisdiction to grant a sanction to proceedings under s. 468 of Act X. of 1872 are the Court before which the

offence was alleged to have been committed, and the Courts to which such Court is subordinate. *Per* Garth, C.J.—Where a case is settled without evidence being gone into, the Court in which the suit was brought, even if it have power to sanction criminal proceedings against any of the parties to such suit under s. 468 of Act X. of 1872 is guilty of great impropriety and indiscretion in so doing, inasmuch as it can have had no opportunity of judging of the *bonâ fides* of the claim or defence. *Semble.* — A petition presented under Reg. XVII. of 1860, not requiring verification, cannot, from the fact of its being verified unnecessarily, be made the subject of a prosecution for giving false evidence.—IN THE MATTER OF KASI CHUNDER MOZUMDAR JUGGUT CHUNDER MOZUMDAR v. KASI CHUNDER MOZUMDAR, I. L. R., 6 Cal. 440; 7 C. L. R. 33. [Garth, C.J., and Maclean, J. Sep. 29, 1880.] Dissented from in *Shashi Kumar Dey* v *Shashi Kumar Dey*, I. L. R., 19 Cal. 345, *infra*; and approved in *Zamindar of Sivagri* v. *Queen*, I. L. R., 6 Mad. 29, *infra*.

THE Mamlatdars Court, constituted by Bom. Act III. of 1876, is a Civil Court within the meaning of s. 468 of the Code of Criminal Procedure (Act X. of 1872). Therefore a complaint of an offence mentioned in that section, when such offence is committed before or against the Mamlatdar's Court, shall not be entertained in the Criminal Courts except with the sanction of the Mamlatdar's Court, or of the High Court to which it is subordinate.—*In re* SAVANTA, I. L. R., 5 Bom 137. [Kemball and Melvill, JJ. Sep. 1880.]

WHEN a Sessions Judge on appeal annuls the conviction of a Magistrate for want of jurisdiction, and omits to order a re-trial at the time under s. 284 of the Criminal Procedure Code (Act X. of 1872), he is not precluded, by virtue of s. 464 of the Code of 1872 (or s. 367 of the new Code), from passing such an order subsequently. The order annulling the conviction in such a case does not amount to an acquittal. Where sanction is given for a prosecution for perjury, and the case tried by an incompetent Court, and the conviction quashed on appeal, a competent Court may re-try the prisoner upon the subsisting sanction without any order of the Appellate Court by whom the conviction is quashed. The evidence of a witness, given in a proceeding pronounced to be *coram non judice*, cannot be used under s. 33 of the Evidence Act, if the witness is dead on a re-trial before a competent Court. R charged A with breach of trust, and S gave evidence in support of the charge. A being acquitted, R was tried for making a false charge, and S for perjury. *Held* (1) that the depositions given by witnesses in the first case could be used against R in the second case, but not against S, under s. 33, Evidence Act; (2) that the word "questions" in s. 33 does not mean "all the questions," and that, though additional issues were involved in the second trial, yet the evidence as to the issues common to both trials was properly admitted at the second trial against R. —*In re* RAMI REDDI, I. L. R., 3 Mad. 48. [Innes and Muttusami Ayyar, JJ. May 2 1881.]

ON an application to a Munsif for sanction to prosecute, the following order was made upon the petition: "If the petitioner thinks there is sufficient evidence against A, I have no objection to give such sanction." *Held* that the order was not a sufficient sanction to support a prosecution.—JADUNATH HAZRA v. ANNODA PROSAD SIRCAR, 11 C. L. R. 53. [Prinsep and O Kinealy, JJ. May 22, 1882.]

IT is competent for a Court which has granted sanction to a prosecution under s. 195 of the Criminal Procedure Code to give a fresh sanction, if the one previously granted has expired by efflux of time. The limitation of six months mentioned in s. 195 means that a Magistrate shall not take cognizance of a case under a sanction which is more than six months old, not that the whole prosecution must be completed within that period. *Held*, therefore, where sanction to a prosecution had been granted under s. 195, and the prosecution had been instituted, and the Magistrate, in consequence of evidence of the complainant not being procurable, had ordered "the case to be shelved for the present," and the complainant, after the six months mentioned in s. 195 had expired, applied to the Magistrate to re-open the proceedings, that it was competent for the Magistrate, having once taken cognizance of the case, and it still remaining on his file undetermined, to take it up again at any moment, and proceed with the prosecution without fresh sanction. —IN THE MATTER OF GUTAB SINGH v. DEBI PROSAD, I. L. R., 6 All 45. [Straight, Offg. C.J. July 28, 1882.]

ON an application for sanction to prosecute under s. 468 of the Code of Criminal Procedure (Act X. of 1872), it is not competent to the Court to go beyond the record in determining whether or not sanction should be granted when the record itself discloses no foundation for the charges. *In re Kasi Chunder Mozumdar* (I. L. R., 6 Cal. 440) approved.—ZAMINDAR OF SIVAGRI v. QUEEN, I. L. R., 6 Mad 29. [Innes, Offg. C.J., and Kernan, J. Aug. 30, 1882. Dissented from in *Shashi Kumar Dey* v. *Shashi Kumar Dey*, I. L. R., 19 Cal. 345, *infra*.

THE Court of an Assistant Collector is not subordinate to that of the Magistrate of

the district within the meaning of s. 195 of the Criminal Procedure Code. Sanction to prosecution granted under s. 195 should specify the Court or other place in which, and the occasion on which, the offence was committed, and such sanction should not be granted without a preliminary inquiry, where such inquiry is "necessary" within the meaning of s. 476 of the Code. Where sanction to the prosecution of a person for the offence of using certain evidence known to be false was granted by a Court to which the Court in which such evidence was used was not subordinate, and such sanction did not specify the place in which, and the occasion on which, such offence was committed, and the Court granting the sanction did not make any preliminary inquiry, although such an inquiry was "necessary," in the sense of s. 476 of the Criminal Procedure Code: *Held* that the indispensable preliminary conditions of s. 195 of the Code being wanting to the prosecution, the committing Magistrate was incompetent to entertain the case and the commitment was illegal, and should be quashed. *Held*, also, that the fact that there was not any evidence to connect such person with the use of such false evidence was a defect in law sufficient to justify the quashing of the commitment.—EMPRESS *v.* NAROTAM DASS, I. L. R., 6 All. 98. [Tyrrell, J. Oct. 2, 1883.]

IN a suit on a bond instituted in the Court of a Munsif, the question whether the defendant had executed the bond or not was referred to arbitration. The arbitration decided that the defendant had not executed the bond, and that it was a forgery. The Munsif dismissed the suit in accordance with the award. The defendant then applied to the Munsif for sanction to prosecute the plaintiff without specifying in his application the offences in respect of which he desired to prosecute. The Munsif granted sanction, merely observing that there were sufficient grounds for sanctioning the prosecution without giving any reasons or specifying the offence or offences in respect of which sanction was granted. *Held* that the terms in which the Munsif had given his sanction to a prosecution were not sufficiently explicit and that he should have mentioned the section or sections of the Penal Code under which he authorized criminal proceedings to be taken, as also in a general way the offence or offences to be charged, the date of commission, and the place where committed. Further that, as the Munsif himself had not determined the question of forgery in the suit, he should have made some enquiry to satisfy himself that there were materials to justify a prosecution.—IN THE MATTER OF PARSOTAM LAL *v.* BIJAI, I. L. R., 6 All. 101. [Straight, J. Oct 23, 1883.]

A SANCTION to a prosecution for giving false evidence, granted under s. 195 of the Criminal Procedure Code, should specify the place where, and the time when, the alleged false evidence was given, and in substance the assignments of perjury, as also the sections of the Penal Code under which proceedings are authorized.—IN THE MATTER OF HARDIAL *v.* DURGA PRASAD, I. L. R., 8 All. 105. [Straight, J. Oct 27, 1883.]

BEFORE granting a sanction to prosecute under s. 195 of the Code of Criminal Procedure, a Court is bound to satisfy itself that an offence has been committed; but it is not bound to hold any inquiry as to all the persons who may be implicated in such offence. —*In re* GOVINDAN, I. L. R., 7 Mad. 224. [Hutchins, J. Dec. 18, 1883.]

A DISTRICT COURT has jurisdiction, under s. 195 of the Code of Criminal Procedure, to revoke or grant a sanction granted or refused by a Subordinate Judge's Court.—VENKATA *v.* MUTTUSAMI, I. L. R., 7 Mad. 314. [Turner, C.J., and Brandt, J. Feb. 12, 1884.]

A SUB-DIVISIONAL MAGISTRATE, after perusing the calendar of a case tried by a Magistrate subordinate to him, send for the record, and passed an order under s. 195 of the Code of Criminal Procedure, sanctioning the prosecution of a witness in the case for perjury. *Held* that the order was illegal.—QUEEN-EMPRESS *v.* KUPPU, I. L. R., 7 Mad. 560. [Kernan and Muttusami Ayyar, JJ. Aug. 15, 1884.]

A SANCTION to prosecute, when applied for subsequently to the termination of the proceedings in course of which the offence is alleged to have been committed, ought not to be granted, unless the person against whom the sanction is applied for had had notice of the application, and an opportunity of being heard.—ABHILAKH SINGH *v.* KHUB LALL, I. L. R., 10 Cal. 1100. Field and Norris, JJ. Aug. 19, 1884.] But see *In the Matter of Krishnanund Das*, I. L. R., 12 Cal. 58, *infra*.

SANCTION was granted to prosecute a defendant for forgery and perjury alleged to have been committed by him in a civil suit which was decided against him on the 22nd August 1882. The defendant then preferred an appeal, which was dismissed on the 9th August 1883. The plaintiff commenced criminal proceedings against the defendant under the sanction on the 23rd July 1884; but such proceedings having been commenced more than six months after the date of the sanction, the charge was dismissed. The

plaintiff then, on the 20th August 1884, applied for a fresh sanction, which was granted on the 13th April 1885. *Held* that, assuming that the Munsif who granted the fresh sanction had power to do so, as to which the Court expressed no opinion, such fresh sanction should not have been granted, unless some explanation was given for the omission to commence proceedings within six months; and as no such explanation was given, or any special grounds shown why a fresh sanction should be given, the Munsif did not exercise a sound discretion in granting such fresh sanction, and consequently his order was set aside.—JOYDEO SINGH *v.* HARIHAR PERSHAD SINGH, I. L. R., 11 Cal. 577. [Mitter and Norris, JJ. May 22, 1885.]

ON the 2nd August 1884, a Munsif, who was of opinion that, in the course of a suit which had been tried before him, certain persons had committed offences under ss. 193, 463, and 471 of the Penal Code, and that the prosecution of these persons was desirable, made an order which he described as passed under s. 643 of the Civil Procedure Code, and in which he directed that the accused should be sent to the Magistrate, and that the Magistrate should inquire into the matter. In May 1885, upon an application by one of the accused to the District Court to "revoke the sanction for prosecution granted by the Munsif," it was contended that the "sanction" had expired on the 2nd February 1885, and had ceased to have effect. *Held* by the Full Bench that the Munsif's order, whether it was or was not a sanction, was a sufficient "complaint" within the meaning of s. 195 of the Criminal Procedure Code, and that the limitation period prescribed by that section was applicable to the case. *Per* Petheram, C.J., and Straight, J.—That, considering that s. 643 of the Civil Procedure Code was closely similar to s. 476 of the Criminal Procedure Code, the Munsif's order might be taken as having been passed under the latter section. Also *per* Petheram, C.J., and Straight, J.—The words in s. 195 of the Criminal Procedure Code, "except with the previous sanction or on the complaint of the public servant concerned," must be read in connection with s. 476, which was enacted with the object of avoiding the inconvenience which might be caused if a Munsif, or a Subordinate Judge, or a Judge, were obliged to appear before a Magistrate, and make a complaint on oath, like an ordinary complainant, in order to lay the foundation for a prosecution. The language of s. 476 indicates that, where a Court is acting under s. 195, a complaint in the strict sense of the Code is not required, and that the procedure therein laid down constitutes the "complaint" mentioned in s. 195.—ISHRI PROSAD *v.* SHAM LALL, I. L. R., 7 All. 871. [Petheram, C.J., and Straight, Brodhurst, and Tyrrell, JJ. July 4, 1885.]

NO notice is necessary to the person against whom it is intended to proceed, before the Court before which the alleged offence has been committed can, under s. 195 of the Criminal Procedure Code, sanction a complaint being made to a Magistrate regarding one of the offences specified in that section.—IN THE MATTER OF KRISHNANUND DAS; KRISHNANUND DAS *v.* HARI BERA, I. L. R., 12 Cal. 58. [Pigot and O'Kinealy, JJ. Sep. 22, 1885.] But see *Abdulakh Sing* v. *Khub Lall*, I. L. R., 10 Cal. 1100, *infra*.

IN cases not of the kind contemplated in s. 337 of the Criminal Procedure Code (Act X. of 1882) it is not competent to a Magistrate holding a preliminary inquiry to tender a pardon to the accused, or to examine him as a witness. Statements made by the accused, in the course of such examination are irrelevant, and, if subsequently retracted, cannot be used against him, or subject him to a prosecution for giving false evidence under s. 193 of the Penal Code (Act XLV. of 1860). *Reg* v. *Hemanta* (I. L. R., 1 Bom. 610) followed. When a pardon is legally tendered to the accused under s. 337 of the Criminal Procedure Code (Act X. of 1882), and the accused makes a statement on oath which he retracts in a subsequent judicial proceeding, a proper sanction is necessary for a prosecution for giving false evidence on each branch of the alternative charges. *In re Balaji Sitaram* (11 Bom. H. C. R. 34) followed. Such sanction can only be granted before, and not after, the commencement of the prosecution.—QUEEN-EMPRESS *v.* DALA JIVA, I. L. R., 10 Bom. 190. [Birdwood and Jardine, JJ. Dec. 10, 1885.]

A POLICE-CONSTABLE taking down a statement under s. 161 of the Criminal Procedure Code is not a Judge, nor is the place where he officiates a Court. His sanction is, therefore, not necessary, under s. 195 of the Criminal Procedure Code, to a prosecution for a false statement made to him, whether the charge be framed singly or alternatively.—QUEEN-EMPRESS *v.* ISMAIL *valad* FATARU, I. L. R., 11 Bom. 659. [West and Birdwood, JJ. April 5, 1887.]

S. 195 of the Criminal Procedure Code (Act X. of 1882) distinguishes between the sanction granted by a Court to a prosecution by a private individual and a complaint made by the Court itself. A superior Court to which such Court is subordinate may revoke

the sanction granted in the former case to the private prosecution, but it has no power in the latter case to set aside a complaint duly made by a subordinate Court.—QUEEN-EMPRESS v. RACHAPPA, I. L. R., 13 Bom. 109. [Birdwood and Parsons, JJ July 5, 1888.]

A CIVIL COURT granted sanction, under s. 195 of the Code of Criminal Procedure, to the defendant in a suit to prosecute certain witnesses for perjury. The defendant died without having preferred a complaint. His brother thereupon preferred a complaint, and the Magistrate dismissed it under s. 253 of the Code of Criminal Procedure, on the ground that the sanction died with the defendant. The Sessions Judge held that the sanction was alive, and directed the District Magistrate to make further inquiry under s. 437. *Held* that the Sessions Judge was right.—*In re* THATHAYYA, I. L. R., 12 Mad. 47. [Collins, C.J., and Parker, J. Sep. 5, 1888.]

A REGISTRAR, acting under the Registration Act, ss. 72-75, is a Court for the purposes of the Criminal Procedure Code, s 195.—ATCHAYYA v. GANGAYYA, I. L. R., 15 Mad. 138. [Collins, C.J., and Muttusami Ayyar, Parker, and Shephard, JJ. Jan. 22, Oct. 13, 1891; Jan. 8, 1892.]

IT is competent for a Civil Court before which a case may have been settled without any evidence being gone into, and which has grounds for supposing the offence of the nature referred to in s. 195 of the Code of Criminal Procedure has been committed before it during the pendency of such case, to make a preliminary enquiry, and thus satisfy itself whether a *primâ-facie* case has been made out for granting sanction, and, if so satisfied, to grant sanction for the prosecution of the person alleged to have committed such offence. A sanction granted after such preliminary enquiry, and based thereon, is not illegal. *In re Kasi Chunder Mozumdar* (I. L. R., 6 Cal. 440) and *Zamindar of Sivagiri* v. *The Queen* (I. L. R., 6 Mad. 29) dissented from on this point.—SHASHI KUMAR DEY v. SHASHI KUMAR DEV, I. L. R., 19 Cal. 345. [Norris and Beverley, JJ. Jan. 27, 1892.]

THE High Court has jurisdiction to interpose in the case of an order made by a Court under s. 476 of the Criminal Procedure Code, and has also the power to determine whether the discretion given by that section has or has not been properly exercised. *In the Matter of the Petition of Khepu Nath Sikdar* v. *Girish Chunder Mukerjee* (I. L. R., 16 Cal. 730) relied on.—CHAUDHARI MAHOMED IZHARUL HUQ v. QUEEN-EMPRESS, I. L. R., 20 Cal. 349. [Pigot and Rampini, JJ. Aug. 10, 1892.]

THE proceeding under s. 195 of the Code of Criminal Procedure, by which an order granting or refusing to grant sanction to prosecute may be set aside, is a proceeding in revision, and not by way of appeal.—MEHDI HASAN v. TOTA RAM, I. L. R., 15 All. 61. [Knox, J. Nov. 19, 1892.]

THE Bengal Tenancy Act does not authorize a proceeding calling upon a person to show cause why he should not make over documents and papers belonging to an estate of which a common manager has been appointed. A person giving false evidence in such proceeding cannot be convicted under s 193 or s 199 of the Penal Code.—ABDUL MAJID v. KRISHNA LAL NAG, I. L. R., 20 Cal. 724. [Trevelyan and Rampini, JJ. April 13, 1893.]

A SANCTION to prosecute for giving false evidence should specify clearly the statement alleged to be false, so that the person sought to be charged may be definitely informed what is the criminal act alleged against him.—*In re* JIVAN AMBAIDAS, I. L. R., 19 Bom. 302. [Jardine and Ranade, JJ. Mar. 29, 1894.]

SANCTION to prosecute R for offences under ss 193 and 471 of the Penal Code, committed in the course of a judicial proceeding, was granted on the 5th September 1893, and the prosecution was commenced before the Magistrate on the 7th March 1894, the 4th March being a Sunday, and the 5th and 6th Court holidays. R was committed to the Sessions. *Held* that as s 7 of Act I. of 1887 does not apply to the Code of Criminal Procedure of 1882, and there is no provision of law by which the period provided by s. 195 during which a sanction may remain in force can be extended by reason of the period expiring during Court holidays, the proceedings of the Magistrate were without jurisdiction, and the commitment must be quashed. *Held*, further, that s. 537 of the Code of Criminal Procedure was not intended to override the provisions of s. 195, nor can it be said that there has not been a failure of justice in the prosecution of a person after the period for which the sanction was in force has expired.—RAJ CHUNDER MOZUMDAR v. GOUR CHUNDER MOZUMDAR, I. L. R., 22 Cal. 176. [Petheram, C.J., and Beverley, J. Sep. 5, 1894.]

WHERE sanction to prosecute is granted in respect of perjury committed in the course of a civil suit, the valuation of such civil suit is immaterial to the question of the Court to which an application under s. 195 of the Code of Criminal Procedure for revocation of the order granting sanction

will lie.—GANGA DEI *v.* SHER SINGH, I. L. R., 17 All. 51. [Blair, J. Oct. 22, 1894.]

IN matters relating to the grant of sanction to prosecution under s. 195 of the Criminal Procedure Code (Act X. of 1882), a Court is regarded as "subordinate" to another Court where the latter is the Court to which appeals from the former ordinarily lie, *i.e.*, lie in the majority of cases Though the decree in the present instance was appealable to "Her Majesty in Council," still, as appeals from the Court of the Recorder of Rangoon ordinarily lay to the High Court, the former was held to be subordinate to the latter Court within the meaning of the section. *In re Anant Ramchundra Lotlikar* (I. L. R., 11 Bom 438) followed.—MADURAY PILLAY *v.* ELDERTON, I. L. R., 22 Cal. 487. [Norris and Beverley, JJ. Feb. 12, 1895.]

THE District Forest Officer applied by letter to the District Magistrate to take such action as he deemed fit against one Subbaraya Pillai, who, for reasons stated by the District Forest Officer, was suspected of having abetted the offence of giving false evidence in the course of proceedings instituted on behalf of the Forest Department in the Court of a Second-class Magistrate. The District Magistrate had previously directed that all appeals from the Second-class Magistrate should be heard by the Deputy Magistrate, but he passed an order himself, whereby he (1) sanctioned the prosecution of Subbaraya Pillai, and (2) directed that it should take place in the Court of the Head Assistant Magistrate. *Held* (1) that the District Magistrate had no jurisdiction to sanction the prosecution for the reason that he was not the ordinary appellate authority; (2) that the second part of his order was irregular for the reasons that it was not authorized by the Criminal Procedure Code, s. 195, and he had no jurisdiction to act under s. 476, since the alleged offence was not brought to his notice in the course of a judicial proceeding.—QUEEN-EMPRESS *v.* SUBBARAYA PILLAI, I. L. R., 18 Mad. 487. [Collins, C.J., and Parker, J. Feb. 27, 1895.]

BOTH the Sessions Judge and the District Magistrate are competent, under s. 437 of the Criminal Procedure Code, to order a further enquiry; but the Sessions Judge has no jurisdiction to review an order made by the District Magistrate under that section refusing a further enquiry. It is open to the Sessions Judge to refer the matter to the High Court under s. 438. If six months expire after the grant of sanction under s. 195 of the Criminal Procedure Code, and no prosecution is commenced under it within that time it is not open to the prosecutor to procure a fresh sanction, and to institute proceedings upon such fresh sanction. The words "six months from the date on which the sanction was given" must be taken to mean six months from the date on which it was given in the first instance, and not from any subsequent date on which the purport of the order might have been repeated. The Munsif who tried the suit out of which the application for sanction arose refused to sanction any prosecution; the Munsif who originally sanctioned the prosecution was a different officer, while the Munsif who gave the fresh sanction was neither the Munsif who tried the case, nor the Munsif who sanctioned the prosecution originally. *Semble*.—Under these circumstances, it is extremely doubtful whether the sanction was such as is contemplated by s. 195 of the Criminal Procedure Code.—DARBARI MANDAR *v.* JAGOO LAL, I. L. R., 22 Cal. 573. [Petheram, C.J., and Beverley, J. April 8, 1895.]

AN application for sanction to prosecute for forgery or perjury must indicate precisely the document in respect of which forgery is said to have been committed, or must set forth in detail the statements alleged to be false, showing the place where, and the occasion on which, such alleged false statements were made.—BALWANT SINGH *v.* UMED SINGH, I. L. R., 18 All. 203 [Edge, C.J., and Banerjee, J. Jan 18, 1896.]

A SANCTION to prosecute under s. 195 of the Code of Criminal Procedure presupposes an application for sanction, and where no such application is made, a Court ought not to take upon itself to grant sanction, but should take action in the manner provided by s. 476 of the Code. *Empress of India* v. *Gobardhan Das* (I. L. R., 3 All. 62) referred to.—IN THE MATTER OF THE PETITION OF BANARSI DAS, I. L. R., 18 All. 213 [Aikman, J. Jan. 27, 1896.]

S. 195 of the Criminal Procedure Code (Act V. of 1898) runs as follows:—

No Court shall take cognizance—

(*a*) of any offence punishable under ss. 172 to 188 (both inclusive) of the Indian Penal Code, except with the previous sanction, or on the complaint of the public servant concerned, or of some public servant to whom he is subordinate;

(*b*) of any offence punishable under s. 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, or 228 of the same Code, when such offence is committed in, or in relation to, any proceeding in any Court, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate;

(*c*) of any offence described in s. 463, or punishable under s. 471, 475, or 476 of the same Code, when such offence has been committed by a party to any proceeding in

any Court in respect of a document *produced or* given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

(2) *In clauses (b) and (c) of sub-section (1), the term "Court" means a Civil, Revenue, or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877.*

(3) *The provisions of sub-section (1) with reference to the offences named therein apply also to the abetment of such offences, and attempts to commit them.*

(4) The sanction referred to in this section may be expressed in general terms, and need not name the accused person; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed.

(5) When sanction is given in respect of any offence referred to in this section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

(6) Any sanction *given or* refused under this section may be *revoked or* granted by any authority to which the authority *giving or* refusing it is subordinate, and no sanction shall remain in force for more than six months from the date on which it was *given, provided that the High Court may, for good cause shown, extend the time.*

(7) For the purposes of this section every Court shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie, *that is to say* —

*(a) where such appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;*

*(b) where such appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case in connection with which the offence is alleged to have been committed;*

*(c) where no appeal lies, such Court shall be deemed to be subordinate to the principal Court of original jurisdiction within the local limits of whose jurisdiction such first-mentioned Court is situate.*

The Courts of Small Causes in the presidency-towns shall be deemed to be subordinate to the High Court, and every other Court of Small Causes shall be deemed to be subordinate to the Court of Session for the sessions division within which such Court is situate.

ON the trial of certain prisoners on a charge of dacoity, a witness gave false evidence, and was committed under s. 477, Criminal Procedure Code, for trial on a charge under s. 193, Penal Code. After such committal it was discovered that one of the jurors empannelled in the dacoity case was deaf and partly blind, and thereupon, under s. 282, Criminal Procedure Code, the case was tried *de novo* before a competent jury. The trial of the charge under s. 193, Penal Code, was fixed for the November sessions, but on the 17th October 1895, on prisoner's application, the trial was adjourned to 2nd December 1895. On 20th November the prisoner's vakil put in a petition, alleging that he had moved the High Court for a transfer of the case. On this petition coming on for disposal, the prisoner's vakil moved *orally* for an adjournment under s. 526A, Criminal Procedure Code, which was refused. On the 30th November the prisoner's vakil put in a petition in which he prayed for an adjournment under s. 526A. This petition was refused, and the trial began on 2nd December, and judgment was written and pronounced on 5th December. In the meantime application had been made to the High Court for a transfer, and that petition was disposed of on 4th December, granting the transfer prayed, the High Court apparently being not aware that the trial was at that time proceeding before the Sessions Court. On 5th December, after the trial in the Sessions Court was concluded, and before judgment was delivered, a fresh petition was presented for an adjournment on the ground that a telegram had been received from the High Court transferring the case but the Sessions Judge refused to act upon it in the absence of orders from the High Court, and delivered judgment convicting the prisoner. During the trial before the Sessions Court the prisoner applied for an adjournment on the ground that two witnesses for the defence were absent, one being too ill to attend, the other not having been served with the summons, but the Sessions Judge, considering the application was made merely for purposes of delay, and to defeat the ends of justice, and that their evidence would not be material, refused to adjourn for their evidence to be recorded: *Held*, first, that the fact that the trial for dacoity had to be commenced *de novo* did not exonerate the prisoner from the obligation to speak the truth imposed by s. 14 of the Indian Oaths Act (X. of 1873) in the first trial, which became abortive owing to the incompetency of one of the jurors. *Secondly*, that s. 526A, Criminal Procedure Code, is imperative, but that the object of ss. 344 and 526, when read together, is merely to give a party reasonable time to move the High Court and obtain its

orders, and that in the present case there was sufficient time for such application to have been made, if due diligence had been observed. *Thirdly*, that the order for transfer made on 4th December, which, in fact, did not reach the Judge till after judgment was pronounced, did not vitiate the proceedings; and that the Sessions Judge was not wrong in refusing to adjourn the case on the strength of a telegram said to have been received by prisoner's vakil stating that the High Court has ordered a transfer. *Fourthly*, that the Sessions Judge ought not to have refused to adjourn the case in order to obtain the evidence of the two absent witnesses, that their evidence was material, and must be recorded and certified to the High Court under s. 428, Criminal Procedure Code.—QUEEN-EMPRESS v. VIRASAMI, I. L. R., 19 Mad. 375. [Collins, C.J., and Benson, J. Mar. 26, 27, 31, Aug. 3, 1896.]

TRANSFER OF CASE.

THE High Court does not exercise its power of transfer in a case of forgery or perjury solely on the ground that the Judge who is to try the case has formed an opinion that the document has been forged or the perjury committed. But when the transfer can be made without the risk of any improper interference with the course of justice, and without much inconvenience to the parties and witnesses, the transfer would be proper, not only as a fair concession to the accused person, but as a means of relieving the Judge from a position which he would himself desire to avoid.—*Ex parte* ARUNACHELLA REDDI, 5 Mad. H. C. R. 212. [Scotland, C.J., and Holloway, J. Mar 4, 1870.]

CERTAIN witnesses made statements in a preliminary inquiry before a Magistrate, in a case of alleged murder, and contradicted those statements at the trial before the Court of Session. The latter then sanctioned their prosecution for giving false evidence in a judicial proceeding, an offence punishable under s. 193 of the Indian Penal Code, and triable by a Magistrate of the first class. The Deputy Magistrate, by whom they were tried, convicted them, and the accused appealed, the appeals being transferred to another Sessions Court for hearing. The Sessions Judge held that, inasmuch as the false statements had been made in connection with a charge of murder, the offence for which the accused should have been tried fell under s. 194, Indian Penal Code, and that, in consequence, they could be tried only by a Court of Session and not by a Magistrate of the first class. He considered their trial by a First-class Magistrate to be void under s. 530 of the Code of Criminal Procedure, and set aside their conviction, committing one of them for trial by a Court of Session on a charge under s. 194 of the Indian Penal Code, and making no order in respect of the other accused as he considered the imprisonment already undergone was sufficient. *Held* that the order was wrong as the proceedings of the First-class Magistrate were not void within the meaning of s. 530 of the Code of Criminal Procedure. *Queen-Empress* v. *Gundya* (I. L. R., 13 Bom. 502) referred to.—KING-EMPEROR *v.* AYYAN, I. L. R., 24 Mad. 675. [Arnold White, C.J., and Benson, J July 22, 30, 1901.]

**194.*** Whoever gives or fabricates false evidence, intending thereby to cause or knowing it to be likely that he will thereby cause any person to be convicted of an offence which is capital "by the law of British India or England," † shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; Ct. of Ses. Uncog. Warrant. Not bailable. Not comp. Sanction.

Giving or fabricating false evidence with intent to procure conviction of capital offence.

and, if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

if innocent person be thereby convicted and executed.

IN this section the word "offence" denotes a thing punishable under this Code or under any special or local law as defined in this Code.—S. 40. Penal Code.

IN the trial of a prisoner for murder a witness stated on oath before the Sessions Court, that another had committed the murder, whereas before the Magistrate he had stated

* In s. 194 the word "offence" denotes a thing punishable under this Code or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

† In s 194, as amended by s. 7 of the Indian Penal Code Amendment Act (XXVII. of 1870), for the words "by this Code or the law of England," the words quoted have been substituted.—See the Indian Railways Act (IX. of 1890) s. 149.

as was the fact, that the prisoner had committed the murder. *Held* that such witness was guilty under s. 193, and not under s. 194, of the Penal Code, as he did not know that he would cause a conviction for murder.—QUEEN v. HARDYAL, 3 B. L. R. A. Cr. 35. [Norman and Jackson, JJ. July 13, 1869.] Followed in *Queen* v. *Mati Khowa*, 3 B. L. R. A. Cr. 36; *Queen* v. *Norman*, 4 B. L. R. A. Cr. 9.

FACTS showing that an accused person had dug a hole, intending to place salt therein, in order that the discovery of the salt so placed might be used in evidence against his enemy in a judicial proceeding, would justify a conviction for an attempt to fabricate false evidence.—QUEEN v. NUNDA, 4 N.-W. P. 133. [Turner and Spankie, JJ. Aug. 16, 1872.]

THE prisoner was convicted under s. 195 of the Penal Code of fabricating false evidence with intent to procure the conviction of a certain person of an offence. The prisoner's act was committed in a most public manner, and was not calculated to lead to the conviction of the person; nor did it appear that the prisoner took any steps to secure his conviction. *Held* that the conviction of the prisoner could not be sustained.—QUEEN v. SHIB DAYAL, 5 N.-W. P. 188. [Jardine, J. June 7, 1873.]

IT is not necessary, under s. 194, Penal Code, that the false evidence which is given should be evidence given in a Court of Justice. Such statement, if made to a police-officer, would amount to the offence of giving false evidence as defined by s. 191, taking s. 118 of the Code into consideration.—QUEEN v NIM CHAND MOOKERJEE, 20 W. R 41. [Markby and Birch, JJ. June, 17, 1873.] Overruled by *Empress* v. *Kassim Khan*, 8 C. L. R. 300: I. L. R., 7 Cal. 121.

NEITHER the words "shall answer all questions" in s. 118 of the Code of Criminal Procedure nor the words "shall be bound to answer all questions" in s. 119 of the same Code, constitute "an express provision of the law to state the truth" within the meaning of s. 191 of the Penal Code. Ss. 118 and 119 are merely intended to oblige persons to give such information as they can to the police in answer to the questions which may be put to them, and they impose no legal obligation on those persons to speak the truth.—EMPRESS v. KASSIM KHAN; and EMPRESS v. MUSSAMUT DAHIA, I. L. R., 7 Cal 121; 8 C. L. R. 300. [Garth, C.J., and Pontifex, Morris, Mitter, and McDonell, JJ. April 13, 1881.] Explained in *Nathu Sheikh* v. *Empress*, I. L. R., 10 Cal 405 Overrules *Queen* v. *Nim Chand Mookerjee*, 20 W. R. 41.

A SANCTION to prosecute, when applied for subsequently to the termination of the proceedings in course of which the offence is alleged to have been committed, ought not to be granted, unless the person against whom the sanction is applied for had had notice of the application, and an opportunity of being heard.—ABHILAKH SINGH v. KHUB LALL, I. L. R., 10 Cal. 1100. [Field and Norris, JJ. Aug 19, 1884.] Referred to and distinguished in *Krishnanund Das* v. *Hari Bera*, I. L. R., 12 Cal. 58.

A, WITH intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under ss. 211 and 194 of the Penal Code.—Crim. Pro. Code (Act V. of 1898), s. 235, ill. (*f*).

Ct. of Ses. Uncog. Warrant. Bailable. Not comp. Sanction.

**Giving or fabricating false evidence with intent to procure conviction of offence punishable with transportation or imprisonment.**

**195.*** Whoever gives or fabricates false evidence, intending thereby to cause or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which, "by the law of British India or England," † is not capital, but punishable with transportation for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

*Illustration.*

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is transportation for life or rigorous

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* In s. 195 the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

† In s. 195, as amended by s. 7 of the Indian Penal Code Amendment Act (XXVII. of 1870), for the words "by this Code or the law of England," the words quoted have been substituted.—See the Indian Railways Act (IX. of 1890), s. 149.

**imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to such transportation or imprisonment, with or without fine.**

IN this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

WHERE a man burns his own house, and charges another with the offence of doing so, he should be convicted and sentenced under s. 211 (and not under s. 195) of the Penal Code.—QUEEN v. BHUGWAN AHIR, 8 W. R. 65. [Loch and Hobhouse, JJ. Aug. 28, 1867.]

**196.** Whoever corruptly uses, or attempts to use as true or genuine evidence, any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

**Using evidence known to be false.**

Note to s. 187—Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Warrant. According as offence of giving such evidence is bailable or not. Not comp. Sanction.

THE provision of the Penal Code (s. 196) against using false evidence is not ordinarily intended to apply to subornation of perjury. To establish an offence under s. 196 it must be shown that the accused made some use of the false evidence after it was in existence. —QUEEN v. SHEIK SUFFURUDEE, 1 Ind. Jur. O. S. 122. [Steer and Campbell, JJ. Nov. 24, 1862.]

A PERSON who uses in Court false documents as true, besides swearing to their authenticity, may be convicted under s. 196 of the Penal Code only, and not under s. 471 also.—QUEEN v. OODUN LALL, 3 W. R. 17. [Glover, J. May 23, 1865.]

USING and attempting to use false evidence are two distinct and separate offences, and should have been charged in separate heads of the charge. As the above offences are not punishable under s. 193 without the application of s. 196 of the Penal Code, both sections should have been entered in the charge.—2 W. R. Cr. L. 9, No. 94 of 1865.]

WHERE a prisoner produced as evidence an account-book, one page of which had been fraudulently abstracted, and another substituted for it, *held* that he was not guilty of the offence of attempting to use, as genuine, fabricated evidence, unless he knew of the forgery, and intended to use the forged evidence, for the purpose of affecting the decision on the point at issue when the book was tendered. — QUEEN v. MUDDOO SOODUN SHAW, 7 W. R. 23. [Kemp and Markby, JJ. Jan. 26, 1867.]

THE offence imputed against an accused, who in a civil suit is alleged to have used as genuine a document which he knew to be a forged document, is one cognizable under s. 471 of Penal Code. Such accused should, therefore, be charged under that section, and not under s. 196 of the Code.—EMPRESS v. KHERODE CHUNDER MOZUMDAR, I. L. R., 5 Cal. 717; 8 C. L. R. 118. [Jackson and Tottenham, JJ. Mar. 2, 1880.]

WHERE several persons were accused of having given false evidence in the same proceeding, they should be tried separately. A, S, B, D, and P, were jointly tried: A in respect of three receipts for the payments of money, produced by him in evidence in a judicial proceeding, on three charges of falsely using as genuine a forged document, and on three charges of using evidence known to be false; S, B, D, and P on charges of giving false evidence in the same judicial proceeding as to such payments The Court (Straight, J.) being unable to say that the accused persons had not been prejudiced in their defence by having been improperly tried together, set aside the convictions, and ordered a fresh trial of each of the accused separately.—EMPRESS v. ANANT RAM, I. L. R., 4 All. 293. [Straight, J. Feb 13, 1882.]

THE vendees of a plot of land altered the number by which the land was described in the deed of sale, doing so because such number was not the right number. Having made this alteration, they used the deed of sale as evidence in a suit. *Held* that the alteration of the deed did not amount to "forgery" within the meaning of s. 463 of the Penal Code, nor could the deed, after the alteration, be designated a "forged document" as contemplated by s. 470, the intention to cause wrongful loss or wrongful gain, or to defraud, being wanting; nor could it be said that, in using the deed, the vendees were "dishonestly" or "fraudulently" using as genuine a "forged document," and therefore the use by vendees of the deed did not constitute an offence under s. 471 of the Penal Code. Further, that their use of it did not render them liable to conviction under s 196 of that Code.—EMPRESS v FATEH, I. L. R., 5 All. 217. [Mahmood, J. Oct 2, 1882.]

L BROUGHT a suit upon a bond, and at the trial sought to support his claim by a letter

fabricated probably for the purpose of enabling L to get the bond registered. L was convicted under s 196 of the Penal Code. *Held* that, if the letter was fabricated for use before the Registrar, it was no valid objection to the conviction.—LAKSHMAJI *v.* QUEEN-EMPRESS, I. L. R., 7 Mad, 289. [Kindersley and Hutchins, JJ. Jan. 18, 1884.]

A is convicted of an offence under s. 196 of the Indian Penal Code upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.—Crim. Pro. Code (Act V. of 1898), s. 232, illus.

A SESSIONS JUDGE is not debarred by s. 487 of the Criminal Procedure Code from trying a person for an offence punishable under s. 196 of the Penal Code, when he has, as District Judge, given sanction for the prosecution under the provisions of s. 195 of the Code of Criminal Procedure. *Madhub Chunder Mozumdar* v. *Nobodeep Chunder Pundit* (I. L. R., 16 Cal. 121) overruled. *Empress* v. *D'Silva* (I. L. R., 6 Bom. 479) referred to.—QUEEN-EMPRESS *v.* SARAT CHANDRA RAKHIT, I. L. R., 16 Cal. 766. [Petheram, C J., and Tottenham, Trevelyan, Ghose, and Beverley, JJ. July 15, 1889.]

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp.

**197.** Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

Issuing or signing false certificate.

ABETMENT of the issue of a false certificate of summons. Although there was no chaukidar in the village of the name appearing on the receipt acknowledging due service, the prisoner was acquitted in the absence of proof of guilty knowledge or belief, it being probable that he (an utter stranger in the village) was deceived by the villagers.—QUEEN *v.* HISSAMUDDEEN, 3 W. R. 37 [Kemp and Seton-Karr, JJ. June 27, 1865.]

ACCUSED, a copyist in the Small Cause Court office, framed an incorrect copy of a document filed with a certain record by adding a name not contained in the original. The incorrect copy was delivered duly certified to one L D, the applicant for it, and who was probably in collusion with the copyist. This copy was afterwards made use of in a suit against the person whose name had been fraudulently added, and then the fraud was detected. The Magistrate convicted accused under s. 167, and ordered him to pay a fine of Rs. 100. *Held* that s. 167 was not applicable to the case, as it was not shown that accused intended or knew it to be likely that he would cause injury to any person, but that the accused had committed the offence of "issuing or signing a false certificate" within the meaning of s. 197. *Held* also (*per* Barkley, J.) that making what purports to be a copy of a document is not included in the words "preparation or translation of any document," nor in the words "frames or translates that document," as used in s 167.—CROWN *v.* DEIVA SINGH, Panj. Rec., No 15 of 1879.

UNDER the Burma Steam-boilers and Prime-movers Act (XVIII of 1882), s 15, any engineer signing any report under s. 9 of that Act which he either knows or believes to be false in any material point shall be deemed to have committed an offence punishable under s. 197 of the Penal Code.

Ditto.

**198.** Whoever corruptly uses, or attempts to use, any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Using as true a certificate known to be false.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp. Sanction.

**199.** Whoever, in any declaration* made or subscribed by him, which declaration* any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement

False statement made in declaration which is by law receivable as evidence.

* In s. 199, for meaning of "declaration," see s. 200, explanation, *infra*.

**which is false, and which he either knows or believes to be false, or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.**

A HINDU who has become a convert to Christianity is not under a legal obligation to speak the truth, unless his evidence be given under the sanction of an oath on the Holy Gospels, so as to justify a conviction under s. 193 of the Penal Code. A statement made by a witness in a criminal trial not upon oath or solemn affirmation is not a declaration within the meaning of s. 199 of the Penal Code, nor is the witness bound to make a declaration under s. 191.—*In re* A. VEDAMUTTU, 4 Mad. H. C. R. 185. [Scotland, C.J., and Ellis, J. Dec. 21, 1868.]

A PETITION not bearing the signature of the accused, and therefore not a declaration, made or subscribed by him, cannot be made the foundation of a charge or conviction under s. 199 of the Penal Code, but a deposition on oath supporting such a petition, if false, justifies a charge under s. 193 of the Code —IN THE MATTER OF RAM REWAZ KOOER, 7 C. L. R. 536. [Garth, C.J., and Maclean, J. Oct. 22, 1880.]

S. 199 of the Penal Code (XLV. of 1860) does not apply to applications for execution containing false averments.—QUEEN-EMPRESS *v.* BAPUJI DAYARAM, I. L. R., 10 Bom. 288. [Birdwood and Jardine, JJ. Feb. 18, 1886.]

A DEPUTY MAGISTRATE has no power to administer an oath to a person making a declaration in the shape of an affidavit, and such person cannot, on the facts stated in such declaration, be prosecuted for committing an offence either under s. 193 or s. 199 of the Penal Code.—IN THE MATTER OF THE PETITION OF ISWAR CHUNDER GUHO, I. L. R., 14 Cal. 653. [Petheram, C.J., and Ghose, J. June 30, 1887.]

THE Bengal Tenancy Act does not authorize a proceeding calling upon a person to show cause why he should not make over documents and papers belonging to an estate of which a common manager has been appointed. A person giving false evidence in such proceeding cannot be convicted under s. 193 or s. 199 of the Penal Code.—ABDUL MAJID *v.* KRISHNA LAL NAG, I. L. R., 20 Cal. 724. [Trevelyan and Rampini, JJ. April 13, 1893.]

ON the 5th May 1894, C applied in writing, under the provisions of s. 133 of Act III. of 1884, to a municipality for a license to be granted to him in respect of two carriages and six ponies, and filled up and signed the usual statement required by the section. The sum payable in respect of the license was received, and the license asked for by C was granted to him, and at the same time the statement was sent to an overseer of the municipality for verification. On the 7th May the overseer reported that C had in his possession eight ponies and one horse. On the 8th May the chairman of the municipality passed an order, directing C to be prosecuted for making a false statement in the schedule to his statement regarding the number of animals in respect of which he applied for the license. On the 9th May, C presented a petition asking that the tax on the three animals might be received, and stating that he did not think he was liable to take out a license for them, as they were old and diseased, and unfit for work. On the 13th May the chairman passed an order on this application that he had no power to interfere, as the prosecution of C had already been ordered. Meanwhile, on the 11th May, a paper was sent to the Magistrate, headed "List of municipal cases under Act III. of 1884," in which C appeared as charged with an offence under s. 199 of the Penal Code for "filing a false statement, that is to say, putting down in the schedule six ponies only instead of eight ponies and one horse." On the 12th May the Deputy Magistrate directed a summons to issue to C, returnable on the 23rd. On the 18th May the District Magistrate passed an order to the effect that the municipality could not institute a prosecution under the Penal Code, but that the Deputy Magistrate had power to do so, and that he should consider the provisions of ss. 182 and 417, read with 511 of the Penal Code, as applicable to the facts of the case. On the 19th May the summons was issued, and the case was heard on the 23rd and 24th May and 19th June, on which date formal charges under ss. 199, 182, and 417-511 of the Penal Code were framed. Thereafter the hearing proceeded till the 10th July, when, on an application to the High Court, the proceedings were stayed, and a rule issued to show cause why they should not be quashed. It was contended at the hearing of the rule that the High Court should not interfere at that stage of the proceedings under its revisional jurisdiction. *Held* that the High Court has power to interfere at any stage of a case, and that, when it is brought to its notice that a person has been subjected as in this case, for over two months, to the harassment of an illegal prosecution, it is its bounden duty to interfere.

*Held*, further, that it was quite clear that the municipality had no power to institute the proceedings, and that, having regard to the provisions of s. 191 of the Code of Criminal Procedure, it did not appear that the Deputy Magistrate, having no private complainant before him, had power, of his own motion, to institute them; but that, whether he had such power or not, the admitted facts of the case did not in law constitute any of the offences with which C was charged, and that the whole proceedings must be quashed. The Municipal Act is intended to be complete in itself as regards offences committed against the Municipal Commissioners, and there is no indication of any intention to render a delinquent also liable to punishment under the Penal Code. There is no penalty in the Act attached to the omission to make a return under s. 133, and no words in the Act constituting the making a false return a penal offence; and as there are no such words in the Act as are necessary to make the provisions of the Penal Code applicable, the Court has no power to import them. The Municipal Commissioners in such a case have the remedy provided by the Act itself.—CHANDI PERSHAD *v.* ABDUR RAHMAN, I. L. R., 22 Cal. 131. [Petheram, C J., and Beverley, J. Aug. 13, 1894.]

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp. Sanction.

**200.** Whoever corruptly uses, or attempts to use, as true, any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Using as true such declaration, knowing it to be false.

*Explanation.*—A declaration which is inadmissible merely upon the ground of some informality is a declaration within the meaning of sections 199 and 200.

Ct. of Ses. Uncog. Warrant. Bailable. Not comp.

**201.*** Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,

Causing disappearance of evidence of offence, or giving false information to screen offender—

shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if a capital offence;

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp.

and, if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with transportation;

Presy. Mag., or Mag. of 1st class, or Court by which offence is triable. Uncog. Warrant. Bailable. Not comp.

and, if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

if punishable with less than ten years' imprisonment.

*Illustration.*

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

* In s. 201, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—See s. 40, *supra*.

The word "offence" in s. 201 includes any act committed in any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely: 302, 304, 382, 392 to 399, 402, 435, 436, 449, 450, 457 to 460.—See explanation to s. 203, *infra*.

IN this section the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—S. 40, Penal Code.

CHARGE.—That you, on or about , at , believing or having reason to believe that an offence punishable with death had been committed, caused evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, and that you have thereby committed an offence punishable, &c.—8 W R. Cr. L. 7, No. 734 of 1867.

A SESSIONS JUDGE, in his address to the jury during the trial of a prisoner charged with offences under ss. 201, 202, and 203 of the Penal Code, made the following remarks: "The two essential points which remain to be proved before a conviction can pass on any of the three sections referred to are, first, the substantial fact of an offence having been committed; and, secondly, the knowledge or reasonable belief on the part of the accused that such was the case: both these are essential parts of the offences specified in the charges against the accused." The High Court pointed out that both these points were not absolutely necessary in order to constitute a legal conviction under s. 201, 202, or 203 of the Penal Code; for if a person had reason to believe (s. 26) that an offence had been committed, and acted in the manner described in either of those sections, he would be liable to punishment, even although it might subsequently transpire that he was mistaken in his belief.—2 W. R. Cr L. 1, No. 11 of 1865.

A COMMITS no offence, if, in the exercise of the right of private defence of his property against B, whom he finds near a hole in A's house, and, on being attacked by B, he strikes a blow at random and in the dark, with a stick in his hand, whereby B is killed. C and D, by assisting A in removing the body of B, cannot be convicted (under s. 201 of the Penal Code) of having caused evidence to disappear, they having no knowledge or belief that an offence had been committed, nor any intention of screening an offender.—QUEEN v. PELKO NUSHYO, 2 W. R. 43. [Kemp and Glover, JJ. Mar. 15, 1865.]

PRISONER was present at a murder without being aware that such an act was to be committed. Through fear, he not only did not interfere to prevent the commission of the crime, but joined the murderers in concealing the body. *Held* that he was guilty, not of abetment of murder, but causing the disappearing of evidence of a crime under s. 201 of the Penal Code.—QUEEN v. GOBURDHUN BERA, 6 W. R. 80. [Loch and Pundit, JJ. Oct. 4, 1866.]

PRISONER was charged under s. 102 of the Penal Code, for that he, knowing or having reason to believe that an offence punishable with death had been committed, with the intention of screening the offender from legal punishment, gave information respecting the offence which he knew or believed to be false. *Held* that the proper order of proof on the part of the prosecution in the present case was to prove (1) that A N was murdered; (2) that the prisoner gave information respecting the offence, (3) that such information was false, and known by him to be so; (4) that he then knew of the commission of the murder, and (5) that his intention was to screen the murder. *Held*, also, that it was essential to the completeness of the case for the prosecution to show, not only that the information was given, but also that it was false, and known to be so by the prisoner. Further inquiry directed under s. 422, Criminal Procedure Code (Act XXV. of 1861).—REG. v. SUBRAMANYA PILLAI, 3 Mad. H. C. R. 251. [Collet and Ellis, JJ. Dec. 17, 1866.]

S. 201 applies to the causing of disappearance of evidence of an offence committed by another, not by one's self.—5 W. R. Cr. L. 5, No. 242 of 1866.

A CONVICTION on a charge of causing the disappearance of evidence of an offence, which amounted to culpable homicide not amounting to murder, may be good, though there be no proof of who committed the culpable homicide.—QUEEN v. MUDDUN MOHUN BOSE, 7 W. R. 22. Kemp and Markby, JJ. Jan. 26, 1867.

S. 201 of the Penal Code refers to prisoners other than the actual criminals, who, by their causing evidence to disappear, assist the principals to escape the consequences of their offence. But the person who commits an offence, and afterwards conceals the evidence of it, cannot be punished on both heads of the charge.—QUEEN v. RAMSOONDAR SHOOTAR, 7 W. R. 52. [Kemp and Glover, JJ. April 6, 1867.

THE above section refers to persons (other than the actual criminals), who, by their causing evidence to disappear, assist the principal to escape the consequences of his offence. Thus, in *Reg.* v. *Kashinath Dinkar* (8 Bom. H. C. R. 126), Lloyd, J., observed: "This and the two following sections commence with precisely the same words. Now, as there is no law which obliges a criminal to give information which would convict himself, it is evident that ss. 202 and 203 could not apply to the person who committed the offence, *i.e.*, the offence which, he knew, had been committed." A prisoner pushed a woman, who

fell into a boat, and died then and there. Afterwards he set the boat, with the corpse in it, afloat down the river, and so concealed the evidence of his offence. It was held that he was not guilty of the offence of causing evidence to disappear.—QUEEN v. RAMSOONDER SHOOTAR, 7 W. R. 52. [Kemp and Glover, JJ. April 6, 1867.] Referred to in *Queen-Empress* v. *Dungar*, I. L. R., 8 All. 252, *infra*.

WHERE a person is charged (s. 218, Penal Code) with framing a report incorrectly, or (s. 201, Penal Code) giving false information with intent to save offenders from punishment, the issue to be tried is, not whether such alleged offenders were in fact guilty or not, but merely the belief and intention of the prisoners in respect to their guilt. Police-diaries cannot be legally used as substantive evidence or read to the jury.—QUEEN v. HURDUT SURMA, 8 W. R. 68. [Seton-Karr and Macpherson, JJ. Sep. 7, 1867.

A PERSON cannot be convicted, under s. 201 of the Penal Code, of causing evidence of the commission of an offence by himself to disappear; nor can he be convicted of the abetment of such an act.—REG. v. KASHINATH DINKAR, 8 Bom. H. C. R. 126. [Westropp, C.J., and Lloyd, Melvill, Green, and Kemball, JJ. April 12, 1871.] Referred to in *Queen-Empress* v. *Dungar*, I. L. R., 8 All. 252, *infra*.

A PERSON cannot be punished under s. 201 of the Penal Code, where the act which caused the disappearance of the evidence of the commission of an offence was not done with the intention of screening the offender from legal punishment. It is not sufficient that the disappearance of evidence was likely to have the effect of screening the offender.—QUEEN v. TOOLSHEE RAI, 5 N.-W. P. 186. [Jardine, J. June 7, 1873.]

THE accused, on his arrest, denied all knowledge of an offence in which he really took part. *Held* that he could not be convicted, under s. 201, of giving false information respecting an offence.—FAKIR-UD-DIN v. CROWN, Panj. Rec., No. 4 of 1877.

K AND B, having caused the death of J in a field belonging to B, removed J's dead body from that field to his own field with the intention of screening themselves from punishment. K was convicted on these facts of an offence under s. 201 of the Penal Code. *Held* that that section referred to persons other than the actual offenders, and K could not, therefore, properly be punished under that section for what he had done to screen himself from punishment. Also that, as a matter of fact, he did not, by removing J's corpse from one field to another, cause any evidence of J's murder, which that corpse afforded, to disappear, and his act, although his object may have been to divert suspicion from himself and B, did not constitute the offence defined in that section.—EMPRESS v. KRISHNA, I. L. R., 2 All. 713. [Pearson, J. Feb. 18, 1880.] Referred to in *Queen-Empress* v. *Dungar*, I. L. R., 8 All. 252, *infra*.

IT is necessary, in order to justify a conviction under s. 201 of the Penal Code, that an offence for which some person has been convicted or is criminally responsible should have been committed.—EMPRESS v. ABDUL KADIR, I. L. R., 3 All. 279. [Stuart, C.J., and Pearson, Oldfield, and Straight, JJ. Nov. 11, 1880.] Followed in *Matuki Misser* v. *Empress*, I. L. R., 11 Cal. 619, *infra*.

A WOMAN who, with her infant child, eloped from her husband's house, was afterwards arrested on a charge of murdering the child, which was missing. She made three different statements: (1) that she had left it with her husband; (2) that she had been enticed away by one R, who had taken the child from her; (3) that one H had drowned the child. The Sessions Judge believed the last statement, and convicted her under s. 201 of the Penal Code. *Held* that the conviction was wrong, and must be set aside. S. 201 of the Penal Code does not apply to a case where the person who is the probable or possible offender makes statements exculpating himself by inculpating another.—IN THE MATTER OF BEHALA BIBEE, EMPRESS v. BEHALA BIBEE, I. L. R., 6 Cal. 789: 8 C. L. R. 207. Pontifex and Field, JJ. Mar. 7, 1881.] Referred to in *Queen-Empress* v. *Dungar*, I. L. R., 8 All. 252, *infra*.

IN a trial upon a charge under s. 201 of the Penal Code, the accused made a statement to the effect that he was present at the commission of a murder by two other persons, that he himself took no part in the act; that, before the murder was committed one of the persons named pulled off a razai from the bed on which the deceased was sleeping; and that, in his presence, the razai was subsequently concealed in a stack. It was proved that the razai belonged to the deceased, that it was found concealed in a stack; and that it was pointed out by the accused to the police. The accused was convicted of concealing evidence of the murder, with the intention of screening the offender from legal punishment, under s. 201 of the Penal Code. *Held* that the conviction must be quashed, inasmuch as, if the razai had not been concealed or destroyed, its presence or existence would have been no evidence of the murder. A person who is concerned as a principal in the commission of a crime cannot be convicted of the secondary offence of concealing evidence of the crime.—QUEEN-EMPRESS v. LALLI, I. L.

R., 7 All. 749. [Petheram, C.J., and Brodhurst, J. April 11, 1885.] Referred to in *Queen-Empress* v. *Dungar*, I L. R, 8 All 252, *infra*.

BEFORE an accused can be convicted of an offence under s. 201 of the Penal Code, it must be proved that an offence, the evidence of which he is charged with causing to disappear, has actually been committed, and also that the accused knew, or had information sufficient to lead him to believe, that the offence had been committed. *Empress* v. *Abdul Kadir* (I. L. R., 3 All. 279) followed. —MATUKI MISSER *v.* EMPRESS, I. L. R., 11 Cal. 619. [Mitter, Macpherson, and Prinsep, JJ. May 13, 1885.]

S. 201 of the Penal Code does not apply to the case of a criminal causing disappearance of evidence of his own crime, but only to the case of a person who screens the principal or actual offender *Queen* v. *Ram Soonder Shuter* (7 W. R. 52), *Reg.* v. *Kashinath Dinkar* (8 Bom. H. C. R. 126), *Empress* v *Krishna* (I. L. R., 2 All. 713), *Empress* v. *Behala Bibee* (I. L. R., 6 Cal. 789), and *Queen-Empress* v. *Lalli* (I. L. R., 7 All. 749), referred to.—QUEEN-EMPRESS *v.* DUNGAR, I. L. R., 8 All. 252. [Brodhurst, J. April 5, 1886.]

S. 201 of the Penal Code applies merely to the person who screens the principal or actual offender, and not the principal or actual offender himself. The accused were charged with murder, and also with causing the disappearance of the corpse of the deceased with the intention of screening the murderer from punishment under s 201 of the Penal Code. Evidence for the prosecution pointed conclusively to one or other of them being the actual murderer; but it was impossible upon the evidence to say which of them caused the death. They were acquitted on the charge of murder, but convicted on the charge under s. 201. *Held* that the conviction could not stand.—TORAP ALI *v.* QUEEN-EMPRESS, I. L. R., 22 Cal. 638. [Norris and Beverley, JJ. June 3, 1895.]

**202.*** Whoever, knowing or having reason to believe that an offence† has been committed, intentionally omits to give any information respecting that offence† which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Intentional omission to give information of offence by person bound to inform.

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

IN this section the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—S. 40, Penal Code.

WHERE the *corpus delicti* is not established, there can be no conviction for culpable homicide not amounting to murder, nor for intentional omission to give notice of an offence which has not been proved to have been committed.—QUEEN *v.* RAM RUCHEA SINGH, 4 W. R. 29. [Kemp and Seton-Karr, JJ. Nov. 28, 1865.]

A KARNAM is a private person in respect of ss. 176 and 202 of the Penal Code, there being no law binding him in any special way to report or prevent crime. He is therefore not liable to punishment for not reporting the commission of a crime not enumerated in ch. 4 of the Code of Criminal Procedure, 1882.—Mad. H. C Rul., Mar 12, 1867; 2 Mad. Jur. 289.

AN omission to give information that a crime has been committed does not, under s. 107 of the Penal Code, amount to abetment, unless such omission involves a breach of a legal obligation. A private individual is not bound by any law to give information of any offence which he has seen committed.—QUEEN *v.* KHADIM SHEIKH, 4 B. L. R. A. Cr. 7 [Loch and Glover, JJ. Nov. 23, 1869.]

*Per* KEMP, J.—Before a person can be convicted of an offence under s. 202, Penal Code, there must be legal evidence (1) that he has knowledge, or reason to believe, that some offence has been committed; (2) that an *intentional* omission to give *any* information respecting that offence; and (3) that he is legally bound to give information of that offence. In this case, the Sessions Judge, having found that there was *no* evidence at all, s. 422, Code of Criminal Procedure (Act XXV. of 1861), did not apply, as that section only authorizes an Appellate Court to direct *additional* evidence to be taken where there is some *primâ facie* evidence bearing upon the guilt or innocence of the accused, but not where there is *no* evidence at all. *Per* Glover, J.—The Sessions Judge having found that an offence was committed, and that the accused were bound by law to give information respecting it, but that

* In s. 202 the word "offence" has the same meaning when the thing punishable under the special or local law with imprisonment for a term of six months or upwards, whether with or without fine.—See s. 40, *supra*. Also see the explanation to s. 203, *infra*.

† As to meaning of "offence" in s. 202 see explanation to s. 203, *infra*.

there was not, on the record, evidence of their *omission* to give that information, was competent, under s. 422, to order the deficiency to be supplied, the object of that section being the prevention of a guilty person's escape through some careless or ignorant proceedings of a Magistrate, or the vindication of a wrongfully accused person's innocence where the same carelessness or ignorance has omitted to record the circumstance essential to the elucidation of truth.—IN THE MATTER OF WOODOY CHAND MOOKHOPADHYA. 18 W. R. 31; 9 B. L. R. Ap. 31. [Kemp and Glover, JJ. July 22, 1872.]

To warrant a conviction under s. 202, Penal Code, the prosecution must prove that the accused knew, or had reason to believe, that an offence had been committed of which he was bound to give information. Mere omission to inquire into the truth of rumours that reached him, or statements that were made to him, does not constitute an offence under that section. *Held*, also, that where an act is capable upon the evidence of two constructions, the accused is entitled to the benefit of that one which is most favourable to his innocence.—IN THE MATTER OF BEEMBADHUR DASS. 1 Shome's Rep. 29.

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Not comp.

**203.*** Whoever, knowing or having reason to believe that an offence† has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Giving false information respecting an offence committed.

*Explanation.*†—In sections 201 and 202, and in this section, the word 'offence' includes any act committed in any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460.

IN this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

A PRISONER'S intention is immaterial to his conviction under s. 203 of the Penal Code of having given false information respecting an offence committed. Thus, where a chaukidar, having found a corpse with wounds on the throat and jaw, gave information at the thana that the deceased had died of cholera, and that there was nothing suspicious in the matter, he was convicted under s. 203 of the Penal Code.—QUEEN *v.* CHERIOUR CHOWKIDAR, 1 W. R. 18. [Glover, J. Sep. 26, 1864.]

THE elements of an offence under s. 203 of the Penal Code are, *1st*, that the accused should know, or have reason to believe, that an offence has been committed; *2nd*, the giving of information respecting such offence which the accused knew or believed to be false. Therefore, in order to constitute this offence, it would not be necessary that the accused should be aware of the circumstances attending the death of M, but only that he should know, or have reason to believe, that M had been killed by criminal means, or that otherwise some offence had been committed; and if, with such knowledge or belief, the accused gave any information in relation thereto which he knew or believed to be false, he would commit the offence.—9 W. R. Cr. L. 2, No. 135 of 1868.

TO JUSTIFY a conviction for giving false information with respect to an offence under s. 203 of the Penal Code, it must be proved, not only that the person charged had reason to believe that an offence had been committed, but that the offence had actually been committed, and that the accused knew, or had reason to believe, that the offence had been actually committed.—QUEEN *v.* JOYNARAIN PATRO. 20 W. R. 66. [Jackson and Mitter, JJ. Sep 15, 1872.]

Presy. Mag. or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp.

**204.** Whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same

Destruction of document to prevent its production as evidence.

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* In s. 203 the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40, *supra*.

† This explanation has been added by the Indian Criminal Laws Amendment Act (III. of 1894), s. 6.

from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

WHERE the plaintiff, in a suit referred to arbitration by consent, with a view to prevent a witness from referring to an endorsement on a bond (which tended to show that defendant had paid more than it was alleged had been paid by him), snatched up the bond which was lying besides the arbitrator, ran away, and refused to produce it, *held* that the offence committed was not theft, but secreting a document under s. 204 of the Penal Code.—SUBRAMANIA GHANAPATI *v.* REG., I. L. R., 3 Mad. 261. [Turner, C.J., and Muttusami Ayyar, J. Sep. 2, 1881.]

A PERSON merely withholding a document, or not producing it on a false pretence, cannot be convicted of the offence of secreting such document specified in this section.—2 N. A., N.-W. P., Part I., 64.

**205.** Whoever falsely personates another, and, in such assumed character, makes any admission or statement, or confesses judgment, or causes any process to be issued, or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp. Sanction.

**False personation for purpose of act or proceeding in suit or prosecution.**

UNDER s. 205 of the Penal Code it is criminal to personate an imaginary person —QUEEN *v.* BITTO KAHAR, 1 Ind. Jur. O. S. 123. [Seton-Karr and Campbell, JJ. Nov. 20, 1862.] Dissented from in *In re Kadar Ravuttan and Ayangana Ravuttan*, 4 Mad. H. C. R. 18.

FRAUDULENT gain or benefit to the offender is not an essential element of the offence of false personation under s. 205 of the Penal Code, and a conviction for false personation may be upheld, even where the personation is with the consent of the person personated. —*Ex-parte* SUPPAKON, 1 Mad. H. C. R. 450. [Scotland, C.J., and Frere, J. Nov. 23, 1863.]

IT is necessary to a conviction for false personation, under s. 205 of the Penal Code, that the accused should have assumed the name and character of the person he is charged with having personated. The fact that he presented a petition in Court in the name of that individual, *held*, under the circumstances of this case, to be insufficient to show any intention of falsely personating such person.—QUEEN *v.* NARAIN ACHARJ, 8 W. R. 80. [Glover and Hobhouse, JJ. Nov. 13, 1867.]

To constitute false personation under s. 205, it is not enough to show the assumption of a fictitious name. It must also be shown that the assumed name was used as a means of representing some other known individual. A mere "alias" or "incog" is no crime, for it is no uncommon thing for men to pass under names not their own for the purpose of disguise, in some instances from blameless, in others from indifferent or bad, motives. But, whatever the motive, the use of an assumed name is not in itself a criminal offence. The gist of the offence under s. 205 is the feigning to be another known person. The whole language of the section clearly imports the acting the part of another person, the actor pretending that he is that person. There are sections of the Penal Code (for instance, ss. 140, 170, 171, and 415) under which the false assumption of appearance or character may be an offence, though no particular individual is meant to be represented, or only an imaginary person; but it is not so here. *Reg* v. *Bitoo Kahar* (1 Ind. Jur. 123) dissented from.—*In re* KADAR RAVUTTAN AND AYANGANA RAVUTTAN, 4 Mad. H. C. R. 18; 3 Mad. Jur. 146. [Scotland, C.J., and Collett, J., Mar. 9, 1868.]

**206.** Whoever fraudulently removes, conceals, transfers, or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture, or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Not comp. Sanction.

**Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution.**

made, or which he knows to be likely to be made, by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

A PERSON who fraudulently removes property, intending thereby to prevent that property from being taken in execution of a decree made by a Collector, commits an offence, and is punishable under s. 206 of the Penal Code, and not under s. 145, Act X. of 1859.—GOUR CHUNDER CHUCKERBUTTY *v.* KISHEN MOHUN SINGH, 10 W. R. 46; 2 B. L. R. S. N. 4. [Loch and Glover, JJ. Sep. 11, 1868.]

To bring a case under s. 206 of the Penal Code, there must be a fraudulent removal, sale, or transfer of property, or of some interest therein, intending thereby to prevent that property from being taken as a forfeiture or in satisfaction of a fine.—IN THE MATTER OF BALMOKOOND BROJOBASI, 18 W. R. 65. [Kemp and Pontifex, JJ. Nov. 19, 1872.]

A JUDGMENT-DEBTOR, whose standing crops were attached, harvested them while the attachment was in force, and was convicted of theft. *Held* that the accused was not guilty of theft, but of the offence of dishonestly removing the property under the Penal Code, s. 424. *Per* Benson, J.—The offence was also criminal misappropriation within the meaning of Indian Penal Code, s. 403.—QUEEN-EMPRESS *v.* OBAYYA, I. L. R., 22 Mad. 151. [Davies and Benson, JJ. Sep. 13, 1898.]

THE cutting and carrying off crops, which the accused knew to be under attachment in execution of a certificate under the Public Demands Recovery Act of 1895, is an offence under the latter part of s. 206 of the Penal Code. The amount due under the certificate cannot be regarded as a forfeiture or fine, but is money due under a decree, the certificate having the force and effect of a decree of a Civil Court. Where such an offence was taken cognizance of by a Magistrate without sanction for the prosecution being given, as should have been the case, but there is nothing in the proceeding to show that the want of such sanction had in fact occasioned a failure of justice, *held* that the conviction was not bad only on that account.—SUNDAR DASADH *v.* SITAL MAHTO, I. L. R., 28 Cal. 217. [Prinsep and Handley, JJ. Aug. 20, 1900.]

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Not comp. Sanction.

Fraudulent claim to property to prevent its seizure as forfeited or in execution.

**207.** Whoever fraudulently accepts, receives, or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made, by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Presy. Mag. or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp. Sanction.

Fraudulently suffering decree for sum not due.

**208.** Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due, or for a larger sum than is due to such person, or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

*Illustration.*

A institutes a suit against Z. Z, knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

**209.** Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Dishonestly making false claim in Court.

Presy. Mag. or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp. Sanction.

WHERE a person applies for the execution of a decree which has already been executed, his offence falls, not under s. 209 but s. 210, of the Penal Code. S. 209 relates to false and fraudulent claims in a Court of Justice, and is confined to the Civil Court in which the original suit was brought.—QUEEN v. BEEGUN MAHTOON, 12 W. R. 37. [Norman and Jackson, JJ. July 26, 1869.]

**210.** Whoever fraudulently obtains a decree or order against any person for a sum not due, or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied, or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulently obtaining decree for sum not due.

Ditto.

WHERE a person applies for the execution of a decree which has already been executed, his offence falls, not under s. 209, but s. 210, of the Penal Code. S. 209 relates to false and fraudulent claims in a Court of Justice, and is confined to the Civil Court in which the original suit was brought.—QUEEN v. BEEGUN MAHTOON, 12 W. R. 37. Norman and Jackson, JJ. July 26, 1869.

S. 258 of the Code of Civil Procedure, which provides that no payment or adjustment of a decree not certified to the Court as in the said section provided shall be recognized by any Court, does not debar a Criminal Court from recognizing such payment where the decree-holder is charged with fraudulently executing a satisfied decree. —QUEEN-EMPRESS v. PILLALA, I. L. R., 9 Mad. 101. [Hutchins, J. Oct. 6, 1885.]

IN s. 210 of the Indian Penal Code the word "satisfied" is to be understood in its ordinary meaning, and not as referring to decrees, the satisfaction of which has been certified to the Court.—QUEEN-EMPRESS v. BAPUJI DAYARAM, I. L. R., 10 Bom. 288. [Birdwood and Jardine, JJ. Feb. 18, 1886.]

S. 195 of the Criminal Procedure Code (Act X. of 1882) distinguishes between the sanction granted by a Court to a prosecution by a private individual and a complaint made by the Court itself. A superior Court to which such Court is subordinate, may revoke the sanction granted in the former case to the private prosecution, but it has no power in the latter case to set aside a complaint duly made by a subordinate Court.—QUEEN-EMPRESS v. RACHAPPA, I. L. R., 13 Bom. 109. [Birdwood and Parsons, JJ. July 5, 1888.]

A COMPLAINANT applied to a Munsif for sanction to prosecute a decree-holder for an offence under s. 210 of the Penal Code, and, upon the Munsif's refusing such application, preferred an appeal to the District Judge, who granted the sanction asked for. The decree-holder, having been prosecuted and convicted before a Deputy Magistrate, preferred an appeal, which came on for hearing before, and was disposed of by, the same District Judge who had granted the sanction. *Held* that the words "shall try any person," as used in s. 487 of the Code of Criminal Procedure, include the hearing of an appeal, and that the hearing of the appeal from the order of the Munsif refusing sanction was a judicial proceeding within the meaning of the Code, and consequently that, under the provisions of s. 487, the District Judge had no jurisdiction to entertain the appeal against the judgment and sentence passed by the Deputy Magistrate.—IN THE MATTER OF MADHUB CHUNDER MOZUMDAR v. NOVODEEP CHUNDER PUNDIT, I. L. R., 16 Cal. 121. Macpherson and Trevelyan, JJ. Nov. 10, 1888.]

A DECREE-HOLDER having proceeded to execute his decree against his judgment-debtor, the latter objected, stating that the decree had been already satisfied, although the adjustment thereof had not been certified to the Court as required by s. 258 of the Code of Civil Procedure. The judgment-debtor, being under the circumstances compelled to deposit the amount of the decree in Court, applied for and obtained sanction to pro-

secute the decree-holder for an offence under s. 210 of the Penal Code. It was contended that the case did not fall within that section, as the satisfaction, not having been certified to the Court, could not be recognized by the Court executing the decree, and that consequently no offence had been committed. *Held* that the words "after it has been satisfied" used in s. 210 of the Penal Code indicate only the *fact* of the satisfaction of the decree. The fact that the satisfaction is of such a nature that the Court executing the decree could not recognize it, does not prevent the decree-holder from being properly convicted of an offence under that section.—MADHUB CHUNDER MOZUMDAR v. NOVODEEP CHUNDER PUNDIT, I. L. R., 16 Cal. 126. [Mitter and Macpherson, JJ. Dec. 18, 1888.]

A DECREE-HOLDER applied for execution of his decree against the judgment-debtor. The application was dismissed on the ground that the decree had been satisfied out of Court. The judgment-debtor then applied for and obtained sanction to prosecute the decree-holder under s. 210 of the Penal Code. *Held* that such sanction must be revoked, because the decree had not been caused to be executed, and therefore no offence under s. 210 of the Penal Code had been committed.—SHAMA CHARAN DAS v. KASI NAIK, I. L. R., 23 Cal. 971. Ghose and Gordon, JJ. June 10, 1896.

Pres. Mag. or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp. Sanction.

**211.*** Whoever, with intent to cause injury to any person, institutes, or causes to be instituted, any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

False charge of offence made with intent to injure.

Uncog. Warrant. Bailable. Not comp. Sanction.

and, if such criminal proceeding be instituted on a false charge of an offence punishable with death,† transportation for life,† or imprisonment ‡ for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

MEANING OF "OFFENCE."

IN this section the word "*offence*" denotes a thing punishable under this Code or under any special or local law as defined in this Code.—S. 40, Penal Code.

MAKING FALSE CHARGE.

No charge of making a false charge can be proved while the original charge is still under investigation, as it may turn out that the Court conducting the investigation may say that it is a true charge: but it is not necessary that the charge should be heard and dismissed; it is sufficient if it be not pending at the time of the trial.—REG. v. SUBBANNA GAUNDAN, 1 Mad. H. C. R. 30; 1 Ind Jur. O. S. 136. [Scotland, C.J., and Phillips, J. Oct. 27, 1862.]

To establish a charge under s. 211, it is necessary to show that the accused knew, or had reason to believe, that an offence had been committed.—QUEEN v. BITTO KAHAR, 1 Ind. Jur. O. S. 123. [Seton-Karr and Campbell, JJ. Nov. 20, 1862.]

WHEN a prisoner is convicted of having made a false charge of an offence, the nature of the false charge should be stated in the finding, and entered in the calendar.—REG. v. ARJUN, 1 Bom. H. C. R. 87. [Forbes and Westropp, JJ. Nov. 4, 1863.]

THE conviction of a police-inspector for having abetted the bringing of a false charge of murder quashed, because it was not distinctly shown that he preferred the charge *mala fide*.—QUEEN v. MUTHOORAPERSHAD

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* In s. 211 the word 'offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s 40 of this Code, *supra*.

† If offence charged be capital, or punishable with transportation for life—triable by Court of Session.

‡ If offences charged be punishable with imprisonment for seven years or upwards—triable by Court of Sessions, Presidency Magistrate, or Magistrate of 1st class.

PANDAY, 2 W. R. 9. [Kemp and Glover, JJ. Jan. 18, 1865.]

THE mere fact that an accuser (in this case a subordinate police-officer) is an official in a subordinate position will not shield him from the consequences of false and malicious charges made by him officially. —QUEEN v. RHEDOY NATH BISWAS, 2 W. R. 45. [Glover J. Mar. 15, 1865.]

WHERE a man burns his own house, and charges another with the offence of doing so, he should be convicted and sentenced under s. 211, and not under s. 195.—QUEEN v. BHUGWAN AHIR, 8 W. R. 65. [Loch and Hobhouse, JJ. Aug. 28, 1867.]

Ss. 182 and 211 of the Penal Code distinguished. The latter held to apply to a case of false charge in which the accused in the present case had appeared before the police, and charged the new complainant with having caused the death of the accused's child by poisoning.—RUFFEE MAHOMED v. ABBAS KHAN, 8 W. R. 67. [Jackson and Hobhouse, JJ. Sep. 3. 1867.]

S. 211 of the Penal Code applies, not only to a private individual, but also to a police-officer who brings a false charge of an offence with intent to injure.—IN THE MATTER OF NABOODEEP CHUNDER SIRCAR, 11 W. R. 2. [Jackson and Markby, JJ. Jan. 12, 1869.]

WHERE a Deputy Magistrate instituted *proceedings against a complainant and his* witnesses for preferring a false charge of theft before him, it was held that he could not merely rely on the decision in the theft case, but was bound to prove the falsity of the complaint of theft in the presence of the accused.—QUEEN v. RAM DASS BOISTUB, 11 W. R. 35. [Jackson and Markby, JJ. April 6, 1869.]

IF a Magistrate considers a complaint false and groundless, he is not bound to issue a summons or warrant. The law vests him with a discretion, which discretion it is incumbent on him to exercise. At the same time the Magistrate should always take the examination of the complainant.—*In re* RAMCHURN, 3 N.-W. P. 272. [Turner, J. Aug. 25, 1871.]

IF the charge of voluntarily causing hurt, contained in a petition of complaint, is wilfully false, and made with intent to injure, then the complainant is legally chargeable with the offence described in s. 211 of the Penal Code.—QUEEN v. MATA DYAL, 4 N.-W. P. 6. [Pearson, J. Jan. 13, 1872.]

THE lower Criminal Courts cannot punish, as abettors, persons who gave evidence in support of false charges—or rather, charges found by such Courts to be false. S. 108 of the Penal Code does not contemplate any acts of subsequent abetment, or provide for the punishment of such offences, except when *they are such as are defined in ss. 212 to* 218.—QUEEN v. PAUN PUNDAH, 18 W. R. 28; 9 B. L. R. Ap. 16. [Kemp and Glover, JJ. July 11, 1872.]

WHERE the charge is one of instituting a false charge of an offence with intent to injure, the actual information which the prisoner made at the thana ought to be given in evidence, and form part of the record.—QUEEN v. HOOLAS *alias* SUTTOO, 23 W. R. 32. [Phear and Morris, JJ. Jan. 30, 1875.]

AN offence under s. 211 of the Penal Code includes an offence under s. 182; it is therefore open to a Magistrate to proceed under either section, although, in cases of a more serious nature, it may be that the proper course is to proceed under s. 211.—BHOKTERAM v. HEERA KOLITA, I. L. R., 5 Cal. 184. [Ainslie and Broughton, JJ. April 26, 1879.]

THERE is nothing in s. 211 of the Penal Code which limits the penalty there imposed to cases in which attempts have been made to substantiate false charges in a Court of Justice. A false charge made before the police is, therefore, punishable under this section.—ASHROF ALI v. EMPRESS, I. L. R., 5 Cal. 281. [Mitter and Tottenham, JJ. June 24, 1879.]

IT is necessary for a conviction under s. 211 of the Penal Code that the false charge should have been made to a Court or officer having jurisdiction to investigate and send it up for trial.—IN THE MATTER OF JAMOONA; EMPRESS v. JAMOONA, I. L. R., 6 Cal. 620. [Mitter and Maclean, JJ. Jan. 22, 1881.]

A CRIMINAL prosecution for an offence under s. 211 is not a condition precedent to the right to sue for damages. The bringing of a civil suit imports no corrupt agreement or compounding of the offence in such a case. *Shama Churn Bose* v. *Bhola Nath Dutt* (6 W. R., Civ. Ref., 9) followed.—VIRANNA v. NAGAYYAH, I. L. R., 3 Mad. 6. [Innes and Kernan, JJ. Mar. 14, 1881.]

A PRISONER, charged under s. 211 of the Penal Code with having brought a false charge with intent to injure, by accusing A of having caused the death of a person by doing a rash or negligent act not amounting to culpable homicide, under s. 304A, stated at the trial that the original complaint made by him was false, and that he made it un-

thinkingly. The Sessions Judge treated this statement as a plea of guilty, and sentenced the prisoner to rigorous imprisonment. No record of the prisoner's plea, as required by s. 237 of the Criminal Procedure Code (Act X. of 1872), appeared on the proceedings; nor did it appear that the charge had been explained as well as read to the prisoner, and the Judge considered that the original complaint did not amount to a false charge of an offence under s. 304A. *Held* that the conviction was bad—EMPRESS *v.* GOPAL DHANUK, I. L. R., 7 Cal. 96; 8 C. L. R. 471. [Morris and Tottenham, JJ. April 21, 1881.]

R CHARGED A with breach of trust, and S gave evidence in support of the charge. A being acquitted, R was tried for making a false charge, and S for perjury. *Held* (1) that the depositions given by witnesses in the first case could be used against R in the second case, but not against S, under s. 33, Evidence Act; (2) that the word "questions" in s. 33 does not mean "all the questions;" and that, though additional issues were involved in the second trial, yet the evidence as to the issues common to both trials was properly admitted at the second trial against R.—*In re* RAMI REDDI, I. L. R., 3 Mad. 48. [Innes and Muttusami Ayyar, JJ. May 2, 1881.]

THE fact that an offence alleged to have been committed has been compounded is no conclusive answer to a charge made against the prosecutor under s. 211 of the Penal Code. A laid a charge against M for wrongful confinement. The police reported the case as a false one; and A not appearing to prove the complaint, the District Magistrate ordered him to be prosecuted under s. 211 of the Penal Code, and made over the case to a Deputy Magistrate. Upon the hearing of such charge, A pleaded that he had compounded the original charge laid by him against M, and that therefore the charge against him under s. 211 could not lie. The Deputy Magistrate, without hearing any evidence, dismissed the case. *Held* that the course so taken was illegal, as such plea was no conclusive answer to a charge under s. 211.—QUEEN-EMPRESS *v.* ATAK ALI, I. L. R., 11 Cal. 79. [Wilson and Macpherson, JJ. Nov 3, 1884.]

A PROSECUTION under s. 182 of the Penal Code may be instituted by a private person, provided that he first obtains the sanction of the public officer to whom the false information was given, or of his official superior. *Queen* v. *Radha Kishan* (I. L. R., 5 All 36) overruled. Where a specific false charge is made, the proper section for proceedings to be adopted under is s. 211 of the Penal Code. —QUEEN-EMPRESS *v.* JUGAL KISHORE, I. L. R., 8 All. 382. [Straight, Offg. C.J. May 28, 1886.]

A FALSE charge before the police is a false charge falling within the first portion of s. 211 of the Penal Code. The latter portion of s. 211 of the Penal Code is confined to cases in which criminal proceedings have been instituted, and does not apply to false charges merely. *Empress of India* v. *Pitam Rai* (I. L. R., 5 All. 215) and *Empress* v. *Parahu* (I. L. R., 5 All 598) followed.—QUEEN-EMPRESS *v.* KARIM BUKSH, I. L. R., 14 Cal. 633. [Petheram, C.J., and Ghose, J. June 10, 1887.]

### WHAT CONSTITUTES MAKING OF A FALSE CHARGE.

TO constitute the offence of preferring a false charge under s. 211 of the Penal Code, the charge need not be made before a Magistrate; nor need the charge have been fully heard and dismissed: it is enough if it is not pending at the time of trial.—REG. *v.* SUBBANNA GAUNDAN, 1 Mad. H. C. R. 30. [Scotland, C.J., and Phillips, J. Oct. 27, 1862.] Distinguished in *Empress* v. *Abul Hasan*, I. L. R., 1 All. 497, *infra*.

TO prefer a complaint to the police in respect of an offence which they are competent to deal with, and thereby to set the police in motion, is to institute a criminal proceeding within the meaning of s. 211 of the Penal Code.—QUEEN *v.* BONOMALLY SOHAI, 5 W. R. 32. [Campbell and Phear, JJ. Feb. 20, 1866.

INSTITUTING a criminal proceeding with intent to injure, knowing that there is no just or lawful ground for such proceeding, may be treated as a distinct offence from that of falsely charging a person with having committed an offence. A police-officer, though acting upon the information of an informer, may be said to institute a criminal proceeding against the person charged by him; and the consent of his superior officer to such charge will be no guarantee against the consequences of bad faith on his part. The prosecution, when establishing the fact that a police-officer acted knowing there to be no just grounds for proceeding, is bound to call all those on whose statements such officer said he acted—QUEEN *v.* NOBOKISTO GHOSE, 8 W. R. 87. [Seton-Karr and Macpherson, JJ. Dec. 31, 1867.]

A FALSELY, and with intent to injure, informed the police that B had stolen property in his house. The police searched B's house and the information proved to be false. *Held* that A had instituted criminal proceedings, and that he was therefore guilty of an offence

under s. 211, and not under s. 182.—MUTHRA v. ROORA, Panj. Rec., No. 16 of 1870.

WHERE a charge of theft was reported by the police to be false, *held* that the Magistrate ought first to have enquired into the charge of theft, and pass some orders upon it before proceeding under s. 211 of the Penal Code to enquire into the offence of false charge.—*In re* BISHOO BARIK, 16 W. R., (77) 67. [Kemp and Jackson, JJ. Dec. 16, 1871.] Distinguished in *Empress* v. *Abul Hasan*, I L. R., 1 All 497, *infra*.

IF the charge of voluntarily causing hurt, contained in a petition of complaint, is wilfully false, and made with intent to injure, then the complainant is legally chargeable with the offence described in s. 211 of the Penal Code.—QUEEN v. MATA DYAL, 4 N.-W. P. 6. [Pearson, J. Jan. 13, 1872.]

WHERE a person who is interested in the matter, or has a certain official responsibility, says to a police-officer, "A tells me that X has committed a certain offence, and B and C confirm the statement, and I accordingly suspect X," and follows up that statement by an application to have X's house searched, he prefers a charge against X. If such charge be false, he may be convicted under s. 211 of the Penal Code.—QUEEN v. HUNOOMAN LALL, 19 W. R. 5. [Jackson, J. Dec. 4, 1872.]

To constitute the offence of making a false charge under s. 211 of the Penal Code, it is enough that the false charge is made, though no prosecution is instituted thereon. *Queen* v. *Subbanna Gaundan* (1 Mad. H. C. R. 30) followed. *Reference in the Case of Bishoo Barik* (16 W. R. 67) distinguished.—EMPRESS v. ABUL HASAN, I. L. R., 1 All. 497. [Turner and Spankie, JJ. Nov. 9, 1877.]

WHERE A and F were convicted of culpable homicide, and one G H petitioned the Lieutenant-Governor for their release, on the ground that the accusation was a false one, got up by one S K from enmity, whereupon S K charged G H with making a false charge with intent to injure, and procured his conviction under s. 211, *held* that G H was wrongly convicted under that section. To constitute the offence of "falsely charging a person with having committed an offence" within the meaning of s. 211, something more is necessary than to impute against a person that he has committed an offence The "charge" contemplated in the section means a charge made in order to the institution of criminal proceedings.—GHULAM HUSSAIN v CROWN, Panj. Rec., No. 14 of 1879.

THE actual institution of criminal proceedings on a false charge is essential to the application of the latter part of s 211 of the Penal Code, and if a person only makes a false charge, his case falls under the first part of the section irrespective of the fact that the false charge relates to "an offence punishable with death, transportation for life, or imprisonment for seven years or upwards."—EMPRESS v. PITAM RAI, I. L. R., 5 All. 215. [Mahmood, J. Sep. 25, 1882.] Concurred in *Empress* v. *Parahu*, I. L. R., 5 All 598. Followed in *Queen-Emprress* v. *Bisheshar*, I. L. R., 16 All 124, *infra*.

WHERE a person specifically complains that another man has committed an offence, and does so falsely with the object of causing injury to that person he is guilty of making a false charge of an offence under s. 211 of the Penal Code, and not under s 182.—EMPRESS v. ARJUN, I. L R., 7 Bom. 184. [West and Pinhey, JJ. Nov. 2, 1882.]

WHERE no criminal proceeding is instituted on a false charge of an offence of the nature described in the latter part of s. 211 of the Penal Code, the person making such charge is punishable only under the first part of that section.—EMPRESS v. PARAHU, I. L. R., 5 All 598. [Brodhurst, J. May 22, 1883.] Concurs in *Empress* v. *Pitam Rai*, I. L. R., 5 All. 215, *supra*. Followed in *Queen-Empress* v. *Bisheshar*, I. L. R., 16 All. 124, *infra*.

A PERSON who sets the criminal law in motion by making a false charge to the police of a cognizable offence institutes criminal proceedings within the meaning of s. 211 of the Penal Code; and if the offence fall within the description in the latter part of the section, he is liable to the punishment there provided.—KARIM BUKSH v QUEEN-EMPRESS, I. L. R., 17 Cal. 574. [Petheram, C.J., and Wilson, Tottenham, O'Kinealy, and Macpherson, JJ. Sep. 5, 1888.] Dissented from in *Queen-Empress* v. *Bisheshar*, I. L. R., 16 All. 124, *infra*.

To constitute the offence defined in the second paragraph of s. 211 of Act XLV. of 1860, it is necessary that criminal proceedings should be instituted. Where the offence committed does not go further than the making of a false charge to the police, the making of such charge does not amount to the institution of criminal proceedings, and the offence committed will fall within the first paragraph of s. 211, notwithstanding that the offence so falsely charged may be one of those referred to in the second paragraph of that section. *Queen-Empress* v. *Pitam Rai* (I. L. R., 5 All. 215) and *Queen-Empress* v. *Parahu* (I. L. R., 5 All. 598) followed. *Karim Buksh* v. *The Queen-Empress* (I. L. R., 17 Cal. 574) dissented from.—QUEEN-EM-

PRESS v. BISHESHAR, I. L. R., 16 All. 124. [Knox and Burkitt, JJ. Dec. 4, 1893.]

A FALSE charge of dacoity was made to a police-station-house officer, who, after some investigation, referred it to the Magistrate as false, and the Magistrate ordered the charge to be dismissed without taking any action against the parties implicated. The person who preferred the charge was now tried under the Penal Code, s. 211, and was found to have acted with the intent and the knowledge therein mentioned, and he was convicted and sentenced to four years' rigorous imprisonment. *Held* that the prisoner had instituted criminal proceedings within the meaning of that section, and that the conviction and sentence were in accordance with law.—QUEEN-EMPRESS v. NANJUNDA RAU, I. L. R., 20 Mad. 79. [Collins, C.J., and Benson, J. Oct 29, 1896.]

WHERE a Magistrate after having examined the complainant and without hearing his witnesses or dismissing the complaint, ordered the complainant to be prosecuted under s 211 of the Penal Code. *Held* that the Magistrate's order was without jurisdiction. Where a complainant, whose complaint had been reported false by the police, complained to the Magistrate, and asked him to try the complaint, and the Magistrate did not examine the complainant himself, but made over the case to a Subordinate Magistrate for judicial inquiry or report. *Held* that the Magistrate had no authority for this procedure. A complainant must be examined by the Magistrate who receives the complaint, or by some Magistrate to whom he has transferred the case. When a complainant has been examined he is entitled to have the person accused brought before the Magistrate, and it is only when the Magistrate has reason not to believe the truth of the complaint from his examination that this can properly be refused and an investigation held.—MAHADEO SINGH v. QUEEN-EMPRESS, I. L. R., 27 Cal. 921. [Prinsep and Handley, JJ. May 11, 1900.]

JURISDICTION.

WHERE the Sessions Judge, on appeal, reversed a conviction passed by a Magistrate, F. P., of an offence under s. 182 of the Penal Code (which the Magistrate, F. P., was competent to try), and directed the Magistrate, F. P., to institute proceedings against the accused under s. 211, considering that, on the complaint which had been made to him, the Magistrate, F. P., was bound to institute proceedings under the latter section, the High Court reversed that part of the order of the Sessions Judge which directed the Magistrate, F. P., to institute proceedings, as the case did not fall within s. 435 of the Criminal Procedure Code (Act XXV. of 1861), and there was no provision of law giving the Judge jurisdiction to make such an order.—REG. v. GOPAL LAKSHUMAN, 5 Bom. H. C. R. 25. [Couch, C J., and Newton, J. Mar. 10, 1868.]

A MAGISTRATE has no jurisdiction to convict in a case in which the accused is charged, under s. 211 of the Penal Code, with having falsely instituted a criminal charge of the offence of dacoity.—IN THE MATTER OF KADER BUKSH, 21 W. R. 34. [Kemp and Glover, JJ. Jan. 26, 1874.]

WHERE accused preferred a false charge against complainant under s. 342, and was in consequence tried and convicted by the same Court under s. 211, *held* by a majority of the Court (Campbell, J., dissenting) that the Magistrate had no jurisdiction to try the offender.—CROWN v. HASSAN ALI, Panj. Rec., No. 7 of 1877. This ruling is enacted in s. 476, Code of Criminal Procedure, 1898.

IT is only if the compensation ordered to be paid under s. 250, proviso (2) of the Code of Criminal Procedure cannot be recovered that imprisonment can be awarded; therefore an order of imprisonment passed before any attempt is made towards recovery of the sum ordered to be paid as compensation is bad. S. 250 of that Code does not contemplate that compensation shall be awarded because a case is found to be false, but where the Magistrate is satisfied that the accusation is frivolous and vexatious. The words "frivolous and vexatious" in that section indicate an accusation merely for the purpose of annoyance, not an accusation of an offence which is absolutely false. The conviction by a Magistrate of a person of an offence under s. 211 of the Penal Code in a summary proceeding is improper.—PARSI HAJRA v. BANDHI DHANUK, I. L. R., 28 Cal 251. [Prinsep and Handley, JJ. Aug 17, 1900.]

JUST AND LAWFUL GROUND.

WHERE a person is charged, under s. 211 of the Penal Code, with having, with intent to injure, falsely charged another with an offence, knowing that there is no just and lawful ground for the same, the party accused should be allowed to show the information on which he acted, and the Judge ought not only to be satisfied that the facts alleged as the ground for making the charge are in themselves untrue and insufficient, but also that they were known to be such to the accused when the charge was made by him.—REG. v. NAVALMAL VALAD UMEDMAL, 3 Bom. H. C. R. 16. [Couch, C.J., and Newton, J. June 20, 1866.]

MERE rashness in making a charge, which is in fact believed, is not an offence under s. 211. If an accused person does not know at the time he makes the complaint that there are no just and lawful grounds for making the complaint, he cannot be convicted under s. 211. It is not sufficient for a charge under s. 211 of the Penal Code that a person to whom a wrong has been done, or who conceives that a wrong has been done to him, makes a charge or complaint upon evidence or statement which is not, or ought not to be, sufficient to satisfy a reasonable mind, if in truth he did not know, at the time he made the complaint, that there was no just and lawful ground for making it. The fact that information upon which a false charge was preferred was not carefully tested by the complaint is not a ground for indictment under s. 211.—QUEEN v. PRAN KISHEN BID, 6 W. R. 15; 2 Wyman's Rev., Civ., and Crim. Reporter 11. [Norman and Campbell, JJ. June 25, 1866.]

UNDER s 211, Penal Code, "instituting a criminal proceeding" may be treated as an offence in itself apart from "falsely charging" a person with having committed an offence Where a person is charged with instituting a criminal proceeding with intent to cause injury, knowing that there was no just or lawful ground for such proceeding, it is for the prosecution to make out a distinct case against him; not for the prisoner in the first instance to show that he had just or lawful grounds. The deposition of a witness in a former case is not evidence in a subsequent case in which he is examined, except when put in to contradict him. Where certain portions of a police-officer's diary are used as evidence against him, s. 154 of the Code of Criminal Procedure (Act XXV. of 1861), does not bar the admission of other portions of the diary as explaining the portions so used Where facts are as consistent with a prisoner's innocence as with his guilt, innocence must be presumed, and criminal intent or knowledge is not necessarily imputable to every man who acts contrary to the provisions of the law. A Judge should not discuss points of law in summing up to the jury, and he should avoid all the extraneous and unnecessary argument, merely summing up the evidence, and showing how the law applies to it.—QUEEN v. NOBOKISTO GHOSE, 8 W. R. 87. [Seton-Karr and Macpherson, JJ. Dec. 31, 1867.]

A PERSON may, in good faith, institute a charge which is subsequently found to be false, or he may, with intent to cause injury to an enemy, institute criminal proceedings against him, believing there are good grounds for them, but in neither case has he committed an offence under s. 211 of the Penal Code. To constitute this offence it must be shown that the person instituting criminal proceedings knew there were no just or lawful grounds for such proceedings. The averment that the accused knew that there were no lawful grounds for the charge instituted is a most material one.—QUEEN v. CHIDDA, 3 N.-W. P. 327. [Turner, J. Dec. 1, 1871.]

THE complainant was Deputy Collector and First-class Magistrate of Bijapur. Certain petitions, said to emanate from the accused, were received by Government, charging the complainant with bribery and corruption. Government thereupon ordered Mr. Monteath, Collector and Magistrate of the district, to inquire into the matter. Mr. Monteath enforced the attendance of the accused by writing to the police, who brought the accused before him. In answer to questions put to him, the accused denied having sent any petition to Government, but stated that he had paid a bribe to the complainant to secure the acquittal of his son, who was then on his trial on a charge of theft before him. Mr. Monteath examined other witnesses, and reported the result of his inquiry to Government. Government permitted the Deputy Collector to prosecute the accused, and he accordingly lodged a complaint against the accused for defamation, under s. 500 of the Penal Code, in having stated to Mr. Monteath, in the course of the inquiry, that he (the complainant) had accepted a bribe from him. The trying Magistrate was of opinion that the offence fell under s. 211 of the Penal Code. He at first framed charges both under ss. 211 and 500. But subsequently he struck out the charge of defamation under s. 500, and convicted the accused under s. 211 of making a false charge. On appeal, the joint Sessions Judge was of opinion that the charge under s. 211 could not be maintained, as the accused had not made any "false charge" to a Court or officer having jurisdiction to investigate it. As regards the charge of defamation, he was of opinion that the fact of bribery was not proved. But he held that, in making the statement to Mr. Monteath, the accused had acted in good faith, and that his case fell under excep. 8 to s. 499 of the Penal Code. He, therefore, reversed the conviction under s. 211, and acquitted the accused of defamation under s. 500 of the Code. Against this order of acquittal Government appealed to the High Court. *Held* that the accused was guilty of defamation. *Held*, also, that s. 211 of the Penal Code had no application to the present case. The accused was brought before Mr. Monteath against his will. He did not make any complaint be-

fore that officer; and though what he stated, in answer to questions put to him, was defamatory, the imputations did not constitute a "false charge" within the meaning of s. 211, as he did not intend to set the criminal law in motion. *Per* Ranade, J.—The words "falsely charging" in s. 211 must be construed along with the words which speak of the "institution of proceedings." These latter words are obviously used in a technical and exclusive sense, and the same restricted sense must be given to the words which relate to a false charge as implying a false complaint. *Karim Buksh* v. *Queen-Empress* (I. L. R., 17 Cal. 574) followed. *Held*, also, that, in the absence of sanction from Government, the inquiry held by Mr. Monteath, the District Magistrate, was not a taking cognizance of the offence. *Held*, also, that, as Mr. Monteath was not sitting as a "Court" when he made the enquiry, and examined the accused, the accused was not entitled to claim an absolute protection from a charge of defamation as a witness in a judicial proceeding. The accused was only entitled to a qualified privilege depending on the exceptions to s. 499 of the Penal Code. *Per* Ranade, J.—The High Court, in exercising jurisdiction in the matter of appeals against acquittals, should confine its exercise to the particular grounds of objection which are raised by Government against the acquittal complained of.—QUEEN-EMPRESS *v.* KARIGOWDA, I. L. R., 19 Bom. 51. [Jardine and Ranade, JJ. Jan. 18, 1894.]

OPPORTUNITY OF SUBSTANTIATING CHARGE.

A DEPUTY MAGISTRATE was held to have acted irregularly in dismissing a complaint, and directing the trial of the complainant under s. 211 of the Penal Code, without recording his reasons for doing so, and without examining all the witnesses tendered by the complainant, or allowing a reasonable time for the attendance of such of the witnesses as were not present.—QUEEN *v.* HERRA LALL GHOSE, 13 W. R. 37. [Jackson and Glover, JJ. April 1, 1870.] Followed in *Bishoo Barik*, 16 W. R. 67, *infra*.

UNDER s. 249, Act VIII. of 1869, which extends the provisions of s. 180 to trials of offences under ch. 14, a Deputy Magistrate may dismiss a complaint under that chapter without calling evidence, if, in his judgment, there is no sufficient ground for proceeding under it. Under the circumstances of this case, however, the High Court considered that the Deputy Magistrate should have made inquiries before charging the complainant with making a false charge under s. 211, Penal Code.—QUEEN *v.* GOUR MOHUN SINGH, 16 W. R. 44; 8 B. L. R. Ap. 11. [Kemp and Ainslie, JJ. Sep. 9, 1871.]

WHERE a charge of theft was reported by the police to be false, *held* that the Magistrate ought first to have inquired into the charge of theft, and passed some order upon it before proceeding under s. 211 of the Penal Code, to inquire into the offence of false charge.—BISHOO BARIK, 16 W. R 67. [Kemp and Jackson, JJ. Dec. 16, 1871.]

WHERE a charge, made against a peshkar and the police, was dismissed upon the statements of persons examined by the police, and without complainant's witnesses being examined, the order of dismissal was held to be illegal. It was also *held* to be illegal for the Magistrate to sanction a prosecution under the Penal Code, s. 211, against the complainant without giving him an opportunity to prove his charge.—SYED NISSAR HOSSEIN *v.* RAMGOLAM SINGH, 25 W. R. 10. [Kemp and Pontifex, JJ Jan. 6, 1876.]

A PETITION was presented to the Joint-Magistrate, charging the police with having made a false report of an investigation which they had been directed to make at the instance of the petitioner. The Joint-Magistrate, after reading the police-report, rejected the petition, and directed the petitioner to be prosecuted under s. 211 of the Penal Code for having made a false charge. *Held* that the Joint-Magistrate should not have made the order without first instituting an inquiry into the truth of the complaint, such as is required by s. 471 of the Code of Criminal Procedure (Act X. of 1872).—IN THE MATTER OF CHOOLHAIE TELEE, 2 C. L. R. 315. [Markby and Prinsep, JJ. April 8, 1878.]

A MAGISTRATE is not competent to discharge the accused in a warrant-case, and order the complainant to be prosecuted for making a false complaint, until he has examined all the witnesses cited by the complainant.—IN THE MATTER OF GANGOO SINGH, 2 C. L. R 389. [Mitter and Maclean, JJ. May 21, 1878.]

A CHARGE of burglary and theft having been preferred against two persons, the Magistrate, before whom the charge was laid, after comparing the petition of complainant with the papers submitted to him by the police, who had made an inquiry, and reported the charge to be false, directed, without having taken the examination of the complainant, that the case should be struck out, and that proceedings should be instituted against the complainant under s. 182 of the Penal Code. Proceedings were accordingly taken, and the complainant was ultimately tried and found guilty of an offence under s. 211. *Held* on appeal that the proceedings

had been irregular, and should be quashed; that the Magistrate should be directed to re-open the inquiry into the charge of burglary and theft, first examining the complainant; and that, if after such examination, he should be of opinion that the charge was false, the appellant might be proceeded against under s. 211 of the Penal Code.—IN THE MATTER OF BIYOGI BHAGUT, 4 C. L. R. 134. [Jackson and McDonell, JJ. Mar. 18, 1879.]

A CHARGE of theft was preferred by the petitioner on the 7th October 1878 before the police, who thereupon instituted inquiries which subsequently resulted in their finding the charge unproved. Meanwhile, on the 15th October, the charge was repeated in a complaint before the Magistrate of the district, who directed the complainant and his witnesses to attend on a particular day, but subsequently, without having examined them or the complainant, referred the matter to the Sub-Deputy Magistrate. The officer having reported the charge to be false, the Magistrate, on the 9th November, wrote upon the police-report, which had meanwhile, on the 26th October, been submitted to him, the following direction, *viz.*, "Show as false." On the 19th November a counter-prosecution under ss. 211, 182, and 500 of the Penal Code was sanctioned, and eventually, on the 22nd May 1879, resulted in the petitioner being convicted. While the counter-prosecution was pending, the petitioner, on the 22nd April, applied to the Magistrate to proceed with his complaint according to law, but was informed that his complaint was dismissed. On the following day the Magistrate recorded the following order. "Dismissed in accordance with my decision recorded in the police-report under s. 147 of the Criminal Procedure Code" (Act X. of 1872). *Held* that the complaint had been improperly dismissed, and that the order of the Magistrate, dated 23rd April 1879, must be set aside.—SHEIKH IRAD ALI *v.* NUSSIBUNNISSA BIBEE, 4 C. L. R. 534. [Morris and White, JJ. June 13, 1879.]

WHERE a person has instituted a charge found to be false by the police, a Magistrate, except under exceptional circumstances, is not justified, merely on a perusal of a police-report, which has found a charge made to be false, in prosecuting the person by whom such charge was preferred, summarily under s. 182 of the Penal Code, but should proceed under s. 211. When a charge is pronounced false by the police, no proceedings should be taken by a Magistrate *suo motu*, until a reasonable interval has shown that the complainant accepts the result of the investigation.—IN THE MATTER OF RUSSICK LAL MULLICK, 7 C. L. R. 382. [Garth, C.J., and Maclean, J. Nov. 17, 1880.]

BEFORE a person can be put upon his trial for making a false charge under s. 211 of the Penal Code, he must be allowed an opportunity of proving the truth of the complaint made by him; and such an opportunity should be afforded to him, if he desires to take advantage of it, *not before the police, but before the Magistrate*. Magistrates should clearly understand that, whilst the police perform their proper duty in collecting evidence, it is the function of the Magistrate alone to decide upon the sufficiency or credibility of such evidence when collected.—GOVT. *v.* KARIMDAD, I. L. R., 6 Cal. 496; 7 C. L. R. 467. [Garth, C.J., and Field, J. Dec. 9, 1880.] Concurred in *Empress* v. *Radha Kishan*, I. L. R., 5 All. 36, *infra*.

A COMMITMENT for trial, under the provisions of s. 211 of the Penal Code, for knowingly instituting a false charge with intent to injure the persons accused, is not illegal, merely because the complaint which the accused made has not been judicially inquired into, but is based on the report of the police that the case was a false one.—EMPRESS *v.* SALIK ROY, I. L. R., 6 Cal. 582, 8 C. L. R. 255. [Mitter and Maclean, JJ. Jan. 13, 1881.]

A CHARGE laid against certain persons before the police having been reported false by that body, the person who made the charge complained to the Magistrate of the district, who directed a fresh investigation. The charge was again reported false. The complainant thereupon filed a petition, in which he alleged that the second investigation had not been properly conducted, and asked that further evidence might be taken by a specified officer. No further investigation having taken place, the complainant was ordered to be prosecuted under s. 211 of the Penal Code, and, on trial, was convicted and sentenced. On appeal to the High Court, it was *held* that the conviction was illegal, inasmuch as an opportunity had not been afforded to the accused of producing all his evidence in support of the charge made by him. *Per* Maclean, J.—The proper principle which should guide a Magistrate is that, if no complaint is made before him after a reasonable time has elapsed from the conclusion of a police-inquiry, he would be justified in proceeding against a person who has made a complaint to the police which has been found to be false; but if a complaint is made, that complaint must be dealt with judicially. It is unfair even then to proceed against the complainant without hearing any witnesses whom he may wish to examine. *Per* Mitter, J.—Although a Magistrate has power, under

s. 147 of the Criminal Procedure Code (Act X. of 1872), to dismiss a complaint without examining witnesses, yet in such a case no sanction for prosecution under s. 211 of the Penal Code should be granted.—IN THE MATTER OF CHUCKRODHUR POTTI, 8 C. L. R. 289. [Mitter and Maclean, JJ. Jan. 20, 1881.]

WHERE a charge had been preferred against a person, and the Magistrate, before whom it was heard, after hearing the statement of the complainant, but not those of the witnesses, dismissed the complaint, and subsequently, on the application of the person, charged, granted him leave under s. 470 of Act X. of 1872 to prosecute the complainant for bringing a false charge, *held* that the proceedings were not irregular, and that the Magistrate was justified in acting as he had done. *Held* also, that there is a distinction in the proceedings to be adopted when a sanction is given under s. 470 of Act X. of 1872 (or s. 195 of X. of 1882), and the institution by the Court of its own motion of proceedings under s. 471 of the Act of 1872 (or s. 195 of the Act of 1882).—IN THE MATTER OF GYAN CHUNDER ROY; GYAN CHUNDER ROY v. PROTAB CHUNDER DASS, I. L. R., 7 Cal. 208; 8 C. L. R. 267. [Cunningham and Prinsep, JJ. April 6, 1881.]

UPON a trial for bringing a false charge with intent to injure, it appeared that the original complaint was lodged in the Court of the Extra-Assistant Commissioner, and a local inquiry by a competent police-officer was directed. The officer reported that the charge was false, and recommended that the prisoner should be prosecuted. The Extra-Assistant Commissioner ordered the papers to be sent to the Deputy Commissioner, who ordered the prosecution; and the prisoner was convicted. *Held* that the conviction was bad. The Extra-Assistant Commissioner should, on receipt of the report of the police, have communicated its contents to the prisoner, and afforded her an opportunity of substantiating her complaint, and should then have decided the case.—IN THE MATTER OF SAKHINA BIBEE; EMPRESS v. GRISH CHUNDER NUNDI, I. L. R., 7 Cal. 87; 8 C. L. R. 387. [Norris and Tottenham, JJ. April 26, 1881.]

A MAGISTRATE should not direct a prosecutor to be put upon his trial under s. 211 of the Penal Code without first giving him an opportunity of obtaining a judicial inquiry into the charge originally preferred by him. The sanction to prosecute contemplated in s. 468 of the Criminal Procedure Code of 1872 is not a direction to prosecute, but is a permission granted to a private person to exercise his own unfettered discretion as to whether he will take proceedings or not.—IN THE MATTER OF GRIDHARI MONDUL; GRIDHARI MONDUL v. UCHIT JHA, I. L. R., 8 Cal. 435; 10 C. L. R. 46. [Pontifex and Field, JJ. Dec. 7, 1881.]

WHERE a Magistrate dismisses a complaint as a false one under s. 147 of the Criminal Procedure Code of 1872, and decides to proceed against the complainant under s. 471 of the Code of 1872 for making a false charge, he is not bound, before so proceeding, to give the complainant an opportunity of substantiating the truth of the complaint by being allowed to produce evidence before him.—EMPRESS v. BHOWANI PERSAD, I. L. R., 4 All. 182. [Oldfield, J. Dec. 24, 1881.]

K MADE a report at a police-station accusing R of a certain offence. The police having reported to the Magistrate having jurisdiction in the matter that, in their opinion, the offence was not established, the Magistrate ordered the case to be "shelved." K then preferred a complaint to the Magistrate, again accusing R of the offence. The Magistrate rejected the complaint with reference to the police-report. Subsequently R, with the sanction of the police-authorities, instituted criminal proceedings against K, under s. 182 of the Penal Code, in respect of the report which he had made at the police-station, and K was convicted under that section. *Held* that, before proceeding against K, the Magistrate should have fully investigated and sifted his complaint for himself, and should not have abrogated the functions imposed on him by law, because the police had reported against the entertainment of the case. The views expressed in the *Government* v. *Karimdad* (I. L. R., 6 Cal. 496) concurred in. *Held* also that K's conviction under s. 182 of the Penal Code was illegal, as the Magistrate had no power to entertain a complaint under that section at the instance of R, the application of s. 182 and the institution of prosecutions under it being limited to the public servant against whom the offence has been committed or to his official superior, as mentioned in s. 467 of Act X. of 1872, and it not being intended that those provisions should be enforced at the instance of private persons. Moreover, if K's complaint was false, his offence was against R and not against the public servant to whom the complaint was made, and fell within s. 211 of the Penal Code. Ordered that the complaint made by K should be investigated.—EMPRESS v. RADHA KISHAN, I. L. R., 5 All 36. [Straight, J. July 5, 1882.] Concurs in *Govt.* v. *Karimdad*, I. L. R., 6 Cal. 496. Explains *Queen* v. *Hurree Ram*, 3 N.-W. P. 194. Overrules *Empress* v.

*Jugal Kishore*, I. L. R., 8 All. 382. Dissented from in *Poonit Singh* v. *Madho Bhot*, I. L. R., 13 Cal. 250.

J COMPLAINED to the police that she had been raped by a certain person. The police having reported the charge to be false, criminal proceedings were instituted against her under s. 182 of the Penal Code. In the meantime J made a complaint in Court, again charging R with rape. This complaint was not disposed of, but the proceedings against her under s. 182 of the Penal Code were continued, and she was eventually convicted under that section. *Held*, setting aside the conviction, and directing that J's complaint should be disposed of, that such complaint should have been disposed of before proceedings were taken against her under s. 182.—EMPRESS *v.* JAMMI, I. L. R., 5 All. 387. [Oldfield, J. Mar. 9, 1883.]

R MADE a complaint of theft against S to the police. The police referred the case as false to the Magistrate. The Magistrate summoned R, and examined him, but gave him no opportunity to prove the charge by calling the witnesses named by him. The Magistrate then ordered the case to be struck off the file, and gave sanction to prosecute R. R was subsequently brought before the same Magistrate, and committed to the Sessions, and convicted by the Sessions Court under s. 211 of the Penal Code. *Held* that, although R had no opportunity of proving his case before he was himself tried, the conviction was not illegal.—RAMASAMI *v.* QUEEN-EMPRESS, I. L. R., 7 Mad. 292. [Kernan and Kindersley, JJ. Feb. 4, 1884.]

A COMPLAINT of offences under ss. 323 and 379 of the Penal Code was referred to the police for inquiry. The police reported that the charge was a false one, and thereupon the Magistrate of the district passed an order, under s. 195 of the Criminal Procedure Code, directing the prosecution of the complainants for making a false charge under s. 211 of the Penal Code. *Held* that the order under s. 195 of the Criminal Procedure Code should not have been passed until the complainants had been afforded an opportunity of proving their case, which had been thrown out merely on the report of the police. *Govt.* v. *Karimdad* (I. L. R., 6 Cal. 496; 7 C. L. R. 467) referred to. — QUEEN-EMPRESS *v.* GANGA RAM, I. L. R., 8 All. 38. [Brodhurst, J. Dec. 2, 1885.]

A PERSON having laid an information before the police, the police reported the case as false; the informant then appeared before a Magistrate, asking that his case might be investigated, and his witnesses summoned. This application was refused, and the Magistrate, after perusing the police-report, passed an order directing him to be prosecuted under s 211 of the Penal Code. *Held* that the application to the Magistrate was "a complaint" within the meaning of s. 191 of the Criminal Procedure Code, into which the Magistrate was bound to have inquired. A Magistrate may take cognizance, under ss. 291 and 292 of the Criminal Procedure Code, of an offence brought to his notice by a police-report which affords ground for a suspicion that an offence has been committed; but, as a matter of sound judicial discretion, a Magistrate should not so proceed, and direct that the person suspected be tried until some person aggrieved has complained, or until he has before him a police-report on the subject based on an investigation directed to the offence to be tried, and in cases of alleged false charges, until it is clear that the original charge has been either heard and dismissed or abandoned. And before the order to prosecute for the false charge is made, the person who made the original charge should be offered an opportunity of supporting it or abandoning it.— QUEEN-EMPRESS *v.* SHAM LALL, I. L. R., 14 Cal. 707. [Petheram, C.J., and Wilson, Tottenham, Norris, and Ghose, JJ. June 22, 1887.]

SANCTION TO PROSECUTE.

WHERE the sanction to a prosecution accorded under s. 169, Code of Criminal Procedure (Act XXV of 1861), extended only to one of the persons charged, the High Court quashed the commitment, and directed the discharge of the persons to whom the sanction did not apply.—QUEEN *v.* WOODURNUL SINGH, 10 W. R. 24A. [Phear and Hobhouse, JJ. Aug. 4, 1868.]

A COLLECTOR, to whom an application is made for a new stamp under cl. 2, s. 50, Act X. of 1862, does not sit as a Court, Civil or Criminal, and the application, therefore, not being a document given in evidence in any proceeding of a Court, s. 170 of the Code of Criminal Procedure (Act XXV. of 1861), does not apply to such a case.—QUEEN *v.* GOUR MOHUN SEIN, 11 W. R. 48; 3 B. L. R. A. Cr. 6. [Norman and Jackson, JJ. May 5, 1869.]

IN a case against the accused under s. 211, Penal Code, the Joint-Magistrate, in the course of the trial, altered the charge from a private one under s. 211 to a public one under s. 182, and convicted the accused on the facts. There being no sanction to prosecute under s. 182, the Sessions Judge referred the case to the High Court. The High Court altered the conviction to one under s. 211, as the accused was not prejudiced in his trial.—KIRTI OJHA *v.* RAJKUMAR,

7 B. L. R. 29n; 13 W. R. 67. [Loch and Hobhouse, JJ. April 30, 1870.]

SANCTION was given by the Magistrate for the institution of criminal proceedings against the defendant for having made a false charge against the complainant. The Magistrate dismissed the complaint on the ground that the complainant had taken no step to prosecute for three months after the sanction was obtained. *Held* that the Magistrate had power to dismiss the complaint.—PRO., Jan. 9, 1871, 6 Mad. H. C. Rep. Ap. 15. No sanction shall remain in force for more than six months from the date on which it was given.— Crim. Pro. Code (Act V. of 1898), s. 195.

THE words, "appellate judgment of acquittal," in s. 272 of Act X. of 1872, were meant to include all judgments of an Appellate Court by which a conviction is set aside. A complaint made at a police-station is not made before any Civil or Criminal Court; and, if it proves false, prosecution for it does not require the sanction of any Court under s. 468, Code of Criminal Procedure.—GOVT. OF BENGAL *v.* GOKOOL CHUNDER CHOWDRY, 24 W. R. 41. [Jackson and McDonell, JJ. Aug. 10, 1875.]

WHERE sanction has been given under s. 468 of Act X. of 1872 by a Deputy Magistrate to a person to prosecute another for bringing a false charge, and such sanction is not proceeded under, it is open to the District Magistrate to take up the case under s. 142 of the Act of 1872 without complaint.—EMPRESS *v.* NIPCHA, I. L. R., 4 Cal. 713. [Jackson and Tottenham, JJ. Dec. 2, 1878.]

A CHARGE of theft was made before the police, and while inquiries, which afterwards resulted in the charge being found by the police not to be proved, were pending, the charge was repeated in a complaint before the Magistrate of the district, by whom the matter was handed over to the Sub-Deputy Magistrate, who reported the charge as false. Whereupon the Magistrate directed the police to enter the charge as false, but without ordering the formal dismissal of the petition of the complainant. On the application of the accused, a counter-prosecution under ss. 211, 182, and 500 of the Penal Code was then sanctioned, and the case sent to the Deputy Magistrate for trial. That officer discharged the accused on the ground that the sanction of the Magistrate was illegal, as there had been, he alleged, (1) no judicial investigation as to the original charge; (2) no formal dismissal of the complaint; and (3) the witnesses produced by the complainant had not been all examined. *Held* that the Deputy Magistrate was bound to accept the sanction made by a superior Court as valid, and to leave the accused to question it before a competent Court, if so advised; that a prosecution may be maintained in respect of a false charge made to the police, or contained in a complaint which has been dismissed under s. 147 of the Criminal Procedure Code (Act X. of 1872), although there has been no judicial investigation; and that, accordingly, the Deputy Magistrate ought to have tried the charge before him.—NUSIBUN-NISSA BIBEE *v.* SHEIK ERAD ALI, 4 C. L. R. 413. [Ainslie and Broughton, JJ. April 3, 1879.]

B CHARGED certain persons before a police-officer with theft. Such charge was brought by the police to the notice of the Magistrate having jurisdiction, who directed the police to investigate into the truth of such charge. Having ascertained that such charge was false, such Magistrate took proceedings against B on a charge of making a false charge of an offence, an offence punishable under s. 211 of the Penal Code, and convicted him of that offence. *Held* that, as such false charge was not preferred by B before such Magistrate, the offence of making it was not a contempt of such Magistrate's authority, and the provisions of ss. 468 and 473 of Act X. of 1872 were inapplicable, and such Magistrate was not precluded from trying B himself, nor was his sanction or that of some superior Court necessary for B's trial by another officer. *Empress* v. *Kashmiri Lal* (I. L. R., 1 All 625) distinguished Observations by Stuart, C.J., on the careless manner in which the charge in this case was framed.—EMPRESS *v.* BALDEO, I. L. R., 3 All. 322. [Stuart, C.J., and Pearson, J. Nov. 16, 1880.]

A SANCTION for a prosecution for making a false charge under s. 211 of the Penal Code, without hearing all the witnesses whom the person accused of making the false charge wishes to produce, is illegal. The High Court has power to quash an illegal commitment at any stage of the case.—EMPRESS *v.* SHIBO BEHARA, I. L. R., 6 Cal. 584; 8 C. L. R. 265. [Mitter and Maclean, JJ. Jan. 20, 1881.]

THERE being nothing in the law requiring that sanction to prosecute under s. 211 of the Penal Code should only be granted upon application by a private prosecutor, a District Magistrate is competent, under s. 468 of the Code of Criminal Procedure (Act X. of 1872), of his own motion, to direct a prosecution where a complaint has been entertained and found to be false by a Magistrate subordinate to him. There being no abetment of an offence after it has been committed, a person cannot

be convicted of abetting the offence of instituting a false charge, on evidence which shows only that he gave evidence in support of a charge found to be false. Duty of of Judge in charging a jury discussed.—IN THE MATTER OF JUGUT MOHINI DASSI, 10 C. L. R. 4. [McDonell and Tottenham, JJ. Dec. 13, 1881.]

IT is competent for a Court which has granted sanction to prosecution under s. 195 of the Criminal Procedure Code to give a fresh sanction, if the one previously granted has expired by efflux of time. The limitation of six months mentioned in s. 195 means that a Magistrate shall not take cognizance of a case under a sanction which is more than six months old, not that the whole prosecution must be completed within that period. *Held*, therefore, where sanction to a prosecution had been granted under s. 195 and the prosecution had been instituted, and the Magistrate, in consequence of evidence of the complainant not being procurable, had ordered "the case to be shelved for the present," and the complainant, after the six months mentioned in s. 195 had expired, applied to the Magistrate to re-open the proceedings, that it was competent for the Magistrate, having once taken cognizance of the case, and it still remaining on his file undetermined, to take it up again at any moment, and proceed with the prosecution without fresh sanction.—IN THE MATTER OF GULAB SINGH *v.* DEBI PROSAD, I. L. R., 6 All. 45. [Straight, Offg. C.J. July 28, 1882.]

A MAGISTRATE of the first class, after considering the result of an investigation of a police-officer under s. 202 of the Code of Criminal Procedure, dismissed a complaint as false, and passed an order sanctioning the prosecution of the complainant for an offence punishable under s. 211 of the Penal Code, and directed a Third-class Magistrate to hold a preliminary inquiry, the offence being cognizable by the Court of Session only. *Held* that, as there was no application before the First-class Magistrate for sanction to prosecute, the order must be taken to be a complaint made by the said Magistrate, and therefore, under s. 476 of the Code of Criminal Procedure, the Third-class Magistrate had no jurisdiction to hold any inquiry. *Held* also that the First-class Magistrate ought to have held a preliminary inquiry under s. 476, in order that the complainant might have an opportunity of showing the truth or *bona fides* of the complaint.—QUEEN *v.* CHANDRAMMA, I. L. R., 7 Mad. 189. [Turner, C.J., and Muttusami Ayyar, J. Oct. 26, 1883.]

A PROSECUTION of a charge under s. 211 of the Penal Code should not be granted under s. 195 of the Criminal Procedure Code as a matter of course, but only when the complainant can satisfy the Court that the interests of justice require a prosecution, and there is a strong *primâ-facie* case against the accused. *Held*, therefore, where S, who had been tried before the Court of Session for an offence, and acquitted, applied to the Court, in respect of the criminal proceedings which had been instituted against him, for sanction to prosecute G for abetment of an offence under s. 211 of the Penal Code, and the Sessions Judge granted the sanction, and there was nothing on the record of the criminal case or of the Judge's proceedings to show on what grounds G was accused of abetting a false charge, or on what grounds the Judge gave the sanction; that, before the Judge gave the sanction, he should have satisfied himself, by examination of S or other inquiry, whether S had sufficient grounds in fact for accusing G, and whether there were good *primâ-facie* grounds for suspecting G of abetting a false charge, and permitting a prosecution.—IN THE MATTER OF GAURI SAHAI, I. L. R., 6 All. 114. [Oldfield, J. Nov. 23, 1883.]

A DISTRICT COURT has jurisdiction, under s. 195 of the Code of Criminal Procedure (Act X. of 1882), to revoke or grant a sanction granted or refused by a Subordinate Judge's Court.—VENKATA *v.* MUTTUSAMI, I. L. R., 7 Mad. 314. [Turner, C.J., and Brandt, J. Feb. 12, 1884.]

A SANCTION to prosecute, when applied for subsequently to the termination of the proceedings in course of which the offence is alleged to have been committed, ought not to be granted, unless the person against whom the sanction is applied for had had notice of the application and an opportunity of being heard.—ABBILAKH SINGH *v.* KHUB LALL, I. L. R., 10 Cal. 1100. [Field and Norris, JJ. Aug. 19, 1884.] But see the following ruling:—

No notice is necessary to the person against whom it is intended to proceed before the Court, before which the alleged offence has been committed, can, under s. 195 of the Criminal Procedure Code, sanction a complaint being made to a Magistrate regarding one of the offences specified in that section. —IN THE MATTER OF KRISHNANUND DAS; KRISHNANUND DAS *v.* HARI BERA, I. L. R., 12 Cal. 58. [Pigot and O'Kinealy, JJ. Sep. 22, 1885.]

WHEN Subordinate Courts grant sanction to prosecute under s. 195 of the Criminal Procedure Code, it is incumbent on them so to frame the proceedings before them as to enable the High Court to satisfy itself from the record whether the application for sanc-

tion has been properly granted or not. A Magistrate, in disposing of a charge of theft, delivered the following judgment: "The charge of theft of doors and windows is not proved at all against the accused. They are acquitted." There was no further record of the proceedings. Immediately on the judgment being delivered, the pleader appearing for the accused applied for sanction to prosecute the complainant under ss. 182 and 211 of the Penal Code. The Magistrate refused to hear the application then, on the ground that it was not the proper time fixed by him to hear applications. The attorney for the complainant, who had expressed his willingness to have the application heard and disposed of there and then, intimated that he was prepared to show cause why sanction should not be granted, and asked that notice of any future application might be given to the complainant. The accused renewed the application the following day without notice to, and in the absence of, the complainant or his attorney, and the Magistrate granted the sanction asked for. On an application to the High Court to revoke the sanction, *held* that the Magistrate did not exercise a proper discretion, under the circumstances, in neglecting to give the complainant notice of the application, and an opportunity of being heard. *Held*, further, that the mere fact of the charge laid by the complainant not having been proved was not in itself sufficient ground for granting sanction to prosecute him under ss. 182 and 211 of the Penal Code, and as, beyond the judgment of the Magistrate, there was nothing on the record to show that there were sufficient grounds for granting the sanction, it should be revoked.—KEDAR NATH DAS *v.* MOHESH CHUNDER CHUCKERBUTTY, I. L. R., *16* Cal. *661*. [*Prinsep* and *Hill*, JJ. May 13, 1889.]

WHERE a Deputy Commissioner issued a sanction to prosecute the accused upon an express application made on behalf of a certain person against whom a charge of torture had been made, and which he found, for reasons stated in his judgment, to be false, *held*, taking the order to have been one made under s. 195 of the Code of Criminal Procedure, that it was a proper sanction, inasmuch as it was given to a contemplated prosecution by a definite person. *Semble*, on the supposition that the order was one under s. 476 of the Criminal Procedure Code, that it was not necessary for the validity of an order under that section that there should be any evidence on the record contradicting the case which was thought to be false, or that there should be a preliminary inquiry. Although it may sometimes well be that a preliminary inquiry ought to be held, the adoption of a rigid rule to that effect is neither rendered imperative by the law, nor is it desirable. *In the Matter of Mutty Lall Ghose* (I. L. R., 6 Cal. 308), *The Queen* v. *Baijoo Lall* (I. L. R., 1 Cal. 450), and *Khepu Nath Sikdar* v. *Girish Chunder Mukerjee* (I. L. R., 16 Cal. 370), referred to and distinguished. — BAPERAM SURMA *v.* GOURI NATH DUTT, I. L. R., 20 Cal. 474. [Pigot and Hill, JJ. Nov. 2, 1892.]

THE proceeding under s. 195 of the Code of Criminal Procedure, by which an order granting or refusing to grant sanction to prosecute may be set aside, is a proceeding in revision, and not by way of appeal.—MEHDI HASAN *v.* TOTA RAM, I. L. R., 15 All. 61. [Knox, J. Nov. 19, 1892.]

A COMPLAINT was made before a Magistrate which involved a charge of dacoity against the accused person and others. The Magistrate, in dealing with the case, proceeded under s. 209 of the Code of Criminal Procedure, and finding no case of dacoity *primâ facie* established, proceeded to frame charges under s. 254 of the Code, charging the accused with offences under ss. 380 and 448 of the Penal Code, *viz.*, theft in a building and criminal trespass. Having heard the whole of the evidence, he then acquitted the accused under s. 258 of the Code, and gave him sanction under s. 195 to prosecute the complainant under s. 211 of the Penal Code. The complainant then applied to the Sessions Judge to revoke that sanction. The Sessions Judge proceeded to consider the whole case, and finding that a proper inquiry had not been made, and all evidence available not taken, and that, had this been otherwise, a Sessions case might have been established, directed the Magistrate to hold a further inquiry, and to proceed, in accordance with the result of such inquiry, either to commit the accused to the Sessions, or grant the sanction, as the case might be. *Held* that the Sessions Judge had exercised a jurisdiction not vested in him by law. Acting as a Revision Court, he could send for the record for any purpose mentioned in s. 436, but he was not competent under s. 436 to direct a fresh inquiry, inasmuch as the accused had not been improperly discharged of an offence triable exclusively by a Court of Session, but had been acquitted of an offence within the Magistrate's jurisdiction. The Sessions Judge had, in fact, exercised the jurisdiction vested in him as an Appellate Court under s. 423 as if an appeal had been presented to him from an order of an acquittal; such powers in revision cases are only conferred on the High Court. —BAIJANATH PANDEY *v.* GAURI KANTA MANDAL, I. L. R., 20 Cal. 633. [Prinsep and Ameer Ali, JJ. Feb. 3, 1893.]

A HEAD ASSISTANT MAGISTRATE sanctioned a prosecution under the Criminal Procedure Code, s. 195, on the charge of preferring a false complaint, and forwarded his proceedings to the Deputy Magistrate of another division of the district, who ordinarily had no jurisdiction to try offences committed in the division under the Head Assistant Magistrate. *Held* that the Deputy Magistrate had jurisdiction to try the charge.—QUEEN-EMPRESS *v.* NAGAPPA, I. L. R., 16 Mad. 461. [Shephard and Best, JJ. Mar. 28, 1893.]

Section 195, Criminal Procedure Code (Act V. of 1898), runs as follows :—

(*1*) No Court shall take cognizance—

(*a*) of any offence punishable under ss. 172 to 188 (both inclusive) of the Indian Penal Code, except with the previous sanction, or on the complaint of the public servant concerned, or of some public servant to whom he is subordinate;

(*b*) of any offence punishable under s. 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, or 228 of the same Code, when such offence is committed in, or in relation to any proceeding in any Court, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate;

(*c*) of any offence described in s. 463, or punishable under ss. 471, 475, or 476 of the same Code, when such offence has been committed by a party to any proceeding in any Court in respect of a document *produced or* given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

(*2*) *In clauses (b) and (c) of sub-section (1), the term "Court" means a Civil, Revenue, or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877.*

(*3*) *The provisions of sub-section (1) with reference to the offences named therein apply also to the abetment of such offences, and attempts to commit them.*

(*4*) The sanction referred to in this section may be expressed in general terms, and need not name the accused person; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed.

(*5*) When sanction is given in respect of any offence referred to in this section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

(*6*) Any sanction *given or* refused under this section may be *revoked or* granted by any authority to which the authority *giving or* refusing it is subordinate; and no sanction shall remain in force for more than six months from the date on which it was *given, provided that the High Court may, for good cause shown, extend the time.*

(*7*) For the purposes of this section every Court shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie, *that is to say,*—

(*a*) *where such appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;*

(*b*) *where such appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case in connection with which the offence is alleged to have been committed;*

(*c*) *where no appeal lies, such Court shall be deemed to be subordinate to the principal Court of original jurisdiction within the local limits of whose jurisdiction such first-mentioned Court is situate.*

CHARGING ON SUSPICION.

NIHALA informed a police-sergeant that a burglary had been committed, and that he suspected Ramkishen. In consequence of this information, Ramkishen's premises were searched, and some property belonging to Nihala was found. Ramkishen was arrested, but upon investigation the Magistrate found that Nihala had himself placed the property where it was discovered. Ramkishen was accordingly discharged, and he then brought a charge against Nihala under s. 211, who was committed to the Deputy Commissioner for trial, but acquitted on the ground that he (Nihala) had never made any charge against Ramkishen, but had merely stated that he suspected him. On the revision side, the Chief Court held that the facts disclosed an offence under s. 211, and directed a new trial.—CROWN *v.* NIHALA, Panj. Rec., No. 14 of 1872.

WHERE a person who is interested in the matter, or has a certain official responsibility, says to a police-officer, "A tells me that X has committed a certain offence, and B and C confirm the statement, and I accordingly suspect X," and follows up that statement by an application to have X's house searched, he prefers a charge against X. If such charge be false, he may be convicted under s. 211 of the Penal Code.—QUEEN *v.* HUNOOMAN LALL, 19 W. R. 5. [Jackson, J. Dec. 4, 1872.]

A STATEMENT made to the police of a suspicion that a particular person had com-

mitted an offence is not a "charge" within the meaning of s. 211 of the Penal Code, nor does it amount to the institution of a criminal proceeding, and the person making the statement cannot, on the suspicion being proved to be unfounded, be convicted under that section.—IN THE MATTER OF BRAMANUND BHATTACHERJEE, 8 C. L. R. 233. [Pontifex, Mitter, and Maclean, JJ. Mar. 10, 1881.]

THE principle of the following ruling, which was one delivered under s. 182 of the Penal Code, would also apply to s. 211 of the same Code: "S. 182 of the Penal Code must be read as entire section, and, when so read, it applies to those cases in which the police are induced, upon information supplied to them, to do or omit to do something which might affect some *third person*, and which they would not have done had they known the truth of the matter laid before them. The facts of the case appear in the following judgment, which is reproduced in full: 'Petheram, C.J.'—We think that this rule must be made absolute to set aside the conviction. The facts of the case are that a person went on one occasion and informed the police that he had been robbed in the street of a shawl, but in the statement which he made to the police he did not indicate any particular person, or describe any person in such a way as by any possibility could be supposed to implicate any one as the person who committed the robbery. All he said was that he was robbed by a person whom he did not see. So that in the statement that he made he did not say anything to cast suspicion on any one in particular. Under these circumstances there was no offence within the meaning of s. 182 of the Penal Code. That section provides that any person who gives any information to a public servant with the intention of inducing him to put his powers in force to the injury or annoyance of any person, or to do or omit anything which such public servant would not have done or omitted to do if the true state of facts respecting which such information was given had been known to him, shall be punished in a certain way there specified. As it seems to us, that section must be read as a whole, and, taken as a whole, we think it applies to those cases in which the police are induced, upon the information supplied to them, to do or omit to do something which might affect some third person, and which they would not have done if they had known the true state of things. Upon the information which was given to these police-constables, all that they could be justified in doing was to examine the informant as to what had happened to him, and then make such inquiries as the result of that examination might render desirable, but they would have no right to interfere with any one or search any one's house, because there were no circumstances brought to their knowledge by the information which this man gave which entitled them to suppose that any particular individual was guilty of any offence. Under the circumstances, the most that the statement of the accused amounts to is, that it was untrue, and was made for the purpose of hoaxing the police. No doubt, that is a very wrong thing for any man to do. In the first place, it is wrong to tell lies; and, in the second place, it is extremely wrong to take up the time of Government servants by putting them to useless inquiries under circumstances of this kind; but I do not think myself that such conduct comes within the meaning of this section, or amounts to anything more than a hoax, for which no punishment is provided by the Code. Under these circumstances, we cannot make a crime when it is not made one by the Code, or provide a punishment for it. The rule will, therefore, be made absolute to set aside the conviction; the prisoner will be discharged.— IN THE MATTER OF GOLAM AHMED KAZI, I L. R., 14 Cal. 314. [Petheram, C J., and Beverley, J. Feb. 19. 1887.] [S. 182 as originally enacted has since been superseded by a new section.]

PUNISHMENT FOR MAKING FALSE CHARGE.

A PRISONER convicted under the second clause of s. 211 of the Penal Code should be sentenced to imprisonment, with or without fine, and not to fine alone.—REG. *v.* RAMA BIN RABHAJI, 1 Bom. H. C. R. 34. [Forbes and Warden, JJ. Aug. 5, 1863.]

DISCUSSION as to the punishment sufficient for women charged with bringing a false charge of dacoity.—QUEEN *v.* NATHOO DOSS, 3 W. R. 12. [Campbell, Jackson, and Glover, JJ. May 15, 1865.]

THE offence of making a false charge, and the offence of intentionally giving false evidence, are not cognate offences, or parts of the same offence, but may be punished separately.—QUEEN *v.* ABDOOL AZEEZ, 7 W. R. 59. [Kemp and Glover, JJ. April 27, 1867.]

REMARKS on the comparatively light sentence passed without any reason in a case where a false charge of murder was preferred and persisted in.—QUEEN *v.* PEELUMLOLL PUDDHUN, 7 W. R. 75. [Seton-Karr, J. May 28, 1867.]

WHERE no criminal proceeding is instituted on a false charge of an offence of the nature described in the latter part of s. 211 of the Penal Code, the person making such

charge is punishable only under the first part of that section.—EMPRESS *v.* PARAHU, I. L. R., 5 All. 598. [Brodhurst, J. -May 22, 1883.] Concurs in *Empress* v. *Pitam Rai*, I. L. R., 5 All. 215.

WHERE the accused, who was a head-constable, was found guilty of making a false charge under s. 211, and of giving false evidence under s. 193 of the Penal Code, and the Sessions Judge passed sentences of three months' simple imprisonment for each offence, and, taking into consideration the accused's past conduct, directed that the sentences should run concurrently, *held* that the sentences were inadequate and illegal. Accordingly, the sentences were enhanced to three months' rigorous imprisonment for each offence; and, as the two offences were distinct, the High Court directed, under s. 35 of the Criminal Procedure Code (Act X. of 1882), one sentence to commence after the expiration of the other. *Queen* v. *Abdool Azeez* (7 W. R 59) followed.—QUEEN-EMPRESS *v.* PIR MAHOMED, I. L. R., 10 Bom. 254. [Birdwood and Jardine, JJ. Dec. 10, 1885.]

THE complainant was directed to pay Rs. 50 as compensation to the accused, or, in default, to suffer simple imprisonment for one month under s. 560 of the Code of Criminal Procedure, and sanction was also granted to prosecute him for offences under ss. 211 and 193 of the Penal Code. *Held* that, if the Magistrate thought that this was a case in which a prosecution under ss. 211 and 193 of the Penal Code should be sanctioned, he ought not to have taken action under the provisions of s. 560 of the Code of Criminal Procedure. *Held* also that the order for imprisonment in default of payment of the compensation awarded was illegal. *Ramjeevan Koormi* v. *Durga Churn Sadhu Khan* (I. L. R., 21 Cal. 979) followed.—SHIB NATA CHONG *v* SARAT CHUNDER SARKAR, I. L. R., 22 Cal. 586. [Petheram, C.J., and Beverley, J. April 1, 1895.]

**212.*** Whenever an offence has been committed, whoever harbours † or conceals a person whom he knows or has reason to believe to be the offender with the intention of screening him from legal punishment,

Harbouring offender—

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Bailable. Not comp.

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine;

if a capital offence;

and, if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

Ditto.

if punishable with transportation for life, or with imprisonment.

and, if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Presy. Mag. or Mag. of 1st class, or Court by which offence triable. Cognizable. Warrant. Bailable. Not comp.

'Offence' in this section includes any act committed at any place out of British India, which, if committed in British India, would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460; and every such act shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in British India.‡

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* In s. 212, the word "offence" has the same meaning when the thing punishable under the special or local law as defined in ss. 41 and 42 is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—See s. 40, *supra*.

† As to meaning of "harbour," see s. 216B, *infra*.

‡ This paragraph has been inserted by the Indian Criminal Law Amendment Act (III. of 1894), s. 7.

*Exception.*—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

*Illustration.*

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to transportation for life, A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

IN this section the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—S. 40, Penal Code.

S. 108 of the Penal Code does not contemplate any acts of subsequent abetment, or provide for the punishment of such offences, except when they are such as are defined in ss. 212 to 218.—QUEEN *v.* PAUN PUNDAH, 18 W. R. 28; 9 B. L. R. Ap. 16. [Kemp and Glover JJ. July 11, 1872.]

To support a conviction under s. 212, there must be evidence (*a*) of an offence committed which the accused could have intended to screen, and (*b*) of harbouring or concealing the offender. A chaukidar and a patwari concocting together, and letting a thief go, do not come under s. 212.—CROWN *v.* KALA SING, Panj. Rec., No. 21 of 1867.

To justify a conviction under s. 212 of the Penal Code, it is necessary that there should be an offence committed, and consequently an offender who has been harboured or concealed. *Empress* v. *Abdul Kadir* (I. L. R., 3 All. 279) referred to.—QUEEN-EMPRESS *v.* FATEH SINGH, I. L. R., 12 All 432. [Straight, ]. Dec. 6, 1889.]

Ct. of Ses. Uncog. Warrant. Bailable. Not comp.

**218.*** Whoever accepts, or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

Taking gift, &c., to screen an offender from punishment—

if a capital offence;

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp.

if punishable with transportation for life, or with imprisonment.

and, if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

*Presy. Mag.*, or Mag. of 1st class, or Court by which offence triable. Uncog. Warrant. Bailable. Not comp.

and, if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

IN this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

A DEPUTY MAGISTRATE vested with the powers of a Subordinate Magistrate of the second class is not competent to initiate a charge under s. 213.—*In re* JHOOMUCK CHA-

* In s. 213, the word "*offence*" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

For exception to s. 213, see s. 214, excep., *infra*.

MAR, 6 W. R. 90. [Kemp and Markby, JJ. Dec. 13, 1866.]

S. 213 of the Penal Code is applicable only when it is proved that the person screened or attempted to be screened from legal punishment has been guilty of an offence, and not when there is merely a suspicion of his having committed some offence. *Queen-Empress* v. *Saminatha* (I. L. R., 14 Mad. 400) followed.—GIRISH MYTE v. QUEEN-EMPRESS, I. L. R., 23 Cal. 420. [Ghose and Rampini, JJ. Feb. 4, 1896.]

THE accused, a Sub-Inspector of Police, arrested one *J.*, wrongfully confined him, and extorted from him Rs 200 under a threat that he, the accused, would not release *J.*, unless the money were paid This money was paid on this account by *P.*, a money-lender, who lent *J.* the money for this purpose. Accused was convicted under ss. 342 and 384 of the Penal Code In appeal the Sessions Judge held that *P.* was not an accomplice, and having considered his evidence accordingly dismissed the appeal. *Held* that it was sufficiently shown that the money was not voluntarily given, that it was given by *J.* to obtain his release from police-custody, in which he was detained on no reasonable or sufficient ground, and it was extorted, because the Sub-Inspector refused to release *J.*, as he was bound to do, unless he were paid that money. That *P.* paying such money under such circumstances could not be regarded as an accomplice of the Sub-Inspector in such misconduct. — AKHOY KUMAR CHUCKERBUTTY v. JAGAT CHUNDER CHUCKERBUTTY, I. L. R., 27 Cal. 925. [Prinsep and Handley, JJ. Mar. 29 and April 2, 1900.]

**214.*** Whoever gives or causes, or offers or agrees to give or cause, any gratification to any person, or to restore or cause the restoration of any property to any person, in consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,

Offering gift or restoration of property in consideration of screening offender—

Ct. of Ses. Uncog. Warrant. Bailable. Not comp.

shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if a capital offence;

and, if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with transportation for life, or with imprisonment.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp.

and, if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Presy. Mag., or Mag. of 1st class or Court by which offence triable. Uncog. Warrant. Bailable. Not comp.

*Exception.*—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.†

*Illustrations.*—[*Repealed by the old Criminal Procedure Code (Act X. of 1882.)*]

IN this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

A WARRANT-CASE, of a nature not compoundable under s. 214 of the Penal Code, was "dismissed" on the parties coming to an amicable settlement. *Held* that the "dis-

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* In s. 214, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s 40 of this Code, *supra*.

† This exception to s. 214 has been substituted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 6, for the one originally enacted.

missal" was equivalent to a discharge under s. 215 of the Code of Criminal Procedure, and the composition did not affect the revival of the prosecution, if that should otherwise be thought necessary or expedient.—REG. *v.* DEVANA, I. L. R., 1 Bom. 64. [West and Nanabhai Haridas, JJ. Dec. 8, 1875.]

THE accused agreed to give Rs. 10 to Saminatha Pillai in consideration of his not giving evidence against Kolundavelu, who was charged with the offences of housebreaking by night and theft in a building. Saminatha Pillai gave evidence against Kolundavelu, who was, however, acquitted. The accused was charged under the Penal Code, s. 214, but was acquitted. *Held* that the acquittal was right.—QUEEN-EMPRESS *v.* SAMINATHA, I. L. R., 14 Mad. 400. [Muttusami Ayyar and Parker, JJ. Dec. 4, 1890.]

Presy. Mag. or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp.

Taking gift to help to recover stolen property, &c.

**215.** Whoever takes, or agrees or consents to take, any gratification under pretence or on account of helping any person to recover any moveable property, of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

IN order to constitute the offence punishable under s. 215 of the Penal Code, it is necessary that the person who is willing to take, and the person who is willing to give, the illegal gratification, must agree, not only as to the object for which the gratification is to be given, but also as to the shape or form the gratification is to take.—QUEEN-EMPRESS *v.* CHITTAR, I. L. R., 20 All. 389. [Dillon, J. April 25, 1898.]

S. 215 of the Indian Penal Code was not intended to apply to the actual thief, but to some one who, being in league with the thief, receives some gratification on account of helping the owner to recover the stolen property without, at the same time, using all the means in his power to cause the thief to be apprehended and convicted of the offence.—QUEEN-EMPRESS *v.* MUHAMMAD ALI, I. L. R., 23 All. 81. [Aikman, J. Sep. 18, 1900.]

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Bailable. Not comp.

Harbouring an offender who has escaped from custody, or whose apprehension has been ordered—

**216.*** Whenever any person convicted of, or charged with, an offence, being in lawful custody for that offence, escapes from such custody,

or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours† or conceals that person, with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say,

if a capital offence;

if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

Ditto.

if punishable with transportation for life, or with imprisonment.

if the offence is punishable with transportation for life, or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine;

Presy. Mag. or Mag. of 1st class, or Court by which offence triable. Cognizable. Warrant. Bailable. Not comp.

and, if the offence is punishable with imprisonment which may extend to one year, and not to ten years, he shall be punished with imprisonment of the

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* In s. 216 the word "offence" has the same meaning when the thing punishable under the special or local law as defined in ss. 41 and 42 is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—See s. 40, *supra*.

† As to meaning of "harbour," see s. 216B, *infra*.

description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

"Offence" in this section includes also any act or omission of which a person is alleged to have been guilty out of British India which, if he had been guilty of it in British India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in British India; and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in British India.*

*Exception.*—This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

IN this section the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—S. 40, Penal Code.

**216A.**† Whoever, knowing or having reason to believe that any persons are about to commit, or have recently committed, robbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity, or of screening them or any of them from punishment, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Penalty for harbouring robbers or dacoits.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Bailable. Not comp.

*Explanation.*—For the purposes of this section it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed, within or without British India.

*Exception.*—This provision does not extend to the case in which the harbour is by the husband or wife of the offender.

**216B.**‡ In sections 212, 216, and 216A, the word 'harbour' includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition, or means of conveyance, or the assisting a person in any way to evade apprehension.

Definition of 'harbour' in sections 212, 216, and 216A.

**217.** Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment, than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture, or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture.

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

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* This paragraph in s. 216 has been inserted by the Indian Criminal Law Amendment Act (X. of 1886), s. 23.

† S. 216A has been inserted by the Indian Criminal Law Amendment Act (III. of 1894), s. 8.

‡ S. 216B has been inserted by the Indian Criminal Law Amendment Act (III. of 1894), s. 8.

IT is only necessary for a conviction under s. 217 of the Penal Code to show that the prisoner knew that the person he released was in danger of punishment, and that the prisoner released such person with the intention of saving him.—QUEEN v. ABDOOL JALEEL, W. R., Gap., 1864, 5. [Jackson, J. Feb. 2, 1864.]

UNDER the latter portions of ss. 217 and 218, the actual guilt or innocence of the alleged offender is immaterial, if the prisoner believes he is guilty, and intends to screen him.—QUEEN v. HURDUT SURMA, 8 W. R. 68; 3 Mad. Jur. 53. [Seton-Karr and Macpherson, JJ. Sep. 7, 1867.]

SEVERAL persons were apprehended at night time on suspicion of having committed culpable homicide. The police-officer tied them together by the hands, and kept them in the village in which they had been arrested, instead of at once taking them to the nearest police-station. The prisoners escaped in the course of the night. To render s. 217 applicable two conditions must be fulfilled: 1st, there must be an intentional disobedience of a rule of law; 2nd there must be a knowledge that the offender, by disobedience, will save a person from legal punishment. If the police-officer's intention in keeping the prisoners in the village was merely to wait until it was more convenient to start, the disobedience of this rule of law was not such a disobedience as this section contemplates. In this case it was held that the police-officer had not committed an offence under s. 217.—REG v. WOOTUM CHUSO Panj Rec., No. 18 of 1871

WHERE a village-accountant and a village-munsif's peon had been convicted, under s. 217 of the Penal Code, of having disobeyed the direction of law contained in Act X. of 1872, s. 90, *held* that they were wrongfully convicted as not bearing the character which raises the obligation under the latter section. The direction of the law mentioned in s. 217, Penal Code, means a positive direction of law, such as those contained in ss. 89 and 90 of the Criminal Procedure Code of 1872 and cannot be made to extend to the more general obligation on every subject not to stifle a criminal charge.—*In re* RAMINIHI NAYAR, I. L. R., 1 Mad. 266. [Innes and Kernan, JJ. Mar. 7. 1877.]

THE accused was charged under s. 217 of the Penal Code; but the charge did not distinctly state what the direction of the law was which he disobeyed, and how he disobeyed it. *Held* that, when accused has been convicted on a charge expressed in vague terms, the prosecution on appeal should be limited to the particular sense in which the charge has been understood at the trial.—IMPERATRIX v. BABAN KHAN, I. L. R., 2 Bom. 142. [West and Pinhey, JJ. Aug 1, 1877.]

IT is sufficient, for the purpose of a conviction under s. 217 of the Penal Code, that the accused has knowingly disobeyed any direction of the law as to the way in which he is to conduct himself as a public servant, and that he has done this with the intention of saving a person from legal punishment; it is not necessary to show that, in point of fact, the person so intended to be saved had committed an offence, or was justly liable to legal punishment.—EMPRESS v. AMIRUDDEEN, I. L. R., 3 Cal. 412, 1 C. L. R. 483. [Jackson and Cunningham, JJ. Feb. 12, 1878.]

Ct. of Ses. Uncog. Warrant. Bailable. Not comp.

Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.

**218.** Whoever, being a public servant, and being, as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture, or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

THE intention is an essential ingredient in the offence contemplated in s. 218.—QUEEN v. SHAMA CHURN ROY, 8 W. R. 27. [Jackson and Hobhouse, JJ. June 25, 1867.]

WHERE a person is charged under s. 218 with framing a report incorrectly, or under s. 201 with giving false information with intent to save offenders from punishment, the issue to be tried is, not whether such alleged offenders were, in fact, guilty or not, but merely the belief and intention of the prisoner in respect to their guilt.—QUEEN v. HURDUT SURMA, 8 W. R. 68. [Seton-Karr and Macpherson, JJ. Sep. 7, 1867.]

A KULKARNI who makes a false report with reference to an offence committed in his village with intent, &c., is punishable under s. 218 of the Penal Code.—REG. v. MALHAR RAMCHUNDRA, 7 Bom. H. C. R. 64. [Gibbs and Melvill, JJ. Aug. 11, 1870.]

A POLICE-OFFICER negligently or improperly submitting an incorrect report of a local investigation may be punished under s. 29, Act V. of 1861, in cases where the proof is insufficient to bring the case under s. 218, Penal Code.—BORODA KANT MOOKHOPADHYA, 15 W. R. 17. [Norman, Offg. C.J., and Loch, J. Feb. 11, 1871.]

S. 108 of the Penal Code does not contemplate any acts of subsequent abetment or provide for the punishment of such offences, except when they are such as are defined in ss. 212 to 218.—QUEEN v. PAUN PUNDAH, 18 W. R. 28; 9 B. L. R. Ap. 16. [Kemp and Glover, JJ. July 11, 1872.]

WHERE a chaukidar was charged under s. 218, Penal Code, with having made a false entry in a chaukidari attendance book with a view to support a charge which was made against a sub-inspector of having made a false report regarding the length of absence from duty of another chaukidar, and thereby to cause loss or injury to the sub-inspector, it was held that the intention was too remote to fall within s. 218.—QUEEN v. JUNGLE LALL, 19 W. R. 40. [Kemp and Pontifex, JJ. Mar. 1, 1873.]

S WAS charged with the preparation of a certain record, and was in the habit of preparing it from certain abstracts made and read to him by D. D made and read false abstracts, whereby an incorrect record was prepared. The Court was of opinion that D could not strictly be held to have committed the offence described in s. 218 of the Penal Code. He was guilty, however, of abetment of the offence described in that section, and not the less so that S had no guilty knowledge or intention in the matter.—QUEEN v. BRIJ MOHUN LAL, 7 N.-W. P. 134. [Pearson, J. Jan. 25, 1875.]

L was charged by S with offences under ss. 193 and 218, Penal Code, and also accused of acts amounting to offences punishable under s. 466 with seven years imprisonment. The Magistrate directed his discharge, whereupon L applied to the Court of Session, and S was committed for trial charged under s. 218, and acquitted by the Court of Session. The Court of Session then, under Act X. of 1872, s. 472, charged L with offences punishable under ss. 193, 195, 211, and 211 and 109, Penal Code, and committed him for trial. *Held* that such commitment was not bad, because it included the charge under s. 493, such an offence not being exclusively triable by a Court of Session.—EMPRESS v. LACHMAN SINGH, I. L. R., 2 All. 398. [Stuart, C.J., and Spankie, J. June 11, 1879.]

A PUBLIC SERVANT in charge, as such, of certain documents, having been required to produce them, and being unable to do so, fabricated and produced similar documents with the intention of screening himself from punishment. *Held* that such fabricated documents, not being records or writings with the preparation of which such public servant, as such, was charged, he could not legally be convicted under s. 218 of the Penal Code; nor, such documents not being forgeries, as they were not made with the intent specified in s. 463, could he be legally convicted under s. 471.—EMPRESS v. MAZHAR HUSAIN, I. L. R. 5 All. 553. [Stuart, C.J., and Straight, Oldfield, Brodhurst, and Tyrrell, JJ. Mar. 19, 1883.]

A POLICE-OFFICER, who had suppressed a document entrusted to him to forward to his superior officer, made a false entry in his official diary that the document had been so forwarded, intending that, if he were prosecuted under the Police Act for suppressing the document, such entry might be used as evidence in his behalf that he had so forwarded the document. *Held* that, inasmuch as to constitute the offence of fabricating false evidence, defined in s. 192 of the Penal Code, the evidence fabricated must be admissible evidence, and as, if such police-officer had been prosecuted under the Police Act, the entry in the diary would not have been admissible in his behalf though contrary to his intention it might have been used against him, such police-officer was improperly convicted in respect of such entry of fabricating false evidence punishable under s. 193 of the Penal Code. *Held* also that, such police-officer's intention in making such entry being to screen himself from punishment, he was not punishable under s. 218 of the Code.—EMPRESS v. GAURI SHANKER, I. L. R., 6 All. 42. [Straight, J. July 24, 1883.]

A TREASURY-ACCOUNTANT was convicted of offences under ss. 218 and 465 of the Penal Code under the following circumstances: A sum of Rs. 500 which was in the treasury, and was payable to a particular person through a Civil Court, was drawn out and paid away to other persons by means of forged cheques. After the withdrawal of the Rs. 500, but before such withdrawal had been discovered, the representative of the payee applied for payment. The prisoner then, upon two occasions, wrote reports to the effect that the Rs. 500 in question then stood at the payee's credit as a revenue-deposit, and that it was

about to be transferred to the Civil Court. Upon the first of these reports an order was signed by the treasury-officer for the transfer of the money to the Civil Court concerned, and to effect such transfer a cheque was prepared by the sale-muharrir, which, as originally drawn up, related to the sum of Rs. 500 already mentioned. The signature of the cheque by the treasury-officer was delayed for some time, and meanwhile the cheque was altered by the prisoner in such a manner as to make it relate to another deposit of Rs 500 which had been made subsequently to the above, and to the credit of another person. The result of this was the transfer of the second payee's Rs 500 to the Civil Court, as if it had been the first Rs. 500, and to the credit of the first payee's representative. The prisoner was convicted under s. 465 of the Penal Code in respect of the cheque, and under s. 218 in respect of the two reports above referred to *Held*, with respect to the charge under s. 465, that the prisoner's immediate and more probable intention—which alone, and not his remoter and less probable intention, should be attributed to him—was not to cause wrongful loss to the second payee by delaying payment of the Rs. 500 due to her, though the act might have caused her loss, but to conceal the previous fraudulent withdrawal of the first payee's Rs. 500; that, under these circumstances, he could not be said to have acted "dishonestly" or "fraudulently" within the meaning of s 24 or s. 25 of the Penal Code; and that, therefore, his guilt under s 465 had not been made out, and the conviction under that section must be set aside. *Held* also that prisoner's intention in making the false reports was to stave off the discovery of the previous fraud, and save himself or the actual perpetrator of that fraud from legal punishment, and that, having prepared the reports in a manner which he knew to be incorrect, he was rightly convicted under s. 218 of the Penal Code. *Held* further that, as the prisoner, who was a public servant, made these reports, and assumed to make them in due course and as a part of his duty, and held them out as reports which were made by the proper officer, and as no question was put in the examination of the witnesses from the office which suggested that it was not his business to make such reports, it must be inferred that he made them because it was his business to do so, and as a public servant within the meaning of s. 218 of the Penal Code.—QUEEN-EMPRESS *v.* GRIDHARI LAL, I. L. R., 8 All. 653. [Edge, C.J. Aug 24, 1886;

A PUBLIC servant who does that which, if done to save another from legal punishment, would bring the public servant within s 218 of the Penal Code, has equally committed the offence punishable under s. 218, if the person whom he intends to save from legal punishment is himself. *Queen-Empress* v. *Gauri Shankar* (I. L. R., 6 All. 42), *quoad hoc* overruled. *Queen-Empress* v. *Girdhari Lal* (I. L. R., 8 All. 653) referred to.—QUEEN-EMPRESS *v.* NAND KISHORE, I. L. R., 19 All. 305. [John Edge, C.J., and Blair, J. Feb. 12, 1897.]

A REPORT of the commission of a dacoity was made at a thana. The police-officer in charge of the thana at first took down the report which was made to him, but subsequently destroyed that report, and framed another and a false report—of the commission of a totally different offence—to which he obtained the signature of the complainant, and which he endeavoured to pass off as the original and correct report made to him by the complainant. *Held* that, on the above facts, the police-officer was guilty of the offences punishable under s 204 and s. 218 of the Indian Penal Code.—QUEEN-EMPRESS *v.* MUHAMMAD SHAH KHAN, I. L. R., 20 All. 307. [John Edge, C.J., and Burkitt, J.J. Feb. 11, 1898.]

THE District Superintendent of Police gave a warrant under the Gambling Act (Ben. Act II. of 1897) to *D*, a sub-inspector, to arrest persons found gambling in a certain house. In order to save two persons from legal punishment for having committed an offence under the Gambling Act in that house, *D* framed a first information and a special diary incorrectly. *Held*, he was properly charged with, and found guilty of, having committed an offence under section 218 of the Penal Code. The word "charged" in that section is not restricted to the narrow meaning of "enjoined by a special provision of law." An offence under the Gambling Act, being an offence for which the District Superintendent of Police may arrest or by warrant direct an arrest, is a cognizable offence within the meaning of s. 4, cl. (*f*), of the Criminal Procedure Code. The words "a police-officer," in that clause do not mean "any and every police-officer," it is sufficient if the Legislature by any law limits the power of arrest to any particular class of police-officers. *D*, and *F*, a head constable, were also charged under section 161, and section 161 read with s. 114, of the Penal Code, respectively, and it was contended that these charges were not sustainable, because they rested entirely on the testimony of persons alleged to have been accomplices, who had not been corroborated in material particulars. *Held*, the mere presence of a person on the occasion of the giving of a bribe, and his omission to promptly inform the authorities, do not constitute him

an accomplice, unless it can be shown that he somehow co-operated in the payment of the bribe, or was instrumental in the negotiations for the payment. *Queen* v. *Chundo Chundalinee* (24 W. R. Cr. 55); *Queen-Empress* v. *Magantal* (I L. R., 14 Bom. 115); *Queen-Empress* v *Chagan Dayaram* (I. L R., 14 Bom. 331); *Queen-Empress* v. *O'Hara* (I. L R., 17 Cal. 642); *Ishan Chundra* v. *Queen-Empress* (I. L. R., 21 Cal 328); *Jogendro Nath Bhaumik* v. *Sangat Garo* (2 C. W. N. 55); *Rajoni Kanto Bose* v. *Asan Mullick* (2 C. W. N 672); and *Alimuddin* v. *Queen-Empress* (I. L. R., 23 Cal. 361) distinguished.—QUEEN-EMPRESS v. DEODHAR SINGH, I. L. R., 27 Cal. 144. [Rampini and Pratt, JJ. Sep. 5, 1899.]

**219.** Whoever, being a public servant, corruptly or maliciously makes or pronounces, in any stage of a judicial proceeding, any report, order, verdict, or decision, which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both. Ct. of Ses. Uncog. Warrant. Bailable. Not comp.

Public servant in judicial proceeding corruptly making report, &c., contrary to law.

**220.** Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that authority, knowing that, in so doing, he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both. Ditto.

Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.

PROOF of an unlawful commitment to confinement will not of itself warrant the legal inference of malice. Knowledge that such commitment is contrary to law is a question of fact, and not of law, and must be proved in order to satisfy the requirements of s. 220 of the Penal Code.—REG v. NARAYAN BABAJI, 9 Bom. H. C. R 346 [Lloyd and Kemball, JJ. Aug. 28, 1872.]

S. 54 of the Criminal Procedure Code (Act X. of 1882) authorizes the arrest by the police, not only of persons against whom a reasonable complaint has been made, or a reasonable suspicion exists of their having been concerned in a "cognizable offence," but also of persons against whom "credible information" to that effect has been received. *Semble.*—Where the arrest is legal, there can be no guilty knowledge "superadded to an illegal act," such as it is necessary to establish against the accused to justify a conviction under s 220 of the Penal Code. It is only where there has been an excess by a police-officer of his legal powers of arrest, that it becomes necessary to consider whether he has acted corruptly or maliciously, and with the knowledge that he was acting contrary to law.—QUEEN-EMPRESS v. AMARSANG JETHA, I. L. R, 10 Bom. 506. [Birdwood and Jardine, JJ. Dec. 7. 1885.]

**221.*** Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with, or liable to be apprehended for, an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping, or attempting to escape, from such confinement, shall be punished as follows, that is to say:— Ditto.

Intentional omission to apprehend on the part of public servant bound to apprehend.

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with death; or

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* In s 221, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp.

with imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with transportation for life, or imprisonment for a term which may extend to ten years; or

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Not comp.

with imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term less than ten years.

In this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code

An offence falling under the Police Act and also under the Penal Code should be punished under the Code. Where a police-constable allowed a prisoner to escape from the *hawalat* while the former was on duty as sentry, and was sentenced, on conviction by the Magistrate, to forfeit three months' pay under s. 29, Act V. of 1861, the Chief Court held that the conviction must be quashed, and the accused tried under s. 221.—CROWN v. FUTTEH KHAN, Panj. Rec., No. 11 of 1874.

A CHAUKIDAR, or village-watchman, is not legally bound as a public servant to apprehend a person accused of committing murder outside the village of which he is chaukidar, such person not being a proclaimed offender, and not having been found by him in the act of committing such murder; and consequently such chaukidar, if he refuses to apprehend such person on such charge at the instance of a private person, is not punishable under s. 221 of the Penal Code.—EMPRESS v. KALU, I. L. R., 3 All. 60. [Pearson, J. June 25, 1880.]

Ct. of Ses., Uncog. Warrant. Not bailable. Not comp.

**222.*** Whoever, being a public servant, legally bound as such public servant to apprehend, or to keep in confinement, any person under sentence of a Court of Justice for any offence, "or lawfully committed to custody,"† intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping, or attempting to escape, from such confinement, shall be punished as follows, that is to say:—

Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed.

with transportation for life, or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death; or

Ditto.

with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to transportation for life or penal servitude for life, or to transportation or penal servitude or imprisonment for a term of ten years or upwards; or

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp.

with imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, to

* In s. 222, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

† In s. 222, the words quoted have been inserted by the Indian Penal Code Amendment Act (XXVII. of 1870) s. 8.

imprisonment for a term not extending to ten years, "or if the person was lawfully committed to custody."*

IN this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

**223.**† Whoever, being a public servant, legally bound as such public servant to keep in confinement any person charged with, or convicted of, any offence, "or lawfully committed to custody,"* negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Escape from confinement or custody negligently suffered by a public servant.

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

IN this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

CONVICT-WARDERS are "public servants" within the meaning of s. 223 of the Penal Code.—QUEEN *v.* KALLY CHAND MOITREE, 7 W. R. 63; 3 Wym. 35. Seton-Karr and Macpherson, JJ. May 6, 1867.

WHILE a case was being investigated by A, a police-officer under the provisions of ch. 14 of the Criminal Procedure Code, 1882, T presented a petition to the Magistrate having jurisdiction to try the case, in which he accused W of being concerned in the commission of the offence, and prayed that he might be arrested and sent to the police-officer investigating the case. W was accordingly arrested and brought before the Magistrate who, having examined T on oath, and taken W's statement, made an order on the petition to the following effect: "As no police-report has been made in this matter, and the petitioner only has presented this petition, ordered that these papers of W be sent to the District Superintendent of Police, and if a report of this matter be made, the case may be sent up according to rule with the papers." In accordance with this order, W was taken to the District Superintendent of Police, and was sent by that officer to A. *Held* that the Magistrate's order might be taken to have been passed under s. 167 of the Code, and therefore W was lawfully committed to the custody of the police and A was bound to detain him in such custody until released therefrom by due course of law; and that, consequently, A, having negligently suffered W to escape, had been properly convicted under s 223 of the Penal Code.—EMPRESS *v.* ASHRAF ALI, I. L. R., 9 All. 129. Straight, J. Dec 13, 1883.

S. 223 of the Penal Code applies only to cases where the person who is allowed to escape is in custody for an offence, or has been committed to custody, and not to cases where such person has merely been arrested under civil process.—QUEEN-EMPRESS *v.* TAFAULLAH, I. L. R., 12 Cal 190. Wilson and Ghose, JJ. Aug. 24, 1885.

**224.**† Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged, or of which he has been convicted, or escapes, or attempts to escape, from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Resistance or obstruction by a person to his lawful apprehension.

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

*Explanation.*—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

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* In ss. 222 and 223, the words quoted have been inserted by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 8.

† In ss. 223 and 224, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

IN this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

ESCAPING from lawful custody is not obstructing a public servant in the discharge of his public functions within the meaning of s. 186 of the Penal Code.—REG. *v.* POSHU BIN DHAMBAJI PATIL, 2 Bom. H. C. R. 128. [Couch, C.J., and Newton and Warden, JJ. Jan. 25, 1865.]

ESCAPES by parties detained for offences not punishable under the Penal Code are punishable under the Penal Code.—PRO., Dec. 22, 1866, 3 Mad. H. C. R. Ap. 11. [Bittleston, Offg. C.J., and Holloway, Collett, Ellis, and Innes, JJ.]

THE punishment for escape from lawful custody (s. 224), in a case in which that is one of the offences of which the prisoner is convicted, must be "in addition" to any punishment awarded for the substantive offence.—QUEEN *v.* DHOONDA BHOOYA, 8 W. R. 85; 5 Wym. 7. [Kemp and Glover, JJ. Dec. 2, 1867.]

To constitute the offence of escaping from transportation under s. 226 of the Penal Code, it is essential that the convict should have been actually sent to a penal settlement, and have returned before his term of transportation had expired or been remitted. Where a prisoner had escaped from custody whilst on his way to undergo sentence of transportation, *held* that he had committed an offence punishable under s. 224, and not under s. 226 of the Penal Code.—REG. *v.* RAMASAMY, 4 Mad. H. C. R. 152. [Scotland, C.J., and Collett, J. Dec. 2, 1868.]

To escape from custody under civil process is not a criminal offence within the meaning of s. 8 of the Presidency Towns' Police Amendment Act of 1860. *Quære.*—Whether such an escape, without force, is a misdemeanour at Common Law?—*In re* DAVID TURNBULL STUART; REG. *v.* JOHN CONNON, 6 Bom. H. C. R. 15. [Westropp and Sargeant, JJ. April 12, 1869.]

PRISONER, whilst under trial before the Sessions Court upon a charge framed under s. 436 of the Penal Code (mischief by fire, &c., with intent to destroy a house), was charged under s. 224 with escaping from lawful custody. The Magistrate, being too late to make the latter offence the subject of another charge in the same case, made a separate commitment of the prisoner, after he had been convicted of the former offence, for the latter offence, which was one cognizable by the Magistrate. The commitment was cancelled, and the Magistrate directed to deal with the case himself.—*In re* ANUNTO KOYBURT, 17 W. R. 14. [Kemp and Jackson, JJ. Feb. 10, 1872.]

A PERSON who is detained in custody for the purpose of giving security for good behaviour, and escapes from the custody, has not committed an offence under s. 224, as he was not lawfully detained in custody for an offence.—PRO., Oct. 28, 1874, 7 Mad. H. C. R. Ap. 41. He is liable to be punished under s. 225A.

WHERE a person apprehended on a charge of a cognizable offence escapes from lawful custody, his liability to punishment is not affected by the circumstance that a competent Court determines his offence to be other than that with which he has been charged. But, if charged with a non-cognizable offence, the police-officer, who apprehends him without warrant, does not have him in lawful custody, and his escape is not punishable under the Indian Penal Code, s 224.—QUEEN *v.* RAM SARAN TEWARY, 24 W. R. 45 [Jackson and McDonell, JJ. Aug. 19, 1875.]

WHERE a party was sentenced to ten months' imprisonment for escaping from a confinement, which he was undergoing without warrant of law, and without having committed an offence, the High Court, in the exercise of its powers of interference, set aside the sentence.—QUEEN *v.* RUGHOOBUR SINGH, 25 W. R. 1. Jackson and McDonell, JJ. Dec. 2, 1875.

ESCAPE from the custody of a village-watchman by a person wanted by the police on a charge of theft, and arrested on suspicion by the village-watchman, is no offence under s. 224.—REG. *v.* BOJJIGAN (I. L. R., 5 Mad. 22), following *Reg v. M. Sinnadu Padiyachi* (Weir, p. 68), in which the facts were as follow: "A prisoner, caught stealing limes, was brought by the owner to the village-magistrate, who put him into the stocks and put the talyari and vettiyan in charge over him. They went to sleep, and the prisoner released himself. *Held* that the confinement in the stocks of the accused before conviction was not lawful custody (Mad. Reg. XI. of 1816), and that the village-watchman was not a police-officer within the meaning of Act XXIV. of 1859, because he had not been enrolled or invested with power under s. 11 of that Act. Conviction for escaping from lawful custody. Sep. 23, 1878."

AN escape from custody when being taken before a Magistrate for the purpose of being bound over to be of good behaviour is not punishable under either s. 224 or s. 225 of the Penal Code.—EMPRESS *v.* SHASTI CHURN NAPIT, I. L. R., 8 Cal 331; 10 C. L. R. 290. [Mitter and Maclean, JJ. Feb. 22,

1882.] Followed in *Queen-Empress* v. *Kandhaia*, I. L. R., 7 All. 67, *infra*.

AN order was issued to a police-officer, directing him to arrest K under s. 55 of the Criminal Procedure Code, as a person of bad livelihood. K, with the assistance of three others, resisted apprehension, and escaped. *Held* that K was not charged with an "offence" within the meaning of that term as defined in s. 40 of the Penal Code, and that consequently no offence made punishable by s. 224 or s. 225 of the Penal Code had been committed in connection with his evasion of arrest. *Empress* v. *Shasti Churn Napit* (I. L. R., 8 Cal. 331) followed.—QUEEN-EMPRESS *v.* KANDHAIA, I. L. R., 7 All. 67. [Mahmood and Duthoit, JJ. Aug. 7, 1884.]

THE accused was arrested in the act of stealing, and was handed over to the village-magistrate, who forwarded him in custody of the village-servants to a police-station. The accused escaped on the way. He was convicted under s. 224 of the Penal Code. On appeal the conviction was reversed, on the ground that the custody was not legal. *Held* that the conviction was right. S. 59 of the Code of Criminal Procedure, which requires a private person who arrests a thief in the act to take the thief to the nearest police-station, is sufficiently complied by sending the offender in custody of a servant.—QUEEN-EMPRESS *v.* POTADU, I. L. R., 11 Mad. 480. [Muttusami Ayyar and Parker, JJ. Sep. 4, 1888.] Referred to in *King-Emperor* v. *Johri*, I. L. R., 23 All. 166, *infra*.

ON a charge under the Penal Code, s. 226, it appeared that the accused had been apprehended on a hue and cry being raised as he was running away after committing robbery, and that he was handed over to the village-magistrate, and was by him placed in the charge of taliyaries for detention till the next morning, when he was to be taken to the police-station, and that he escaped from the custody of the taliyaries. *Held*, distinguishing *Queen* v. *Bojjigan* (I. L. R., 5 Mad. 22), that the accused was rightly convicted of the offence charged.—QUEEN-EMPRESS *v.* FAKIRA, I. L. R., 17 Mad. 103. [Muttusami Ayyar and Best, JJ. Oct. 25, 1893.]

AN offence was committed in 1866. In 1893 a person of the same name as the offender was arrested, tried, and acquitted. Whilst under arrest, the accused escaped from custody. *Held* that he was not liable to conviction under s. 224 of the Penal Code. An escape from custody, when such detention is not for an offence, is not punishable under that section.—GANGA CHARAN SINGH *v.* QUEEN-EMPRESS, I. L. R., 21 Cal. 337. [Prinsep and Ameer Ali, JJ. Dec. 21, 1893.]

THE accused, having been legally arrested, was subsequently left unguarded, and he escaped. He was then re-arrested, and was tried and convicted under the Penal Code, s. 224. *Held* that the conviction was right.—QUEEN-EMPRESS *v.* MUPPAN, I. L. R., 18 Mad. 401. [Shephard and Subramania Ayyar, JJ. July 23, 1895.]

THE Madras Salt Act, 1889, only authorizes searches for contraband salt, and arrests of the parties concerned in the keeping of such salt, to be made by officers of the Salt Department without search-warrant in cases where the delay in obtaining such search-warrant will prevent the discovery of such contraband salt. *Held* that, where the circumstances did not justify the officer in believing that the delay in obtaining a search-warrant would prevent the discovery of contraband salt, he had no power to search or arrest persons without such warrant, and the escape by the persons so arrested from custody was no offence within the meaning of s. 224, Penal Code.—QUEEN-EMPRESS *v.* KALIAN, I. L. R., 19 Mad. 310. [Collins, C.J., and Benson, J. Mar 31, April 15, 1896.]

THERE is nothing extending s. 80 of the Code of Criminal Procedure to an arrest made by the police on an order in writing under s. 56 of that Code, so as to require that any information as to the authority under which the police are acting must be given to the person arrested in order to make it an arrest warranted by law. It may be desirable, or even obligatory, that, if called upon, the police-officer making such an arrest should show the person arrested the authority under which he is acting, but to hold that he is bound to do so before he can properly arrest and detain in custody such a person, so as to make the arrest and the detention lawful, would be to extend the law beyond what the Legislature has thought proper to declare it. QUEEN-EMPRESS *v.* BASANT LALL, I. L. R., 27 Cal. 320. [Prinsep and Stanley, JJ. Jan. 26, 1900.]

S. 411 of the Indian Penal Code does not apply to the person who is the actual thief. Where, therefore, a person whose bullock had been stolen in his absence traced it to the house of the thief, and there and then arrested him, and made him over to a chaukidar, from whose custody he escaped, it was *held* that this was not an escape from lawful custody within the meaning of s. 224 of the Code. *Semble*, that if the owner of the bullock had himself been entitled to make the arrest, the subsequent custody of the prisoner by the chaukidar would have been a lawful custody. *Queen-Empress* v. *Potadu* (I. L. R., 11 Mad. 480) referred to.—KING-EMPEROR *v.* JOHRI, I. L. R., 23 All. 266. [Blair and Aikman, JJ. Mar. 14, 1901.]

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

**225.*** Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

Resistance or obstruction to lawful apprehension of another person.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp.

or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with, or liable to be apprehended for, an offence punishable with transportation for life or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

or, if the person to be apprehended or rescued, or attempted to be rescued, is charged with, or liable to be apprehended for, an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

Ditto.

or, if the person to be apprehended or rescued, or attempted to be rescued, is liable under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to transportation for life, or to transportation, penal servitude, or imprisonment for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

Ditto.

or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

IN this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S 40, Penal Code.

WHERE substantially but one offence has been committed, and the acts, which are the basis of one charge, are the same which form the basis of another charge on which the prisoner has also been convicted; cumulative sentences on each charge should not be passed. Where prisoners were convicted under s. 224 for escape, under s. 225 for rescuing from lawful custody, and under s. 353 for using criminal force in so doing, and sentenced to separate punishments under each section, it was held that the prisoners had only done one act, and were guilty of only one offence, and should only have been found guilty under ss 224 and 225 of "escape" and "rescuing" respectively and sentenced accordingly.—QUEEN v. KALISANKAR SANDYAL, 3 B. L. R. A. Cr. 14; 12 W. R. 2. [Macpherson and Jackson, JJ. June 11, 1869.]

WHERE a police-officer, duly appointed under Act V. of 1861, was engaged in the discharge of his duty as such police-officer at a time when an unlawful assembly took place, it was held that he was competent to apprehend any of the members of such unlawful assembly; and a person who rescued the party apprehended was convicted of rescuing from lawful custody within the meaning of s. 225 of the Penal Code.—QUEEN v. ASSAM SHURFEE, 13 W. R. 75. [Phear and Mitter, JJ May 17, 1870.]

BEFORE a conviction can be had under s. 225, Penal Code, it must be proved that the person whom the accused are charged with having rescued was in lawful custody at the time.—QUEEN v. DEGUMBER AHEER, 21 W. R. 22. [Glover and Markby, JJ. Dec. 18, 1873.]

WHERE a person, apprehended on a charge of a cognizable offence, escapes from lawful custody, his liability to punishment is not affected by the circumstances that a compe-

* In s. 225 the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

tant Court determines his offence to be other than that with which he has been charged. But, if charged with a non-cognizable offence, the police-officer who apprehends him without warrant does not have him in lawful custody, and his escape is not punishable under the Penal Code, s. 224.—QUEEN *v.* RAM SARAN TEWARY, 24 W. R. 45. [Jackson and McDonell, JJ. Aug. 19, 1875.]

AN escape from custody when being taken before a Magistrate for the purpose of being bound over to be of good behaviour is not punishable under either s. 224 or 225 of the Penal Code.—EMPRESS *v.* SHASTI CHURN NAPIT, I. L. R., 8 Cal. 331; 10 C. L. R. 290 [Mitter and Maclean, JJ. Feb. 22, 1882.] Followed in *Queen-Empress* v. *Kandhaia*, I. L. R., 7 All. 67, *infra*. But see s. 225B, which is a new section.

AN order was issued to a police-officer directing him to arrest K under s. 55 of the Criminal Procedure Code, as a person of bad livelihood. K, with the assistance of three others, resisted apprehension, and escaped. *Held* that K was not charged with an "offence" within the meaning of that term as defined in s. 40 of the Penal Code, and that consequently no offence made punishable by s 224 or s. 225 of the Penal Code had been committed in connection with his evasion of arrest. *Empress* v. *Shasti Churn Napit* (I. L. R., 8 Cal. 311) followed.—QUEEN-EMPRESS *v.* KANDHAIA, I. L. R., 7 All. 67 [Mahmood and Duthoit, JJ. Aug. 7. 1884.] But see new section 225B

To support a conviction under s. 225 of the Penal Code, it is not necessary that the custody from which the offender is rescued should be that of a policeman it is enough that the custody is one which is authorized by law. *Held*, therefore, that rescue from the custody of a private person who had arrested a thief in the act of stealing was an offence. A Magistrate tried A for theft, and B and C for rescuing A from lawful custody, and convicted A, B, and C in one trial. A appealed, and B and C, appealed separately. No objection was taken in the petitions of appeal to the procedure of the Magistrate. *Held*, on revision, that the convictions might stand. —QUEEN-EMPRESS *v.* KUTTI, I. L. R., 11 Mad. 441. [Muttusami Ayyar and Parker, JJ. July 18, 1888.]

S, who was alleged to have committed theft, was unlawfully arrested by a private person, and made over to the custody of the village-chaukidar. The theft was not committed in view of such private person. S was rescued from the custody of the village-chaukidar by the accused The accused were convicted under section 225 of the Penal Code, and sentenced each to two months' rigorous imprisonment. *Held* that a village chaukidar cannot be properly regarded as a police-officer within the terms of s. 59 of the Code of Criminal Procedure, and that S, therefore, was not in lawful custody at the time of his rescue Conviction and sentence set aside.—KALAI *v.* KALU CHOWKIDAR, I. L. R., 27 Cal. 366 [Trinsep and Stanley, JJ. Jan. 11, 1900.]

A WARRANT of arrest which contains a wrong description of the accused is not a valid warrant, and a conviction under ss. 225B and 353 of the Penal Code of such accused person, who resisted or used criminal force upon his being arrested under such warrant, is illegal. In order to have a conviction for an illegal disobedience of a warrant, the *onus* is on the prosecution to show that the accused is the person, against whom the warrant has issued. It is not for the accused to show that he is not the person against whom the warrant was issued.—DEBI SINGH *v.* QUEEN-EMPRESS, I. L. R., 28 Cal. 399. [Ameer Ali and Pratt, JJ. Feb 8, 1901.]

**225A.*** Whoever, being a public servant legally bound, as such public servant, to apprehend or to keep in confinement any person in any case not provided for in section 221, section 222, or section 223, or in any other law for the time being in force, omits to apprehend that person, or suffers him to escape from confinement, shall be punished—

**Omission to apprehend, or sufferance of escape, on part of public servant in cases not otherwise provided for.**

As to cl. (*a*). Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp.

(*a*) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and

As to cl. (*b*). Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable Not comp.

* S. 225A has been substituted by the Indian Criminal Law Amendment Act (X. of 1886), s. 24 (*1*), for s. 225A as inserted by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 9.

Chaps. IV. and V. of the Code apply to offences punishable under ss. 225A and 225B.—See the Indian Penal Code Amendment Act (XXVII. of 1870), s. 13, as amended by the Repealing and Amending Act (XII. of 1891).

(*b*) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Presv. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

**225B.*** Whoever, in any case not provided for in section 224 or section 225, or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Resistance or obstruction to lawful apprehension, or escape, or rescue in cases not otherwise provided for.

A REVENUE COURT is a "Court of Civil Judicature" within the meaning of s 651 of the Code of Civil Procedure. A person, therefore, who escapes from custody under the process of a Revenue Court, is punishable under that section. S. 642 of the Civil Procedure Code only protects an accused person while he is attending a Criminal Court from arrest "under that Code." *Held*, therefore, where a person who had been convicted by a Magistrate, and had been fined, was arrested in execution of the process of a Revenue Court while waiting in Court until the money to pay such fine was brought, that such person was not protected from such arrest by the provisions of that section, and that, having escaped from custody under such arrest, such person had properly been convicted under s. 651 for escaping from "lawful custody."—EMPRESS *v.* HARAKH NATH SINGH, I. L. R., 4 All 27. [Straight and Duthoit, JJ. July 13, 1881.]

THE apprehension of a judgment-debtor in execution of a decree without the officer making the apprehension having the warrant of the Court executing the decree in his possession at the time of making the apprehension is illegal; and therefore, in such a case, the judgment-debtor does not render himself liable to punishment under s. 651 of the Civil Procedure Code, if he escapes from the custody of the officer making the apprehension. *Quære.*—Whether a person convicted under s. 651 of the Civil Procedure Code of escaping from lawful custody, who is sentenced to one month's imprisonment only, can, under s. 588 (29) of that Code, appeal?—EMPRESS *v.* AMAR NATH, I. L. R., 5 All. 318. [Tyrrell, J. Feb. 1, 1883.]

AN arrest by a police-officer without notifying the substance of the warrant to the person against whom the warrant is issued, as required by s. 80 of the Criminal Procedure Code, is not a lawful arrest; and resistance to such an arrest is not an offence under s. 225B of the Penal Code.—SATISH CHANDRA RAI *v.* JODU NANDAN SING, I. L. R., 26 Cal. 748; 3 C. W. N. 741. [Prinsep and Hill, JJ. June 1, 1899.]

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

**226.** Whoever, having been lawfully transported, returns from such transportation, the term of such transportation not having expired, and his punishment not having been remitted, shall be punished with transportation for life, and shall also be liable to fine, and to be imprisoned with rigorous imprisonment for a term not exceeding three years before he is so transported.

Unlawful return from transportation.

To constitute the offence of escaping from transportation under s. 226 of the Penal Code, it is essential that the convict should have been actually sent to a penal settlement and have returned before his term of transportation had expired or been remitted. Where a prisoner had escaped from custody whilst on his way to undergo sentence of

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* S. 225B has been substituted by the Indian Criminal Law Amendment Act (X. of 1886), s. 24 (*1*), for s. 225A as inserted by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 9.

Chaps. IV. and V. of the Code apply to offences punishable under ss. 225A and 225B.—See the Indian Penal Code Amendment Act (XXVII. of 1870), s. 13, as amended by the Repealing and Amending Act (XII of 1891).

transportation, it was held that he had committed an offence punishable under s. 224, and not under s. 226 of the Penal Code.—REG. v. RAMASAMY, 4 Mad. H. C. R. 152. [Scotland, C.J., and Collett, J. Dec. 2, 1868.]

**227.** Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

**Violation of condition of remission of punishment.**

Ct. by which original offence was triable. Uncog. Summons. Not bailable. Not comp.

A PERSON convicted by the Recorder's Court of Prince of Wales's Island, Singapore, and Malacca, of the crime of burglary, and sentenced to transportation for ten years, at a place to be appointed by the Governor-General of India in Council, was released from the Ratnagiri jail on the ticket-of-leave after having been in confinement for more than eight years. At Karedar he committed theft in a dwelling-house before his sentence had expired. *Held* that the F. P. Magistrate at Karedar had jurisdiction to try the convict for an offence of violation of the condition of remission of punishment under s. 227, Penal Code.—REG. v. AHONE AKONG, 9 Bom. H. C. R. 356. [Lloyd and Kemball, JJ. Sep. 5, 1872.]

**228.** Whoever, intentionally offers any insult or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

**Intentional insult or interruption to public servant sitting in any stage of a judicial proceeding.**

Ct. in which offence committed, subject to provisions of ch. 35. Uncog. Summons. Bailable. Not comp. Sanction.

A PARTY who bids for an estate at a sale in execution, with the knowledge that he is not in a position to deposit the earnest-money, obstructs the business of the Court, and is guilty of contempt of Court, punishable under s. 228.—IN THE MATTER OF MOHESH CHUNDER MOOKERJEE, W. R. Gap., 1864, Mis. 3. [Kemp and Campbell, JJ. Jan. 11, 1864.]

WHEN a person is in custody for contempt of Court, any application for release should be made to the committing Judge. It is advisable, but not necessary, to limit the period of commitment to a fixed time.—IN THE MATTER OF SITTARAM ATMARAM, 1 Ind. Jur. N. S. 23. [Peacock, C.J., and Couch, J. Jan. 1866.]

REFUSING or neglecting to return direct answers to questions does not constitute the offence, under s. 228 of the Penal Code, of intentionally offering insult or causing interruption to a public servant sitting in a judicial proceeding.—REG. v. PANDU BIN VITHOJI, 4 Bom. H. C. R. 7. [Couch, C.J., and Newton, J. July 24, 1867.]

PREVARICATION while giving evidence does not constitute the offence, under s. 228 of the Penal Code, of intentionally causing interruption to a public servant sitting in a judicial proceeding.—REG. v. AUBA BIN BHIVRAV, 4 Bom. H. C. R. 6. [Couch, C.J., and Newton, J. July 24, 1867.]

PERSISTING in putting irrelevant and vexatious questions to a witness after warning might amount to a contempt.—AZEEMOOLA v. CROWN, Panj. Rec., No. 44 of 1867.

AN appeal lies against an order of the Sessions Court imposing a fine upon a witness under s. 228 of the Penal Code for intentional insult to the Sessions Judge sitting in a stage of a judicial proceeding. Where the High Court were satisfied that the witness did not intend to insult the Judge, the order was set aside.—REG. v. R. CHAPPU MENON, 4 Mad. H. C. R. 146. [Scotland, C.J., and Ellis, J. Nov. 6, 1868.]

IN a conviction under s. 228 of the Penal Code, it ought to be clearly stated that the Judge was sitting in a stage of a judicial proceeding, the nature of which should also be stated.—IN THE MATTER OF PROKASH CHUNDER DOSS, 12 W. R. 64. [Norman and Kemp, JJ. Oct. 1, 1869.]

*Held*, overruling *Baijoo Baul* v. *Gugun Misser* (8 W. R. 61), that a Magistrate cannot take cognizance of an offence under s. 174, Penal Code, committed against his own Court, but is bound under s. 171 of the Code of Criminal Procedure (Act XXV. of 1861), to send the case for trial before another Ma-

gistrate. The only cases under the Criminal Procedure Code in which a Sessions Judge or Magistrate can try a case in which he is himself interested, pointed out.—QUEEN v. CHUNDER SHEKUR ROY, 13 W. R. 66; 5 B. L. R. 100. [Jackson and Glover, JJ. April 23, 1870.]

No conviction can be had under s. 228 of the Penal Code, simply because witnesses in a case give inconsistent evidence, and give their evidence reluctantly, and take up the time of the Court.—QUEEN v. CHOTA HURRY PARAMANICK TANTEE, 15 W. R. 5. [Norman, Offg. C.J., and Loch, J. Jan. 21, 1871.]

BEFORE a conviction can be had, under s. 228 of the Penal Code, of offering an insult to a public servant, it must be proved that there was an *intention* to insult.—QUEEN v. HURRY KISHEN DOSS, 15 W. R. 62 [Kemp and Glover, JJ. April 29, 1871.

PREVARICATION by a witness may, though it does not necessarily amount to contempt of Court within the meaning of s. 228 of the Penal Code, and s. 435 of the Code of Criminal Procedure (Act X. of 1872).—REG. v. JAIMAL SHRAVAN, 10 Bom. H. C. R. 69. [Melvill and Kemball, JJ. Mar. 27, 1873.]

A SUB REGISTRAR is a public officer; his proceedings are judicial proceedings within the meaning of s. 228 of the Penal Code; and his Court is a Court within the meaning of that word in the Evidence Act. In cases under s. 228 of the Penal Code, the Court in which the offence is committed is to try the offence, but the procedure is to be restricted by the provisions of ch. 32 of the Code (Act X. of 1872). Where in a case, under s. 228, the sub-registrar, before whom the offence was committed, did not proceed under s. 435 or s. 436 of the Code of 1872, it was held that a Magistrate had no jurisdiction.—IN THE MATTER OF SARDHARI LAL, 22 W. R. 10; 13 B. L. R. Ap. 40. [Kemp and Birch, JJ. April 28, 1874.]

S. 473 of the Code of Criminal Procedure (Act X. of 1872), which, except as therein provided, forbids a Court to try any person for an offence committed in contempt of its own authority, is not limited to offences falling under ch. 10 of the Penal Code, but extends to all contempts of Court. *Reg.* v. *Kultaran Singh* (I. L. R., 1 All. 129) dissented from; 7 Mad. H. C. R. Ap. 17, approved. *Reg.* v. *Nuvranbeg Dulabeg* (10 Bom. H. C. R. 73) followed.—REG. v. PARSAPA MAHADEVAPA, I. L. R., 1 Bom. 339. [Melvill and Nanabhai Haridas, JJ. Aug. 17, 1876.]

A BARRISTER, offended by the use of a strong expression on the part of a Judge while sitting in Court, sends an officer to the Judge's private residence upon a pacific errand to ask for an explanation. *Held*, by nine Judges out of eleven, that the party sending the message and the party conveying it are guilty of contempt of Court.—IN THE MATTER OF PIFFARD (C.) AND FRANCIS (E. G.), Hyde's Rep. 79.

THE procedure laid down in s. 480 of the Criminal Procedure Code should be strictly followed. The provisions of the section should be applied then and there, at any rate before its rising, by the Court in whose view or presence a contempt has been committed, which it considers should be dealt with under s. 480. Where a Magistrate in whose presence contempt was committed took cognizance of the offence immediately, but, in order to give the accused an opportunity of showing cause postponed his final order for some days, *held* that such action, though it might be irregular, was not illegal; and as the accused had not been in any way prejudiced was covered by s. 537 of the Criminal Procedure Code. *Held* also that, under the circumstances, it was doubtful whether there was any necessity for the Magistrate to postpone the final order until the accused had had an opportunity of showing cause against it and that he should have directed the detention of the accused, and dealt with the matter at once or before his rising.—QUEEN-EMPRESS v. PAYAMBAR BAKHSH, I. L. R., 11 All. 301. Straight, J. April 1, 1889.]

THE accused intentionally insulted a village-munsif in the discharge of his magisterial duties. The village-munsif did not prefer a complaint or sanction a prosecution, but a Second-class Magistrate charged the accused under the Penal Code, s. 228, on a police-report, and convicted him. *Held* (1) that ss. 480-482, Criminal Procedure Code, do not apply to village-munsifs, (2) that the Second-class Magistrate was competent to try the complaint, and the conviction was right.—QUEEN-EMPRESS v. VENKATASAMI, I. L. R., 15 Mad. 131. [Collins, C.J., and Parker, J. Nov. 19, 1891.]

Presy. Mag. or Mag. of 1st class. Uncog. Summons. Bailable. Not comp.

**229.** Whoever, by personation or otherwise, shall intentionally cause or knowingly suffer himself to be returned, empannelled, or sworn as a juryman or assessor in any case in which he knows that he is not entitled by law to be so returned, empannelled, or sworn, or knowing himself to have been so returned, empannelled, or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be

Personation of a juror or assessor.

punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

## CHAPTER XII.*

### OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

REPORT OF THE INDIAN LAW COMMISSIONERS ON OFFENCES RELATING TO COIN.

MOST of the provisions in this chapter appear sufficiently intelligible without any explanation.

We have proposed that the Government of India should follow the general practice of Governments in punishing more severely the counterfeiting of its own coin than the counterfeiting of foreign coin. It appears to us peculiarly advisable, under the present circumstances of India, to make this distinction. It is much to be wished that the Company's currency may supersede the numerous coinages which are issued from a crowd of mints in the dominions of the petty Princes of India. It has appeared to us that this object may be, in some degree, promoted by the law as we have framed it. That coinage, the purity of which is guarded by the most rigorous penalties, is likely to be the most pure; and that coinage which is likely to be the most pure will be the most readily taken in the course of business.

It is not very probable that any person in this country will employ himself in making counterfeit sovereigns or shillings, but, should so improbable an event occur, we think that the King's coin should have the same protection which is given to the coin of the Local Government. It may perhaps be thought that, in proposing laws for the protection of the King's coin, we have departed from the principle which we laid down in our note on the law of offences against the State, and that we should have acted more consistently in leaving the British currency to the care of the British Legislature. It appears to us, however, that the offence of coining though, in an arbitrary classification, it may be called by the technical name of treason, is in substance an offence against property and trade, and that it is an offence of very nearly the same kind with the forging of a bank-note, and that it would be an offence of exactly the same kind, if the bank-note, like the notes of the Bank of England formerly, were, in all cases, legal tender, or if the coin, like the Company's gold-mohur at present, were not legal tender. We do not, therefore, conceive that, in proposing a law for punishing the counterfeiting of the King's coin, we are proposing a law which can reasonably be said to affect any of the royal prerogatives.

The distinction which we propose to make between two different classes of utterers is marked in the French Code; and it is so obviously agreeable to reason and justice that we are surprised that, having been marked in that Code, it should not have been adopted by Mr. Livingstone. We are glad to perceive that the Code of Bombay makes this distinction.

An utterer by profession, an utterer who is the agent employed by the coiner to bring counterfeit coin into circulation, is guilty of a very high offence. Such an utterer stands to the coiner in a relation not very different from that in which a habitual receiver of stolen goods stands to a thief. He makes coining a far less perilous, and a far more lucrative, pursuit than it would otherwise be. He passes his life in the systematic violation of the law, and in the systematic practice of fraud in one of its most pernicious forms. He is one of the most mischievous, and is likely to be one of the most depraved, of criminals. But a casual utterer, an utterer who is not an agent for bringing counterfeit coin into circulation, but who, having heedlessly received a bad rupee in the course of his business, takes advantage of the heedlessness of the next person with whom he deals to pay that bad rupee away, is an offender of a very different class. He is undoubtedly guilty of a dishonest act, but of one of the most venial of dishonest acts. It is an act which proceeds, not from greediness for unlawful gain, but from a wish to avoid, by unlawful means, it is true, what to a poor man may be a severe loss. It is an act which has no tendency to facilitate or encourage the operations of the coiner. It is an occasional act, an act which does not imply that the person who commits it is a person of lawless habits. We think, therefore, that the of-

* As to enhanced punishment for second conviction for certain offences under Ch. XII., see s. 75, *supra*.

REPORT OF THE INDIAN LAW COMMISSIONERS ON OFFENCES RELATING TO COIN—*Contd.*

fence of a casual utterer is, perhaps, the least heinous of all the offences into which fraud enters.

We considered whether it would be advisable to make it an offence in a person to have in his possession at one time a certain number of counterfeit coins without being able to explain satisfactorily how he came by them. It did not, after much discussion, appear to us advisable to recommend this or any similar provision. We entertain strong objections to the practice of making circumstances which are, in truth, only evidence of an offence part of the definition of an offence; nor do we see any reason for departing in this case from our general rule.

Whether a person who is possessed of bad money knows the money to be bad, and whether, knowing it to be bad, he intends to put it in circulation, are questions to be decided by the tribunals according to the circumstances of the case, circumstances of which the mere number of the pieces is only one, and may be one of the least important. A few bad rupees which should evidently be fresh from the stamp would be stronger evidence than a greater number of bad rupees which appeared to have been in circulation for years. A few bad rupees, all obviously coined with the same die, would be stronger evidence than a greater number obviously coined with different dies. A few bad rupees placed by themselves, and unmixed with good ones, would be far stronger evidence than a much larger number which might be detected in a larger mass of treasure.

**280.** Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.*

"Coin" defined.

Queen's coin is metal stamped and issued by the authority of the Queen, or by the authority of the Government of India, or of the Government of any Presidency, or of any Government in the Queen's dominions, in order to be used as money; and metal which has been so stamped and issued shall continue to be the Queen's coin for the purposes of this chapter, notwithstanding that it may have ceased to be used as money.†

Queen's coin.

*Illustrations.*

(*a*) Cowries are not coin.

(*b*) Lumps of unstamped copper, though used as money, are not coin.

(*c*) Medals are not coin inasmuch as they are not intended to be used as money.

(*d*) The coin denominated as the Company's rupee is the Queen's coin.

(*e*) The 'Farukhabad' rupee, which was formerly used as money under the authority of the Government of India, is Queen's coin, although it is no longer so used ‡

IT is not necessary, in order to satisfy the ordinary definition of money, that a coin should be a legal tender receivable at a value in rupees fixed by law. Gold-mohurs, which, although they do not pass at an absolutely fixed value, yet have a current value not ascertainable merely by weighing them as lumps of gold, but attaching to them as coin, are coins "for the time being used as money" within the meaning of Act XIX. of 1872.—QUEEN *v.* KUNJ BEHAREE, 5 N.-W. P. 187. [Pearson and Jardine, JJ. June 7, 1873.

S. 230 is an amended section. Cl. 1 has been amended by Act XIX. of 1872. The following are Mr. Hobhouse's object and reasons for the amendment: "The primary object of this Bill is to check the practice of counterfeiting the copper coin of Native States. These counterfeits are freely circulated in parts of British India, and the result is stated to be injurious to our currency. The Penal Code prohibits the counterfeiting of coin. But 'coin' is defined as 'metal stamped and issued by the authority of some *Govern-*

* In s. 230, the first paragraph has been substituted, by the Indian Penal Code Amendment Act (XIX. of 1872), for the one originally enacted.

† In s. 230, the second paragraph has been substituted by the Indian Penal Code Amendment Act (VI. of 1896), s. 1 (*1*), for the one which had been substituted for the original by the Indian Penal Code Amendment Act (XIX. of 1872).

‡ In s. 230, ill. (*e*) has been added by the Indian Penal Code Amendment Act (VI. of 1896), s. 1 (*2*).

*ment*,' and 'Government,' by s. 17, denotes 'the person or persons authorized by law to administer executive government in any part of *British India*.' It has thus happened (accidentally, no doubt) that the coin of Native States is not coin within the meaning of the Act. This defect it is desired to amend. The opportunity has been taken to make another amendment. S. 230 defines coin as metal 'used' as money. It has been suggested that the definition may possibly be held to include old coin, such as the Græco-Bactrian stater, formerly used as money but now regarded only as a curiosity. The bill therefore proposes to introduce before 'used' the words 'for the time being.'"

**231.** Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

Counterfeiting coin.

*Explanation*.—A person commits this offence, who, intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

THOUGH there may be an absence of apparent resemblance, which may possibly arise from the process being imperfectly carried out, yet there would still be an offence under s. 231. And, even if the metal in which the counterfeit was made was completely different from that of the coin represented, it would still be a question of fact whether this difference did not arise merely from the manufacture having been interrupted in an early stage.—Mad. H. C. Rul., Nov. 17, 1863.

WHERE a medal was fraudulently represented to an ignorant person as being money, it was held that the representation did not render the medal counterfeit coin.—Mad. H. C. Rul. 1864.

MERCHANTS in various parts of the country had been in the habit for many years of sending copper to the Nawab of Loharoo, who turned the metal in mints established for the purpose, into small round pieces, upon which a certain stamp was impressed, the stamp not purporting to resemble the mark on any legal coin. These pieces of copper were then sold in the bazars in British India by weight, and used as money. It was generally believed that the Nawab had authority to establish the mints, and issue this copper as coin. *Held* that the pieces of copper were not counterfeit coin.—PREMSOOKH DASS *v.* CROWN, Panj. Rec., No. 38 of 1870. But see the amended definition of "coin."

THE test of whether a coin is money or not is the possibility of taking it into the market, and obtaining goods of any kind in exchange for it. For this its value must be ascertained and notorious. *Held*, therefore, that to counterfeit a coin of the Emperor Akbar's time was not an offence under ss. 230 and 231 of the Penal Code.—REG. *v.* BAPUYADAV AND RAMA TULSIRAM, 11 Bom. H. C. R 172. West and Nanabhai Haridas, JJ. Sep. 10, 1874.]

**232.** Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Ditto.

Counterfeiting the Queen's coin.

To constitute the offence described in s. 232, there must be an intention that the coins made will be used as Queen's coin, or a knowledge that they are likely to be used as such. Such knowledge or intention will be inferred from the mere fact of counterfeiting, except under circumstances which conclusively negative it; but a distinction must be drawn between a deception practised for show merely, and one practised for wrongful loss or gain, and the former is not an offence under the Penal Code.—SHUMSOODEEN *v.* CROWN, Panj. Rec., No. 26 of 1868.

IT is not an offence under s. 232 of the Indian Penal Code to remove the ring from a coin which has been used to form part of a necklace or other ornament, and to work up the face of the coin where the ring has been, it not being shown that any material part of the coin has at any time been removed.—KING-EMPEROR *v.* MUHAMMAD HUSAIN, I. L. R., 23 All. 420. [Knox, J. May 14, 1901.]

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp.

**233.** Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Making or selling instrument for counterfeiting coin.

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

**234.** Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or selling instrument for counterfeiting Queen's coin.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp.

**235.** Whoever is in possession of any instrument or material for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

Possession of instrument or material for the purpose of using the same for counterfeiting coin.

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

and, if the coin to be counterfeited is the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

IT is not necessary to satisfy the ordinary definition of money, that a coin should be a *legal tender* receivable at a value in rupees fixed by law. Gold-mohurs, which, although they do not pass at an absolutely fixed value, yet have a current value not ascertainable merely by weighing them as lumps of gold, but attaching to them as coin, are coins "for the time being used as *money*" within the meaning of Act XIX of 1872.—QUEEN v. KUNJ BEHAREE, 5 N.-W. P. 187. Pearson and Jardine, JJ. June 7, 1873.

Ditto.

**236.** Whoever, being within British India, abets the counterfeiting of coin out of British India, shall be punished in the same manner as if he abetted the counterfeiting of such coin within British India.

Abetting in India the counterfeiting out of India of coin.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp.

**237.** Whoever imports into British India, or exports therefrom, any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Import or export of counterfeit coin.

MERCHANTS in various parts of the country had been in the habit for many years of sending copper to the Nawab of Loharoo, who turned the metal in mints established for the purpose, into small round pieces, upon which a certain stamp was impressed, the stamp not purporting to resemble the mark on any legal coin. These pieces of copper were then sold in the bazars in British India by weight, and used as money. It was generally believed that the Nawab had authority to establish the mints, and issue this copper as coin. *Held* that the pieces of copper were not counterfeit coin. — PREMSOOKH DASS v. CROWN, Panj. Rec., No. 38 of 1870. But see the amended definition of "coin."

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

**238.** Whoever imports into British India, or exports therefrom, any counterfeit coin which he knows, or has reason to believe, to be a counterfeit of the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Import or export of counterfeits of the Queen's coin.

**239.** Whoever, having any counterfeit coin, which, at the time when he became possessed of it, he knew to be counterfeit, fraudulently, or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp.

**Delivery to another of coin, possessed with the knowledge that it is counterfeit.**

S. 239 of the Penal Code is directed against a person other than the coiner, who procures or obtains or receives counterfeit coin, and not to the offence committed by the coiner.—QUEEN v. SHEOBUX *alias* SHEOPERSHAD, 3 N.-W. P. 150. [Turner, J. June 23, 1871.]

**240.** Whoever, having any counterfeit coin which is a counterfeit of the Queen's coin, and which, at the time when he became possessed of it, he knew to be a counterfeit of the Queen's coin, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ditto

**Delivery of Queen's coin, possessed with the knowledge that it is counterfeit.**

WHERE the charge is one of counterfeiting Queen's coin, direct proof of fabrication is not necessary to render the person punishable under the sections of the Penal Code with reference to the uttering of false coin. All that is required is a guilty knowledge of the spuriousness of the coin at the time of receiving possession of it, or the absence of such guilty knowledge at first. Such guilty knowledge may be proved either directly or indirectly from surrounding circumstances.—PARUSHULLAH MUNDUL v. KHEROD MUNDUL, QUEEN v. GURIB SHEK, RAM RUTTUN SHAHA v. BAWOOL MUNDUL, 23 W. R. 4 [Kemp and Birch, JJ. Nov. 30, 1874.]

THE accused was tried by a jury for an offence triable with the aid of assessors, and the jury by a majority found him "not guilty." The Sessions Judge, who disagreed with the verdict, convicted the accused, treating the verdict of the jury as the opinion of assessors. *Held* that the conviction was bad, inasmuch as the case was validly "tried by a jury" within the meaning of s. 536 of the Criminal Procedure Code, 1882 and the trial was complete when the jury had returned their verdict, and that the Judge was bound, under the circumstances, either to give judgment in accordance with the verdict, or, if he disagreed with it, to submit the case for orders of the High Court as provided by ss. 306 and 307 of the Code. *In the Matter of Bhoot Nath Dey*, 4 C. L. R. 405, followed. A reference under s. 307 of the Criminal Procedure Code should be made when the Judge is "clearly of opinion that he should do so for the ends of justice."—SURJA KURMI v. QUEEN-EMPRESS, I. L. R. 25 Cal. 555. Hill and Stevens, JJ. Jan. 10 1898.

**241.** Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin, which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Not bailable. Not comp.

**Delivery of coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit.**

*Illustration.*

A, a coiner, delivers counterfeit Company's rupees to his accomplice B for the purpose of uttering them. B sells the rupees to C, another utterer, who buys them, knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them, not knowing them to be counterfeit. D, after receiving the rupees, discovers that they are counterfeit, and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under section 239 or 240, as the case may be.

CHARGE.

*First.*—That you, on or about the day of , at , knowing a coin to be counterfeit, delivered the same to another person, by name A B, as genuine, and thereby committed an offence punishable under s. 241 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court.]

*Secondly.*—That you, on or about the day of , at , knowing a coin to be counterfeit, attempted to induce another person, by name A B, to receive it as genuine, and thereby committed an offence punishable under s. 241 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court.]—Crim. Pro. Code (Act V of 1898), Sch. V., Form XVIII (11).

WHERE the prisoner being in possession of a counterfeit coin handed it to a friend, in order to avoid its being discovered by the police in his (prisoner's) possession, it was held that no offence had been committed under s. 241, as the coin was not delivered as genuine. The gist of an offence under s. 241 (passing as genuine coin known to be counterfeit) is that a person should deliver or attempt to induce any other person to receive as genuine coin known to be counterfeit.—QUEEN v. SOORUT, 4 N.-W. P. 92 [Spankie, J. April 27, 1872.]

WHERE the charge is one of counterfeiting Queen's coin, direct proof of fabricating is not necessary to render the person punishable under the sections of the Penal Code with reference to the uttering of false coin. All that is required is a guilty knowledge of the spuriousness of the coin at the time of receiving possession of it, or the absence of such guilty knowledge at first. Such guilty knowledge may be proved either directly or indirectly from surrounding circumstances.—PARUSHULLAH MUNDUL v. KHEROO MUNDUL; QUEEN v. GURIB SHEK; RAM RUTTUN SHAHA v. BAWOOL MUNDUL, 23 W. R. 4. [Kemp and Birch, JJ. Nov. 30, 1874.]

THE accused was tried by a jury for an offence triable with the aid of assessors, and the jury by a majority found him "not guilty." The Sessions Judge, who disagreed with the verdict, convicted the accused, treating the verdict of the jury as the opinion of assessors. *Held* that the conviction was bad, inasmuch as the case was validly "tried by a jury" within the meaning of s. 536 of the Criminal Procedure Code, 1882, and the trial was complete when the jury had returned their verdict, and that the Judge was bound, under the circumstances, either to give judgment in accordance with the verdict, or, if he disagreed with it, to submit the case for orders of the High Court, as provided by ss. 306 and 307 of the Code. *In the Matter of Bhoot Nath Dey* (4 C. L. R. 405) followed. A reference under s. 307 of the Criminal Procedure Code should be made when the Judge is "clearly of opinion" that he should do so for the ends of justice.—SURJA KURMI v. QUEEN-EMPRESS, I. L. R., 25 Cal. 555. [Hill and Stevens, JJ. Jan. 10, 1898.]

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp.

**242.** Whoever fraudulently, or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof.

Ditto.

**243.** Whoever fraudulently, or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of the Queen's coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Possession of Queen's coin by person who knew it to be counterfeit when he became possessed thereof.

A PRISONER, who was charged under s. 243, admitted possession, but denied fraudulent intention. In spite of the denial of fraudulent intention, the Sessions Judge recorded a plea of guilty, and convicted the accused thereon. In appeal it was held that the conviction was bad, as the admission of possession on the part of the prisoner did not extend to an admission of fraud, which was the gist of the offence.—5 N. A., N.-W. P., Part II, 217, 1864.

**244.** Whoever, being employed in any mint lawfully established in British India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

Person employed in mint causing coin to be of different weight or composition from that fixed by law.

**245.** Whoever, without lawful authority, takes out of any mint lawfully established in British India, any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Ditto.

Unlawfully taking coining instrument from mint.

**246.** Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp.

Fraudulently or dishonestly diminishing weight or altering composition of coin.

*Explanation.*—A person who scoops out part of the coin, and puts anything else into the cavity, alters the composition of that coin.

**247.** Whoever fraudulently or dishonestly performs on any of the Queen's coin any operation which diminishes the weight or alters the composition of that coin shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Ditto.

Fraudulently or dishonestly diminishing weight or altering composition of Queen's coin.

**248.** Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. Ditto.

Altering appearance of coin with intent that it shall pass as coin of different description.

**249.** Whoever performs on any of the Queen's coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Ditto.

Altering appearance of Queen's coin with intent that it shall pass as coin of different description.

**250.** Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it fraudulently, or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine. Ditto.

Delivery of coin possessed with knowledge that it is altered.

**251.** Whoever, having coin in his possession with respect to which the offence defined in section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been Ditto.

Delivery of Queen's coin possessed with knowledge that it is altered.

committed with respect to it, fraudulently, or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp.

**252.** Whoever fraudulently, or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of coin by person who knew it to be altered when he became possessed thereof.

Ditto.

**253.** Whoever fraudulently, or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 247 or 249 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Possession of Queen's coin by person who knew it to be altered when he became possessed thereof.

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Not bailable. Not comp.

**254.** Whoever delivers to any other person as genuine, or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in section 246, 247, 248, or 249, has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed or attempted to be passed.

Delivery of coin as genuine, which, when first possessed, the deliverer did not know to be altered.

Ct. of Ses. Cognizable. Warrant. Bailable. Not comp.

**255.** Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government* for the purpose of revenue, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Counterfeiting Government stamp.

*Explanation.*—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

THE passing off of a one-anna stamp as a one-rupee stamp is not a counterfeiting a one-rupee stamp.—QUEEN v. SHUROOP CHUN-DER DOSS, 2 W. R. 65. Jackson and Glover, JJ. April 24, 1865.

Ditto.

**256.** Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government* for the purpose of revenue, shall be punished

Having possession of instrument or material for counterfeiting Government stamp.

* As to meaning of "Government," see s. 263A (*d*), *infra*.

with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**257.** Whoever makes, or performs any part of the process of making, or buys, or sells, or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government* for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or selling instrument for counterfeiting Government stamp.

Ct. of Ses. Cognizable. Warrant. Bailable. Not comp.

**258.** Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government* for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Sale of counterfeit Government stamp.

Ditto.

**259.** Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government* for the purpose of revenue, intending to use or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having possession of counterfeit Government stamp.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Bailable. Not comp.

**260.** Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government* for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Using as genuine a Government stamp known to be counterfeit.

Ditto.

**261.** Whoever fraudulently, or with intent to cause loss to Government, removes or effaces from any substance bearing any stamp issued by Government* for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Effacing writing from substance bearing Government stamp or removing from document a stamp used for it, with intent to cause loss to Government.

Ditto.

**262.** Whoever fraudulently, or with intent to cause loss to Government* uses for any purpose a stamp issued by Government* for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Using a Government stamp known to have been before used.

Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

**263.** Whoever fraudulently, or with intent to cause loss to Government,* erases or removes from a stamp issued by Government* for the purpose of revenue any mark put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession, or sells or disposes of, any such stamp from which such mark has been erased or removed, or sells or disposes of any

Erasure of mark denoting that stamp has been used.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Bailable. Not comp.

* As to meaning of "Government," see s. 263A (*4*), *infra*.

such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Prosv. Mag., or Mag. of 1st class. Cognizable. Warrant. Bailable. Not comp.

Prohibition of fictitious stamps.

**263A.*** (*1*) Whoever—

(*a*) makes, knowingly utters, deals in, or sells any fictitious stamps, or knowingly uses for any postal purpose any fictitious stamp, or

(*b*) has in his possession, without lawful excuse, any fictitious stamp, or

(*c*) makes or, without lawful excuse, has in his possession any die, plate, instrument, or materials for making any fictitious stamp,

shall be punished with fine which may extend to two hundred rupees.

(*2*) Any such stamp, die, plate, instrument, or materials in the possession of any person for making any fictitious stamp, may be seized, and shall be forfeited.

(*3*) In this section 'fictitious stamp' means any stamp falsely purporting to be issued by Government for the purpose of denoting a rate of postage, or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government for that purpose.

(*4*) In this section and also in sections 255 to 263 (both inclusive), the word 'Government,' when used in connection with, or in reference to, any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in section 17, be deemed to include the person or persons authorized by law to administer executive government in any part of India, and also in any part of Her Majesty's dominions, or in any foreign country.

## CHAPTER XIII.

### OF OFFENCES RELATING TO WEIGHTS AND MEASURES.

Prosv. Mag., or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

Fraudulent use of false instrument for weighing.

**264.** Whoever fraudulently uses any instrument for weighing, which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

INTENTION is an essential part of the offence of fraudulently using false instruments for weighing, and in any evidence of the absence of such intention in this case the Court quashed the conviction, and directed the return of the fines.—GOVT. *v.* KANGALEE MUDUK, 18 W R 7. Kemp and Glover. JJ June 3 1872

Ditto.

Fraudulent use of false weight or measure.

**265.** Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity, as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Ditto.

Being in possession of false weights or measures.

**266.** Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

* S. 263A has been added by the Indian Criminal Law Amendment Act (III. of 1895), s. 2.

THE mere possession of weights in excess of the authorized standard will not support a conviction under s. 266 of the Penal Code. A fraudulent intent must be charged and proved.—REG. *v.* DAMODHAR DALJI, 1 Bom. H. C. R. 181. [Couch and Tucker, JJ. Jan. 27, 1864.]

THE mere possession of false weights or measures will not in itself raise any strong presumption of fraud, as they may have been put away so as not to be used. The fraudulent intent will be shown greatly by the place where they are found. Suppose a false balance was found fixed to a tradesman's counter where he was accustomed to sell his goods, and there was no other in the place. There would be, in the case, the strongest possible presumption that the possession was not innocent. On the other hand, suppose he had true balances in his shop, but an untrue one stowed away in an attic with a lot of lumber, there the presumption would be against fraud. A farmer had in his house a balance or portable weighing machine and two iron weights which were found by the inspector to be light. The inspector saw no produce about the premises, and could not prove that the farmer exposed or kept for sale, or weighed for conveyance or carriage any goods or produce, and it was held that the conviction of the farmer was wrong.—GRIFFITHS *v.* PLACE, 20 L. T., N. S., 484.

**267.** Whoever makes, sells, or disposes of any instrument for weighing, or any weight, or any measure of length or capacity, which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Making or selling false weights or measures.

Presy. Mag., or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

## CHAPTER XIV.

### OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS.

**268.*** A person is guilty of a public nuisance, who does any act, or is guilty of an illegal omission, which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right.

Public nuisance.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

KEEPING dogs which make noises in the night amounts to a public nuisance.—2 Chit. Crim. Law 647; 1 Russ. 452.

WHERE, upon an indictment against a tinman for the noise made by him in carrying on his trade, it appeared in evidence that the noise only affected the inhabitants of three sets of chambers in Clifford's Inn, and that by shutting the windows the noise was, in a great measure, prevented, it was ruled by Lord Ellenborough, C.J., that the indictment could not be sustained, as the annoyance was, if anything, a private nuisance.—REX. *v.* LLOYD, 1 Russ. 318.

NUISANCES punishable under the Penal Code may still be made the subject of civil action, before or without prosecution.—JINA RANCHHOD *v.* JODHA GHELLA, 1 Bom. H. C. R. 1. [Forbes and Newton, JJ. June 30, 1863.]

A COMMON gaming-house is one which is kept or used for profit or gain, and may

* The definition of "public nuisance" here given applies in the case of all Acts of the Governor-General in Council and Regulations under 33 Vict., c. 3, s. 1, made after 14th January 1887.—See the General Clauses Act (X. of 1897), s. 3 (*44*) and s. 4 (*2*).

As to procedure in case of public nuisances, see the new Code of Criminal Procedure (Act V. of 1898), Ch. X., s. 133, *et seq.*

constitute a public nuisance; but it cannot be held, in the absence of evidence of any actual annoyance to the public, that every person who admits gamblers into his house, and all persons who game therein, are guilty of a public nuisance within the meaning of s. 268 of the Penal Code.—REG. v. HAU NAGJI, 7 Bom. H. C. R. 74. [Gibbs and Melvill, JJ. Dec. 1, 1870.

AT a certain village where a fair was annually held, the lambardars made arrangements, at the time of the fair, every year for the public sanitation of the place. In March 1875, the Deputy Commissioner, going to the place, found that the usual arrangements had not been made for the fair, and that the public road was for several hundred yards covered with fœtid matter. The Deputy Commissioner tried the lambardars for committing a public nuisance and convicted them. *Held* (by the Chief Court) that the conviction was bad, as there was no legal omission on the part of the lambardars.—CROWN v. GUJ SING, Panj. Rec., No. 11 of 1875.

PERSONS placing a bamboo stockade across a tidal navigable river for the purpose of fishing, although leaving in such stockade a narrow opening for the passage of boats, which passage was, however, kept closed except on the actual passage of a boat, were charged at the instance of a sub-divisional officer with causing an obstruction under s. 283 of the Penal Code. *Held* that, although it was doubtful whether s. 283 applied to the case, they had committed an offence under s. 268 of the Penal Code, and were punishable under s. 290 of that Code.—IN THE MATTER OF UMESH CHANDRA KAR, I. L. R., 14 Cal. 656. [Petheram, C. J., and Beverley, J. July 9, 1887.] Considered and commented on in *Jugal Das Dalal* v. *Queen-Empress*, I. L. R., 20 Cal. 665 *infra*.

THE accused cut up, on his verandah, meat that was to be cooked for a dinner-party, exposing it to the sight of persons passing along the road, among whom were some Jains, whose temple was close by. The Jains complained to the Magistrate that the accused had made the air offensive, and caused annoyance. The Magistrate found that the meat was *not in an offensive state, but convicted* the accused of committing a public nuisance, under s. 268 of the Penal Code, on the ground that he had done an act by which several persons, being Jains were much annoyed, it being a well-known fact that they had great repugnance to the killing of animals of every sort. *Held*, reversing the conviction and sentence, that in this case no real damage or injury was caused to the public or to the people in general dwelling in the vicinity, and that it was a case of private rather than of public nuisance, and, therefore, not one falling within the purview of the criminal law. The applicant's act was an annoyance merely by reason of its hurting the feelings of the Jains, who have a repugnance to the killing of animals, and did not constitute an offence under s. 291 of the Penal Code. *Muttumira* v. *Queen-Empress* (I. L. R., 7 Mad. 590) referred to.—QUEEN-EMPRESS v. BYRAMJI EDALJI, I. L. R., 12 Bom. 437. [Birdwood and Parsons, JJ. Dec. 1, 1887.] For *Muttumira* v. *Queen-Empress*, I. L. R., 7 Mad. 590, see under s. 290, *infra*.

THE mere fact of an encroachment on a tidal navigable river does not necessarily amount to a public nuisance so as to render a person causing such encroachment liable to punishment under s. 290 of the Penal Code, but there must be evidence that such encroachment causes one of the results specified in s. 268. *In the Matter of the Petition of Umesh Chandra Kar* (I. L. R., 14 Cal. 656) considered and commented on. The rule laid down in that case, to the effect that any encroachment, however slight, on a tidal navigable river, constitutes an offence under s. 290, is too widely stated. Each case should be determined on its own merits, and a decision arrived at as to whether the encroachment has caused an obstruction or not. The petitioner was charged with having erected a *jag* in a tidal navigable river, constructed of trees and dams, and thereby having committed offences under ss. 283 and 290 of the Penal Code. There was evidence to show that the *jag* was about 45 cubits long and 20 cubits broad, and that it was erected on the silted side of the river, where it was about 300 *hats* broad, and that it did not obstruct the ordinary navigation of the river. The lower Court held that the *jag* could not but cause an obstruction, and convicted the petitioner under s. 283. *Held* that, as there was no evidence to show that the petitioner had caused any danger, obstruction, or injury to any person in any public way or line of navigation, the conviction under that section could not be sustained. *Held* further that he could not be convicted under s. 290, as there was no evidence of any obstruction to the ordinary navigation of the river.—JUGAL DAS DALAL v. QUEEN-EMPRESS, I. L. R., 20 Cal. 665. [Prinsep and Ameer Ali, JJ. Feb. 9, 1893.]

WHOEVER appropriates any part of a street by building over it, infringes the right of the public *quoad* the part built over, and thereby commits an offence punishable under the Penal Code, s. 290, if not one punishable under s. 283.—QUEEN-EMPRESS v. VIRAPPA

CHETTI, I. L. R., 20 Mad. 433. [Collins, C.J., and Benson, J. Dec. 10, 17, 1896.]

WHERE a mother refused to allow her daughter suffering from small-pox to be removed to a hospital, in accordance with an order made by the District Magistrate, unless she accompanied her, and was convicted of an offence under s. 269 of the Penal Code by the District Magistrate, *held* that no unlawful or negligent act had been committed within the meaning of s. 269 of the Penal Code.—CAHOON v. MATHEWS, I. L. R., 24 Cal. 494 [Ghose and Gordon, JJ. Mar. 3, 1897.]

*Held* that the soliciting for purposes of prostitution of passers-by on a public road is not a public nuisance as that term is defined in s. 268 of the Indian Penal Code.—QUEEN-EMPRESS v. NANNI, I. L. R., 22 All. 113. [Knox and Aikman, JJ. Nov. 6, 1899.]

**269.** Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Pres. Mag., or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Not comp.

* Negligent act likely to spread infection of any disease dangerous to life.

INOCULATION in itself is not an illegal or negligent act; and unless it is proved that the act was done negligently, with the knowledge or belief that it was likely to spread the infection of a disease dangerous to life, or that there was negligent dealing with the patient after inoculation, with the knowledge or belief as aforesaid, there can be no conviction in respect of such an act under s. 269.—Mad. H. C. Rul., July 10, 1867; 2 Mad. Jur. 324.

ACCUSED were convicted under s. 269 for allowing accumulation of filth and manure in their villages. *Held* that this could not be construed into an act likely to spread infection of dangerous disease within the meaning of the section.—CROWN v. BUTA SINGH, Panj. Rec., No. 25 of 1872.

K, KNOWING that he was suffering from cholera, entered a train as a passenger without informing the Railway Company's servants of his condition. M, knowing of K's condition, bought K's ticket, and travelled with him. *Held* that K was properly convicted under s. 269 of the Penal Code of negligently doing an act which was, and which he had reason to believe was, likely to spread infection of a disease dangerous to life, and M of abetment of K's offence.—QUEEN-EMPRESS v. KRISHNAPPA, I. L. R., 7 Mad. 276. [Turner, C.J., and Kernan, J. Dec. 14, 1883.]

A PROSTITUTE who, while suffering from syphilis, communicates the disease to a person who has sexual intercourse with her, is not liable to punishment under s. 269 of the Penal Code (Act XLV of 1860) "for a negligent act and one likely to spread infection of any disease dangerous to life." *Semble*—She may be charged with cheating under s. 417 or 420, if the intercourse was induced by any misrepresentation on her part.—QUEEN-EMPRESS v. RAKHMA, I. L. R., 11 Bom. 59. [West and Nanabhai Haridas, JJ. Sep. 30, 1886.]

WHERE a mother refused to allow her daughter suffering from small-pox to be removed to a hospital, in accordance with an order made by the District Magistrate, unless she accompanied her, and was convicted of an offence under s. 269 of the Penal Code by the District Magistrate, *held* that no unlawful or negligent act had been committed within the meaning of s. 269 of the Penal Code.—CAHOON v. MATHEWS, I. L. R., 24 Cal. 494 [Ghose and Gordon, JJ. Mar. 3, 1897.]

**270.** Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ditto.

Malignant act likely to spread infection of any disease dangerous to life.

**271.** Whoever knowingly disobeys any rule made and promulgated by the Government of India, or by any Government, for putting any vessel into a state of quarantine,* or for

Pres. Mag., or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

Disobedience to quarantine-rule.

* For power to make rules relating to quarantine, see the Indian Quarantine Act (I. of 1870).

regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Presy. Mag., or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

**272.*** Whoever adulterates any article of food or drink so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Adulteration of food or drink intended for sale.

Ditto.

**273.*** Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sale of noxious food or drink.

ACCUSED sold a quantity of *atta* at the rate of 18 seers per rupee, the price of *atta* of good quality being a rupee for fifteen seers. A medical officer deposed that the *atta* was "old and gritty," and "would be bad for the health if eaten." Accused told the purchaser at the time of the sale that the *atta* was being sold cheap, because it was "bad" or of an inferior quality. *Held* that the facts did not warrant a conviction under s. 273.—CROWN *v.* GUNESH, Panj. Rec., No. 15 of 1873.

Ditto.

**274.*** Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Adulteration of drugs.

Ditto.

**275.*** Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sale of adulterated drugs.

Ditto.

**276.** Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both

Sale of drug as a different drug or preparation.

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* For power to order destruction of the food or other thing in respect of which a conviction is had under ss. 272-275, see the new Code of Criminal Procedure (Act V. of 1898), s. 521 (2).

**277.** Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Any Mag. Cognizable. Summons. Bailable. Not comp.

**Fouling water of public spring or reservoir.**

THE words, "public spring or reservoir," used in s. 277 of the Penal Code, do not include a public river. The strewing of branches in a river for fishing purposes, *held* therefore to be no offence under that section. —EMPRESS *v.* HALODHUR PORE, I. L. R., 2 Cal. 383. [Markby and Prinsep, JJ. May 7, 1877.]

THE term "public spring" in s. 277 of the Penal Code does not include a continuous stream of water running along the bed of a river.—REG. *v.* VITTI CHOKKAN, I. L. R., 4 Mad. 229. [Innes and Muttusami Ayyar, JJ. Oct. 21, 1881.]

**278.** Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood, or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

Any Mag. Uncog. Summons. Bailable. Not comp.

**Making atmosphere noxious to health.**

**279.** Whoever drives any vehicle, or rides, on any public way, in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Any Mag. Cognizable. Summons. Bailable. Not comp.

**Rash driving or riding on a public way.**

THE actual driver, and not the owner, of a carriage is liable under s. 279 of the Penal Code in case of a collision and injury to another arising out of rash driving.—LARKMORE (A. W.) *v.* PERNENDOO DEO RAI, 14 W. R. 32. [Bayley and Kemp, JJ. Aug. 13, 1870.]

DEFENDANT was convicted under s. 338 of the Penal Code of causing grievous hurt. The evidence showed that the defendant was being driven in a carriage to her house through the streets of the town between the hours of 7 and 8 P. M.; that the carriage was being driven at an ordinary pace and in the middle of the road; that the night was dark and the carriage without lamps, but that the horse-keeper and coachman were shouting out to warn foot-passengers; that the defendant's carriage came into contact with the complainant's father, an old deaf man, and that complainant's father was thereupon knocked down, run over, and killed. *Held*, upon a reference, that the question for the Court was whether there was any evidence that the death of the deceased was induced by an act negligently and rashly directed by the accused, and that there was no such evidence. The conviction was accordingly quashed.—PRO., Aug. 17, 1871, 6 Mad. H. C. R. Ap. 31.

THE accused was convicted of rash riding on a public way under s. 279 of the Penal Code. He contended that his conviction was bad, on the ground that there was no proof that any person was on the road in question at the time when he was alleged to have ridden in a rash or negligent manner. *Held* that, though there was no such proof, it was competent to the Court to take into its consideration the probability of persons using the public way being placed in danger by the act of the accused. The accused's act came within the mischief struck at by s 279 of the Penal Code, and was included within its terms.—QUEEN-EMPRESS *v.* HORMUSJI NOWROJI LORD, I. L. R., 19 Bom 715 [Jardine and Ranade, JJ. Aug. 29, 1894.]

**280.** Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Not comp.

**Rash navigation of vessel.**

Ct. of Ses. Cognizable. Warrant. Bailable. Not comp.

**281.** Whoever exhibits any false light, mark, or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

*Exhibition of false light, mark, or buoy.*

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Not comp.

**282.** Whoever knowingly or negligently conveys, or causes to be conveyed, for hire, any person by water, in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

*Conveying person by water for hire in unsafe or overloaded vessel.*

BOATMEN who ply an unseaworthy vessel, whereby the lives of passengers for hire are endangered, should be charged under s. 282, and not under s. 336 of the Penal Code.—REG. v. KHODA JAGTA, 1 Bom. H. C. R. 137. [Forbes and Couch, JJ. Jan. 8, 1864.]

Ditto.

**283.** Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction, or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.

*Danger or obstruction in a public way or navigation.*

WHERE an accused, for having repaired a public road without having previously asked for leave to repair it, was, on a simple petition, charged with having obstructed the road, and the complainant never appeared, *held* that the Deputy Magistrate ought to have dismissed the complaint.—QUEEN v. BHOLANATH BANERJEE, 7 W. R. 31. [Kemp and Markby, JJ. Feb. 16, 1867.]

To spread fishing nets by the side of a thoroughfare in a town is neither an offence punishable under cl. 3, s. 48, Act XXIV., 1859, nor, without proof of obstruction caused to any particular person or class of persons, under s. 283, Penal Code. The following is a full report of the case:—"In this case the prosecutor (a policeman) deposed that he saw a bad-smelling net dried on the road by the side of the house of the first accused, so as to cause obstruction to persons passing by. The second accused admitted the net was his, and had been left there by him. The Magistrate convicted the second accused under cl. 3 s. 48, Madras Police Act (XXIV. of 1859) and fined him one rupee. The case was referred by the District Magistrate of Madura for the orders of the High Court, on the ground that the action of the accused in drying nets in the street did not, in his opinion, constitute such an obstruction as is contemplated in cl. 3, s. 48, Act XXIV., 1859. No one appeared at the hearing. The Court (Innes and Muttusami Ayyar, JJ.) delivered the following judgment: 'Cl. 3, s. 48, Madras Police Act (XXIV. of 1859) under which the accused has been convicted, refers to obstruction of the road or street caused by *cattle* or by *conveyances*, in certain circumstances therein detailed. The act of the accused in spreading fishing nets by the side of the road was clearly, therefore, not punishable under this clause of s. 48 of the Act. The present conviction cannot also, in our opinion, be sustained as a conviction under s. 283, Penal Code, because, although it is stated in the evidence in general terms that obstruction was caused, it does not appear that obstruction was caused to any particular individual or individuals. The conviction is accordingly quashed. The fine collected from the accused must be refunded.'—REG. v. KHADER MOIDIN, I. L. R., 4 Mad. 235. [Innes and Muttusami Ayyar, JJ. Nov. 7, 1881.]

PERSONS placing a bamboo-stockade across a tidal navigable river for the purpose of fishing, although leaving in such stockade a narrow opening for the passage of boats, which passage was, however, kept closed except on the actual passage of a boat, were charged, at the instance of a sub divisional officer, with causing an obstruction under s. 283 of the Penal Code. *Held* that, although it was doubtful whether s. 283 applied to the case, they had committed an offence under s. 268 of the Penal Code, and were punishable under s. 290 of that Code.—IN THE MATTER OF UMESH CHANDRA KAR, I. L. R., 14 Cal. 656 [Petheram, C.J., and Beverley, J. July 9, 1887. Considered and commented on in *Jugal Das Dalal* v. *Queen-Empress*, I. L. R., 20 Cal. 665, *infra*.

THE mere fact of an encroachment on a tidal navigable river does not necessarily amount to a public nuisance so as to render a person causing such encroachment liable to punishment under s 290 of the Penal Code, but there must be evidence that such encroachment causes one of the results specified in s. 268. *In the Matter of the Petition of Umesh Chandra Kar* (I. L. R., 14 Cal. 656) considered and commented on. The rule laid down in that case, to the effect that any encroachment, however slight, on a tidal navigable river, constitutes an offence under s 290, is too widely stated Each case should be determined on its own merits, and a decision arrived at as to whether the encroachment has caused an obstruction or not. The petitioner was charged with having erected a *jag* in a tidal navigable river, constructed of trees and dams, and thereby having committed offences under ss. 283 and 290 of the Penal Code There was evidence to show that the *jag* was about 45 cubits long and 20 cubits broad, and that it was erected on the silted side of the river, where it was about 300 *hats* broad, and that it did not obstruct the ordinary navigation of the river. The lower Court held that the *jag* could not but cause an obstruction, and convicted the petitioner under s 283 *Held* that, as there was no evidence to show that the petitioner had caused any danger, obstruction, or injury to any person in any public way or line of navigation, the conviction under that section could not be sustained. *Held*, further, that he could not be convicted under s. 290, as there was no evidence of any obstruction to the ordinary navigation of the river.—JUGAL DAS DALAL v. QUEEN-EMPRESS, I. L. R., 20 Cal. 665. [Prinsep and Ameer Ali, JJ Feb. 9, 1893.]

WHOEVER appropriates any part of a street by building over it, infringes the right of the public *quoad* the part built over, and thereby commits an offence punishable under the Penal Code, s. 290, if not one punishable under s. 283.—QUEEN-EMPRESS v. VIRAPPA CHETTI, I. L., R., 20 Mad. 433. [Collins, C J. and Benson J. Dec 10, 17, 1896.]

**284.** Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person,

Negligent conduct with respect to poisonous substance.

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against probable danger to human life from such poisonous substance.

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to fire or combustible matter.

**285.** Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt, or injury to any other person,

Any Mag. Cognizable. Summons. Bailable. Not comp.

or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

THE word "injury" (rashly caused by fire &c.) in s 285 of the Penal Code includes any harm illegally caused to the property of any other person, and is not confined to injury to the person only.—REG. v. NATHA LALLA, 5 Bom H. C. R. 67. [Newton and Tucker, JJ. Aug. 6 1868.

**286.** Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person,

Negligent conduct with respect to explosive substance.

Ditto.

or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance,

**shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.**

C, HAVING returned to his house after dawn from watching his crops at night with a loaded gun, and finding his house-door locked, placed the gun, loaded, with the hammer down on the cap, on a cot outside his house and went for a short time to a neighbouring house. A, the child of a neighbour, four years old, was killed by the gun exploding. C was convicted under s. 286 of the Penal Code for negligently omitting to take order with the gun sufficient to guard against probable danger to human life. *Held* that the conviction was bad in law.—QUEEN-EMPRESS v. CHENCHUGADU, I. L. R., 8 Mad. 421 [Brandt, J. April 30, 1885.]

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

**287.** Whoever does, with any machinery, any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to machinery.

Ditto.

**288.** Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to pulling down or repairing buildings.

Any Mag. Cognizable. Summons. Bailable. Not comp.

**289.** Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to animal.

A PONY is an animal within the provisions of s. 289. To sustain a charge under s. 289, there should be evidence, not only of negligence, but also that such negligence would probably lead to danger to human life or of grievous hurt.—PRO., April 8, 1867, 3 Mad. H. C. R. Ap. 33.

A CONVICTION under s 289 of the Penal Code quashed, inasmuch as the evidence did not allude to the negligence of which the accused had been found guilty, and because the evidence was taken in the presence of the accused.—QUEEN v. BROJONARAIN PURRAJ, 2 W. R. 51. [Jackson and Glover, JJ. Mar 22, 1865.]

THE order of a Deputy Magistrate prohibiting the owners of cattle from allowing their animals to stray, and a conviction under s. 289 of the Penal Code against the accused for permitting his pony to stray, were quashed as illegal upon a reference under s. 434 of the Code of Criminal Procedure (Act X. of 1872).—GOVT. v. MOZUFFER KHALIFA, 18 W. R. 21, 9 B. L. R. Ap. 36. [Kemp and Glover, JJ. June 21, 1872.]

THE High Court refused to interfere with an order passed under s 289 of the Penal Code by a Magistrate finding the owner of a pony which had been tied negligently, and which was running about loose in a crowded bazar, and thereby endangering the lives and limbs of persons, that section referring, not only to savage animals, but to any animal.—IN THE MATTER OF CHAND MANDAL, 19 W. R. 1 [Kemp and Glover, JJ. Nov. 29, 1872.]

**Punishment for public nuisance in cases not otherwise provided for.**

**290.** Whoever commits a public nuisance in any case not otherwise punishable by this Code shall be punished with fine which may extend to two hundred rupees.

Any Mag. Uncog. Summons. Bailable. Not comp.

THE omission of a person to keep his ponies from straying is not a public nuisance punishable under s. 290 of the Penal Code. —JOYNATH MUNDUL *v.* JAMUL SHEIKH, 6 W. R. 71. [Kemp and Markby, JJ. Sep. 8 1866.]

THE establishment of a butcher's shop is not an indictable nuisance under s 290, but may become a nuisance if it be carried on in such a way as to be offensive to a section of the community, or without due regard to the feelings of any class.—EESA *v.* KEEMOO, Panj. Rec., No 18 of 1867.

IN a case of public nuisance under s. 290 of the Penal Code, it must be proved that injury, danger, or annoyance has been caused either in regard to the enjoyment of property, or the exercise of a public right on the part of a portion of the community, or of any particular class of people. The fact that there is a special law to meet a particular offence (in this case, cattle-trespass) does not prevent the punishment of the offenders under the Penal Code, if an offence which could have been rightly punished under the Penal Code was established.—ONOORAM *v.* LAMESSOR; WEBSTER *v.* KEENA, 9 W. R. 70. [Phear and Hobhouse, JJ. May 23, 1868.]

THE sentence of imprisonment passed in default of the payment of a fine inflicted under s. 290 of the Penal Code (for committing a public nuisance) should be one of simple, not rigorous, imprisonment.—REG. *v.* SANTU BIN LAKHAPPA KOKE, 5 Bom. H. C. R. 45. [Couch, C.J., and Newton, J. June 17, 1868.]

CERTAIN Hindus charged certain Muhammadans with nuisance, in that they had opened a cook-shop, and carried on their business in a manner calculated to give annoyance. Disputes of this nature being frequent, the Magistrate ordered the shop to be closed, pending reference to a committee of respectable Hindus and Muhammadans of the city, in conjunction with whom he prepared and promulgated for observance by both sects a set of rules, which included rules for the management of a Hindu temple and a Muhammadan mosque in the neighbourhood. *Held* that the Magistrate had no authority to interfere in the management of the temple and mosque, and should have confined himself to deciding whether the shop complained of was or was not a nuisance: that that was a question which did not depend entirely on the shop, being a cook shop, or on beef being sold there (though that might, under certain circumstances, amount to a nuisance), but whether the business of the shop (in itself a lawful business) was or was not conducted in such a manner as to give annoyance to the public in the vicinity.—ASSA NUND *v.* HOSSEIN BUKSH, Panj. Rec., No. 15 of 1868.

A PROSTITUTE, by visiting a dák-bungalow at the request of a person staying there, but against whom there is no evidence of any impropriety of speech, or gesture, or act, or that she had occasioned annoyance to the public generally, or to any persons who, in the exercise of their public right, were lodging in the bungalow, is not liable to be convicted under s. 290 of the Penal Code as having committed a public nuisance.—QUEEN *v.* MUSSUMAT BEGUM, 2 N.-W. P. 349. [Turner, Offg. C.J., and Turnbull, J. Aug. 18, 1870.]

A COMMON gaming-house is one which is kept or used for profit or gain, and may constitute a public nuisance, but it cannot be held, in the absence of evidence of any actual annoyance to the public, that every person who admits gamblers into his house, and all persons who game therein, are guilty of a public nuisance within the meaning of s. 268 of the Penal Code.—REG. *v.* HAU NAGJI, 7 Bom. H. C. R. 74. [Gibbs and Melvill, JJ. Dec. 1, 1870.]

THE petitioners, who filled up a portion of a ditch or drain which formed part of a public way, and which belonged to the public, instead of being convicted of a nuisance punishable under s. 290, Penal Code, were convicted of criminal trespass. But inasmuch as they had not been sentenced to a heavier punishment than might have been awarded if they had been convicted of a nuisance, the High Court declined to interfere.—IN THE MATTER OF ROOPNARAIN DUTT, 18 W R 38. [Couch, C.J., and Ainslie, J. Aug. 2, 1872.]

THE trial of 14 persons together charged with distinct offences (committing public nuisance) under ss. 290 and 291 of the Penal Code was *held* an irregularity calculated to prejudice the accused. Convictions quashed.—PULISANKI REDDI *v.* REG., I. L. R., 5 Mad. 20 [Innes and Muttusami Ayyar, JJ. Feb. 24, 1882.]

A SENTENCE of rigorous imprisonment in default of payment of fine for the offence of

nuisance under s. 290 of the Penal Code is legal.—REG *v.* YELLAMANDU, I. L. R., 5 Mad. 157. [Innes and Muttusami Ayyar, JJ. Mar. 14, 1882.]

OMISSION to fence a well on private ground within eight yards of a highway, and open to it, is not punishable as a public nuisance. —QUEEN *v.* ANTHONY, I. L. R., 6 Mad. 280. [Innes and Kernan, JJ. Feb. 23, 1883.]

CERTAIN Mahomedan inhabitants of a village erected, during the Muharram, a temporary shed on land forming part of the village-site, and placed in the shed a religious symbol. They were convicted by a Magistrate under s 290 of the Penal Code of committing a public nuisance, on the ground that their act was certain to cause annoyance to the Hindu inhabitants of the village, whose temples were in the vicinity, and was therefore, calculated to lead to a breach of the public peace. *Held* that the conviction was illegal.—MUTTUMIRA *v.* QUEEN-EMPRESS, I. L. R., 7 Mad. 590. [Turner, C.J., and Hutchins, J. Sep. 18, 1884.] Referred to in *Queen-Empress* v. *Byramji Edalji*, I. L. R., 12 Bom. 437, *infra*; and also in *Queen-Empress* v. *Lakiuddin*, I. L. R., 10 All. 44, *infra*.

A PERSON wilfully slaughtering cattle in a public street, so that the slaughter could be heard and seen by the passers-by, would commit an offence punishable under s. 290 of the Penal Code. But where certain Mahomedans, for a religious purpose, killed two cows before sunrise in a private compound partly visible from a public road, and the killing of one of the cows only was witnessed by one Hindu, *held* that the circumstances proved did not amount to the commission of a public nuisance as defined in s. 268 of the Code.—*Muttumira* v. *Queen-Empress* (I. L. R., 7 Mad 590) referred to —QUEEN-EMPRESS *v.* ZAKIUDDIN, I. L. R, 10 All. 44 [Brodhurst, J. June 22, 1887.]

THE accused cutup, on his verandah, meat that was to be cooked for a dinner-party, exposing it to the sight of persons passing along the road, among whom were some Jains, whose temple was close by. The Jains complained to the Magistrate that the accused had made the air offensive, and caused annoyance. The Magistrate found that the meat was not in an offensive state, but convicted the accused of committing a public nuisance, under s. 268 of the Penal Code, on the ground that he had done an act by which several persons being Jains were much annoyed, it being a well-known fact that they had great repugnance to the killing of animals of every sort. *Held*, reversing the conviction and sentence, that in this case no real damage or injury was caused to the public or to the people in general dwelling in the vicinity, and that it was a case of private rather than of public nuisance, and therefore not one falling within the purview of the criminal law. The applicant's act was an annoyance merely by reason of its hurting the feelings of the Jains who have a repugnance to the killing of animals, and did not constitute an offence under s. 291 of the Penal Code. *Muttumira* v. *Queen-Empress* (I. L. R., 7 Mad. 590) referred to —QUEEN-EMPRESS *v.* BYRAMJI EDALJI, I. L. R., 12 Bom. 437. [Birdwood and Parsons, JJ. Dec. 1, 1887.]

PERSONS placing a bamboo stockade across a tidal navigable river for the purpose of fishing, although leaving in such stockade a narrow opening for the passage of boats, which passage was, however, kept closed except on the actual passage of a boat, were charged, at the instance of a sub-divisional officer, with causing an obstruction under s. 283 of the Penal Code. *Held* that, although it was doubtful whether s. 283 applied to the case, they had committed an offence under s. 268 of the Penal Code, and were punishable under s. 290 of that Code.—IN THE MATTER OF UMESH CHANDRA KAR, I. L. R., 14 Cal. 656. [Petheram, C.J., and Beverley, J. July 9, 1887.] Considered and commented on in *Jugul Das Dalal* v. *Queen-Empress*, I. L. R., 20 Cal. 665, *infra*.

THE lessee of a house, who permitted disorderly people to use it for gambling, and thereby caused annoyance to the public, was convicted of an offence under the Penal Code, s. 290. It appeared, however, that the accused had not engaged the house with the object of letting it out as a gaming house. *Held* that the conviction was right —QUEEN-EMPRESS *v.* THANDAVARAYUDU, I. L. R., 14 Mad. 364. [Muttusami Ayyar and Wilkinson, JJ. Jan. 28, 1891.]

THE mere fact of an encroachment on a tidal navigable river does not necessarily amount to a public nuisance so as to render a person causing such encroachment liable to punishment under s. 290 of the Penal Code, but there must be evidence that such encroachment causes one of the results specified in s. 268. *In the Matter of the Petition of Umesh Chandra Kar* (I. L. R., 14 Cal. 656) considered and commented on. The rule laid down in that case, to the effect that any encroachment, however slight, on a tidal navigable river, constitutes an offence under s. 290, is too widely stated. Each case should be determined on its own merits, and a decision arrived at as to whether the encroachment has caused an obstruction or not. The petitioner was charged with having erected a

*jag* in a tidal navigable river, constructed of trees and dams, and thereby having committed offences under ss. 283 and 290 of the Penal Code. There was evidence to show that the *jag* was about 45 cubits long and 20 cubits broad, and that it was erected on the silted side of the river, where it was about 300 *hâts* broad, and that it did not obstruct the ordinary navigation of the river. The lower Court held that the *jag* could not but cause an obstruction, and convicted the petitioner under s. 283. *Held* that, as there was no evidence to show that the petitioner had caused any danger, obstruction, or injury to any person in any public way or line of navigation, the conviction under that section could not be sustained. *Held*, further, that he could not be convicted under s 290, as there was no evidence of any obstruction to the ordinary navigation of the river.—JUGAL DAS DALAL *v.* QUEEN-EMPRESS, I. L. R., 20 Cal 665. Prinsep and Ameer Ali, JJ. Feb 9, 1893.]

ON the 11th August 1894, the District Magistrate promulgated an order prohibiting the people of the village of Thirukodikaval from using their burning-grounds situated on the southern bank of the Cauvery, and directing them to use other burning-grounds which had been provided. On the 11th May 1895, certain persons, in defiance of this order, cremated a corpse at the spot interdicted, and were convicted under ss. 188, 290, Indian Penal Code, but the conviction under s. 188 was reversed on appeal. *Held* that, when persons entitled to use a particular spot dedicated for the communal purpose of cremation, use it for that purpose in a manner neither unusual nor calculated to aggravate the inconveniences necessarily incident to such an act as it is generally performed in this country, they cannot be convicted of a public nuisance on the ground that their act caused material annoyance and discomfort to persons near the place on the occasion referred to. *Held*, further, that the order of the District Magistrate was not warranted by s. 143, Criminal Procedure Code, or by any other law, and must, therefore, be set aside.—QUEEN-EMPRESS *v.* SAMINADHA PILLAI, I. L. R., 19 Mad. 464. [Subramania Ayyar and Davies, JJ. Aug. 13, 14, 25, 1896

*Held* that the soliciting for purposes of prostitution of passers-by on a public road is not a public nuisance as that term is defined in s. 268 of the Indian Penal Code.—QUEEN EMPRESS *v.* NANNI, I. L. R., 22 All. 113. Knox and Aikman, JJ. Nov. 6, 1899.]

**291.** Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Not comp.

**Continuance of nuisance after injunction to discontinue.**

BEFORE a conviction can be had of committing a public nuisance under s. 291, there must be proof that there was a previous conviction of an offence, and an injunction by a public servant to desist from continuing such nuisance.—IN THE MATTER OF MOHESH CHUNDER, 20 W. R. 55. Jackson and Mitter, JJ. May 21, 1873.]

THE trial of 14 persons together charged with distinct offences (committing public nuisance) under ss. 290 and 291 of the Penal Code, was held an irregularity calculated to prejudice the accused. Convictions quashed.—PULISANKI REDDI *v.* REG., I. L. R., 5 Mad. 20. [Innes and Muttusami Ayyar, JJ. Feb. 24, 1882.]

To support a conviction under s. 291 of the Penal Code, there must be proof of an injunction to the accused individually against repeating or continuing the same particular public nuisance. It must be shown that the person convicted had, on some previous occasion, committed the particular nuisance, had been enjoined not to repeat or continue it, and had repeated or continued it. The authority under which a Magistrate can order or enjoin a person against repeating or continuing a public nuisance is s. 143 of the Criminal Procedure Code. It is the infringement of this order that is punishable under s 291 of the Penal Code. What is contemplated is an order addressed to a particular person. A Magistrate's power to deal with public nuisances are contained in chaps. 10 and 11 of the Criminal Procedure Code. Ch. 11 is only properly applicable to temporary orders in urgent cases. It is only in such cases that an order may be made *ex parte*, and any exception is allowed to the general rule that it shall be directed to a particular individual. In such emergent cases an order may, under s. 144 of the Code, be directed to the public generally, when frequenting or visiting a particular place, to abstain from a certain act, but this provision does not apply to a proclamation directed, not to the public generally, frequenting or

visiting a particular place, but to a portion of the community.—QUEEN-EMPRESS *v.* JOKHU, I. L. R., 8 All. 99. [Oldfield, J. Jan. 15, 1886.]

Presy. Mag. or Mag. of 1st or and class. Cognizable. Warrant. Bailable. Not comp.

**292*** Whoever sells or distributes, imports or prints for sale or hire, or wilfully exhibits to public view, any obscene book, pamphlet, paper, drawing, painting, representation, or figure, or attempts or offers so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Sale, &c., of obscene books, &c.

*Exception.*—This section does not extend to any representation sculptured, engraved, painted, or otherwise represented, on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

A CHARGE under ss. 292 and 294 of the Penal Code should be made specific in regard to the representations and words alleged to have been exhibited and uttered, and to be obscene; and the Magistrate, in convicting, should, in his decision, state distinctly what were the particular representations and words which he found on the evidence had been exhibited and uttered, and which he adjudged to be obscene within the meaning of those sections. Where no such specific decision has been given, the High Court, when the case has been transferred under s. 147, Act X. of 1875, may either try the case *de novo*, or dismiss it, on the ground that the Magistrate has come to no finding on which the conviction can be sustained.—REG. *v.* UPENDRONATH DOSS, I. L. R., 1 Cal. 356. [Phear and Markby, JJ. Mar 20, 1876.]

IN interpreting the word "obscene" in ss. 292 and 293 of the Penal Code, the Courts may rightly follow *Reg.* v. *Hicklin* (L. R., 3 Q. B 360), where Lord Cockburn, C.J., says: "I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall" Whether a publication is obscene is a question of fact.—QUEEN-EMPRESS *v.* PARASHRAM YESHWANT, I. L. R., 20 Bom 193. [Jardine and Ranade, JJ. Jan. 10, 1895.]

Ditto.

**293.*** Whoever has in his possession any such obscene book or other thing as is mentioned in the last preceding section for the purpose of sale, distribution, or public exhibition, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Having in possession obscene book, &c., for sale or exhibition.

A BOOK may be obscene within the meaning of the Penal Code, although it contains but a single obscene passage. The defence to a charge of selling and distributing certain obscene books was that they were sold and distributed in good faith in prosecution of a religious controversy *Held* that the excessive obscenity of such books took away the protection which their controversial nature might otherwise have afforded them Also that the intention of the seller and distributor must be gathered from the character of the matter contained in such books. As he had chosen to sell and distribute what was obscene, it must be presumed that he intended the natural consequences of his act, namely, corruption of the minds and prejudice of the morals of the public. It was not sufficient for him to say that his intentions were good It was his public act that must be the test of his intentions, and, having done an unlawful act, it was no answer to say that he thought it lawful. *Queen* v *Hicklin* (L. R., 3 Q. B 360) and *Steele* v *Brannan* (L. R., 7 C. P. 261) followed At the conclusion of the trial of a person for the sale and distribution of obscene books, the Court trying him ordered the destruction of certain copies of such books, voluntarily surrendered by him, under s 418 of the Criminal Procedure Code (Act X of 1872). *Held* that such Court was not empowered by that section to make such an order —EMPRESS *v.* INDERMAN, I. L. R., 3 All. 837. [Straight, J. June 3, 1881.]

* For power to order the destruction of copies of the thing in respect of which a conviction under s. 292 or s. 293 is had, see the new Code of Criminal Procedure (Act V. of 1898) s. 521.

IN interpreting the word "obscene" in ss. 292 and 293 of the Penal Code, the Courts may rightly follow *Reg.* v. *Hicklin* (L. R., 3 Q. B. 360), where Lord Cockburn, C.J., says: "I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall." Whether a publication is obscene is a question of fact.—QUEEN-EMPRESS *v.* PARASHRAM YESHWANT, I. L. R., 20 Bom. 193. [Jardine and Ranade, JJ. Jan. 10, 1895.]

Obscene acts and songs.

**294.*** Whoever, to the annoyance of others—

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

(*a*) does any obscene act in any public place, or

(*b*) sings, recites, or utters any obscene song, ballad, or words in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

A MAGISTRATE, F. P., had convicted certain persons under s 294 for singing obscene songs on a complaint charging them with repeating *lavnya*, which though often are not always obscene There being no evidence that the *lavnya* repeated by the accused were obscene, the convictions and sentences were reversed.—REG. *v.* GANGBIN KRISHNA DURAV 4 Bom H C. R 25 [Couch, C.J. and Newton, J Mar. 6, 1867]

A CHARGE under ss 292 and 294 should be made specific in regard to the representations and words alleged to have been exhibited and uttered, and to be obscene; and the Magistrate, in convicting, should, in his decision, state definitely what were the particular representations and words which he found on the evidence had been exhibited and uttered. Where no such specific decision has been come to, the High Court, when the case has been transferred under Act X of 1875, s. 147, may either try the case *de novo*, or dismiss it, on the ground that the Magistrate has come to no finding on which the conviction can be sustained.—REG. *v.* UPENDRONATH DOSS, I. L. R., 1 Cal. 356. [Phear and Markby, JJ. Mar. 9, 16, 20, 1876.]

Keeping lottery office.

**294A.**† Whoever keeps any office or place for the purpose of drawing any lottery not authorized by Government shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Any Mag. Uncog. Summons. Bailable. Not comp. Sanction.

And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number, or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees.

No charge of an offence punishable under s. 294A shall be entertained by any Court unless the prosecution be instituted by order of, or under authority from, the Local Government.—Act XVII. of 1870, s 14

THE sanction of the Local Government is necessary before a charge for keeping a lottery-office under s 10, Act XXVII. of 1870, can be instituted.—GOVT. *v.* NGA CHO, 15 W. R 2, 6 B I. R Ap. 98. [Norman, Offg C J. and Loch, J. Jan. 17, 1871.]

THE expression "in any such lottery" in part 2. of s. 294A of the Penal Code means "any lottery not authorized by Government,"

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* S. 294 has been substituted for the original by the Indian Criminal Law Amendment Act (III. of 1895), s. 3.

† S. 294A has been inserted by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 10.

As to authority for instituting prosecutions under s. 294A, see the new Code of Criminal Procedure (Act V. of 1898), s. 196.

Chaps. IV, V., and XXIII. of the Code apply to offences punishable under s. 294A.—See the Indian Penal Code Amendment Act (XXVII. of 1870), s. 13.

and includes a foreign lottery. The word "publisher" in the above paragraph includes both the person who sends a proposal as well as the proprietor of a newspaper who prints the proposal as an advertisement. The proprietor of a Bombay newspaper, who published an advertisement in his paper, relating to a Melbourne lottery, was accordingly held to be punishable under s. 294A of the Penal Code.—QUEEN-EMPRESS *v.* MANCHERJI KAVASJI SHAPURJI, I. L. R., 10 Bom. 97. [Nanabhai Haridas and Wedderburn, JJ. Aug. 18, 1885.]

## CHAPTER XV.

### OF OFFENCES RELATING TO RELIGION.

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Not comp.

**295.** Whoever destroys, damages, or defiles any place of worship, or any object held sacred by any class of persons, with the intention of thereby insulting the religion of any class of persons, or with the knowledge that any class of persons is likely to consider such destruction, damage, or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both.

Injuring or defiling place of worship, with intent to insult the religion of any class.

R, A HINDU, had sexual intercourse with a woman within an enclosure surrounding the tomb of a Mahomedan fakir. He was convicted under s 295 of the Penal Code. *Held* that, in the absence of proof that the place was used for worship or otherwise held sacred, the conviction was bad, and that it should be altered to a conviction under s. 297 of the said Code.—*In re* RATNA MUDALI, I. L. R., 10 Mad 126 [Muttusami Ayyar and Brandt, JJ. Dec. 29, 1886.]

THE word "object" in s 295 of the Penal Code does not include animate objects. The killing of a cow, therefore, in a public place is not an offence under this section.—QUEEN-EMPRESS *v.* IMAM ALI, I. L. R., 10 All 150. [Edge, C. J., and Straight, Brodhurst, Tyrrell, and Mahmood, JJ. Dec. 20, 1887.] Followed in *Romesh Chunder Sannyal v. Hiru Mondal*, I. L. R., 17 Cal. 852, *infra*

THE word "object" in s. 295 of the Penal Code does not include animate objects. A bull dedicated and set at large at the *Sradha* of a Hindu in accordance with religious usage is not an "object" within the meaning of that section. Where such an animal was killed by certain Mahomedans secretly, and at night in the presence of none but Mahomedans for the sake of the meat and value of the skin, *held* that no offence had been committed under s. 295 *Queen-Empress v. Imam Ali* (I. L. R., 10 All 150) followed. *Held*, further, that such a bull is not "moveable property" within the meaning of ss. 378 and 403, or "property" within the meaning of s 425 of the Penal Code, and could not therefore be the subject of theft, criminal misappropriation, or mischief The fact that such a bull receives some attention from the cowherd of the persons who set it at liberty, and is daily fed by him by direction of his employers, and is not used for breeding purposes without their permission being asked, is not inconsistent with a total surrender by those who set it at liberty of all their rights as proprietors *Queen-Empress v Bandhu* (I. L. R., 8 All. 51) followed. *Queen Empress v. Nalla* (I. L. R., 11 Mad. 145) referred to and commented on For the purpose of construing a section of an Act, and ascertaining the intention of the Legislature, the Report of the Indian Law Commissioners or a Select Committee appointed to consider a Bill may be referred to *Queen Empress v. Kartick Chunder Das* (I. L. R., 14 Cal 721) followed.—ROMESH CHUNDER SANNYAL *v.* HIRU MONDAL, I. L. R., 17 Cal. 852 [Norris and Macpherson, JJ. Mar. 27, and April 15, 1890.]

Ditto.

**296.** Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremonies shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Disturbing religious assembly.

A MASJID was used by the members of a sect of Mahomedans called the Hanifis, according to whose tenets the word "amen" should be spoken in a low tone of voice. While the Hanifis were at prayers, R, a Mahomedan of another sect, entered the masjid.

and in the course of the prayers, according to the tenets of his sect, called out "amen" in a loud tone of voice. For this act he was convicted of voluntarily disturbing an assembly engaged in religious worship, an offence punishable under s. 296 of the Penal Code. The Full Bench (Mahmood, J., dissenting) ordered the case to be re-tried, and that, in re-trying it, the Magistrate should have regard to the following questions, namely: (1) Was there an assembly lawfully engaged in the performance of religious worship? (2) Was such assembly, in fact, disturbed by the accused? (3) Was such disturbance caused by acts and conduct on the part of the accused by which he intended to cause such disturbance, or which acts and conduct, at the time of such acts and conduct, he knew or believed to be likely to cause such disturbance? *Held* by Mahmood, J., that the discussion occasioned by the act of the accused having, presumably, taken place during the interval when the prayers were not going on, the assembly was not at that time "engaged in the performance of religious worship," and was not "disturbed" within the meaning of s. 296 of the Penal Code; that, in reference to the terms of s. 39 of the Code, the accused did not disturb the assembly "voluntarily;" that he was justified by the Mahomedan ecclesiastical law in entering the mosque, and joining the congregation in saying the word "amen" loudly if he thought fit, and his conduct fell within the purview of s. 79 of the Penal Code, and was, therefore, not an offence under s. 296. *Beatty* v. *Gillbanks* (L. R., 9 Q. B. D. 308) referred to. Also *per* Mahmood, J., that having regard to the guarantee given by the Legislature to s. 24 of Act VI. of 1871 (Bengal Civil Courts Act), that the Mahomedan law shall be administered in all questions regarding "any religious usage or institution," the Court was bound, by s. 57 of Act I. of 1872 (Evidence Act), to take judicial notice of the Mahomedan ecclesiastical law, and the rules of that law need not be proved by specific evidence.—QUEEN-EMPRESS *v.* RAMZAN, I. L. R., 7 All 461. [Petheram, C.J., and Straight, Oldfield, Brodhurst, and Mahmood, JJ. Mar. 7, 1885.]

THE worship referred to in s. 296 of the Penal Code must be real worship and not a cloak for doing something else, and the assembly must be lawfully engaged in worship. If the ceremony is commenced by an act which is not lawful, it cannot be said that the persons engaged in it are lawfully engaged from the mere circumstance of their falling into a posture of worship, though such worship may be real. As to whether a worship is real or not, much must depend upon the circumstances under which it is performed. *Per* Banerjee, J.—To constitute an offence under s. 296 of the Penal Code (1) there must be a *voluntary* disturbance caused; (2) the disturbance must be caused to an assembly engaged in *religious worship* or *religious ceremonies*; and (3) the assembly must be *lawfully* engaged in such worship or ceremonies, *i.e.*, they must be doing what they have a right to do.—JAIPAL GIR *v.* DHARMAPALA, I. L. R., 23 Cal. 60. [Macpherson and Banerjee, JJ. Aug. 22, 1895.]

**297.** Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby,

Trespassing on burial-places, &c.

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Not comp.

commits any trespass in any place of worship, or on any place of sepulture, or any place set apart for the performance of funeral rites, or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

A, B, C, and D, were co-owners of a plot of land in which they were accustomed to bury their dead. A and B opened a sawpit close to the graves of D's relatives but did not disturb any of the graves. *Held* that they were wrongly convicted under s. 297 of the Penal Code.—*In re* KHAJA MUHAMMAD HAMIN KHAN, I. L. R., 3 Mad. 178. [Turner, C.J., and Hutchins, J. April 27, 1881.]

HELD that persons who entered upon a burial place, and ploughed up the graves, were liable to be convicted of the offence defined by s. 297 of the Penal Code, notwithstanding that their entry on the land was by the consent of the owner thereof.—QUEEN-EMPRESS *v.* SUBHAN, I. L. R., 18 All. 395. [Knox, J. May 26, 1896.]

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Comp.

**298.*** Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Uttering words, &c., with deliberate intent to wound religious feelings.

THE Madras High Court has ruled that the interpolation of a forbidden chant in an authorized ritual amounts to an offence under the Penal Code.—NARASIMHA CHARRIER v. SHREE KRISHNA LALA CHERYA, 2 Mad. Jur. 236.

CERTAIN Hindus, present at a caste dinner, had sat down to partake of the food which had been served to them, when certain other members of the caste came, and, after telling those who were seated to move to another place, which they refused to do, threw down a shoe amongst the men who were seated. The persons who threw the shoe were convicted of mischief, on the ground as their action had polluted the food, and had, from a Hindu religious point of view, rendered it unfit to be eaten. On reference by the Sessions Judge, it was held that this conviction was wrong; neither could the accused be convicted under s 298 or under s 504 of the Indian Penal Code on the facts found.—KING-EMPEROR v. MOTI LAL, I. L. R., 24 All. 155. [Blair, J. Nov. 15 1901.

## CHAPTER XVI.†

### OF OFFENCES AFFECTING THE HUMAN BODY.

#### *Of Offences affecting Life.*

REPORT OF THE INDIAN LAW COMMISSIONERS ON OFFENCES AGAINST THE BODY.

THE first class of offences against the body consists of those offences which affect human life; and highest in this first class stand those offences which fall under the definition of voluntary culpable homicide.

This important part of the law appears to us to require fuller explanation than almost any other.

This first point to which we wish to call the attention of His Lordship in Council is the expression, "omits what he is legally bound to do," in the definition of voluntary culpable homicide. These words, or other words tantamount in effect, frequently recur in the Code. We think this the most convenient place for explaining the reason which has led us so often to employ them. For, if that reason shall appear to be sufficient in cases in which human life is concerned, it will, *à fortiori*, be sufficient in other cases.

Early in the progress of the Code it became necessary for us to consider the following question: When acts are made punishable on the ground that those acts produce, or are intended to produce, or are known to be likely to produce, certain evil effects, to what extent ought omissions which produce, which are intended to produce, or which are known to be likely to produce, the same evil effects, to be made punishable?

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* Offences punishable under s. 298 are compoundable.—See the new Code of Criminal Procedure (Act V. of 1898), s. 345. As to the stage of proceedings at which no composition is allowed without the leave of the Court, see cl. 5 of s. 345 aforesaid.

† As to duty to give information of offences punishable under s 302, 303, or 304, see the new Code of Criminal Procedure (Act V of 1898), s. 44. See also (as to offences punishable under s. 302 or 304) s. 45 of the Code, and (as to murder and culpable homicide not amounting to murder) s. 45 of the Code as amended for Burma by the Upper Burma Village Regulation (XIV. of 1887), s. 4, and by the Lower Burma Village Act Act (III of 1889), s. 5.

As to whipping in Upper Burma, for offences mentioned in ss. 302, 304, and 307, see the Burma Laws Act (XIII. of 1898), s 4 (3) (*b*) and Sch. II.

As to punishment for offences under ss. 302, 304, 307, and 308 enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s 14.

REPORT OF THE INDIAN LAW COMMISSIONERS ON OFFENCES AGAINST THE BODY—*contd.*

Two things we take to be evident: first, that some of these omissions ought to be punished in exactly the same manner in which acts are punished; secondly, that all these omissions ought not to be punished. It will hardly be disputed that a gaoler who voluntarily causes the death of a prisoner by omitting to supply that prisoner with food, or a nurse who voluntarily causes the death of an infant entrusted to her care by omitting to take it out of a tub of water into which it has fallen, ought to be treated as guilty of murder. On the other hand, it will hardly be maintained that a man should be punished as a murderer because he omitted to relieve a beggar, even though there might be the clearest proof that the death of the beggar was the effect of this omission, and that the man who omitted to give the alms knew that the death of the beggar was likely to be the effect of the omission. It will hardly be maintained that a surgeon ought to be treated as a murderer for refusing to go from Calcutta to Meerut to perform an operation, although it should be absolutely certain that this surgeon was the only person in India who could perform it, and that, if it were not performed, the person who required it would die. It is difficult to say whether a Penal Code which should put no omissions on the same footing with acts, or a Penal Code which should put all omissions on the same footing with acts, would produce consequences more absurd and revolting. There is no country in which either of these principles is adopted. Indeed, it is hard to conceive how, if either were adopted, society could be held together.

IT is plain, therefore, that a middle course must be taken. But it is not easy to determine what that middle course ought to be. The absurdity of the two extremes is obvious. But there are innumerable intermediate points; and wherever the line of demarcation may be drawn, it will, we fear, include some cases which we might wish to exempt, and will exempt some which we might wish to include.

Mr. Livingston's Code provides that a person shall be considered as guilty of homicide who omits to save life, which he could save "without personal danger or pecuniary loss." This rule appears to us to be open to serious objection. There may be extreme inconvenience without the smallest personal danger, or the smallest risk of pecuniary loss, as in the case which we lately put of a surgeon summoned from Calcutta to Meerut to perform an operation. He may be offered such a fee that he would be a gainer by going. He may have no ground to apprehend that he should run any greater personal risk by journeying to the Upper Provinces than by continuing to reside in Bengal. But he is about to proceed to Europe immediately, or he expects some members of his family by the next ship, and wishes to be at the Presidency to receive them. He, therefore, refuses to go. Surely, he ought not, for so refusing, to be treated as a murderer. It would be somewhat inconsistent to punish one man for not staying three months in India to save the life of another, and to leave wholly unpunished a man who, enjoying ample wealth should refuse to disburse an anna to save the life of another. Again, it appears to us that it may be fit to punish a person as a murderer for causing death by omitting an act which cannot be performed without personal danger or pecuniary loss. A parent may be unable to procure food for an infant without money. Yet the parent, if he has the means, is bound to furnish the infant with food; and if, by omitting to do so, he voluntarily causes its death, he may, with propriety, be treated as a murderer. A nurse hired to attend a person suffering from an infectious disease cannot perform her duty without running some risk of infection. Yet, if she deserts the sick person, and thus voluntarily causes his death, we should be disposed to treat her as a murderer.

We pronounce with confidence, therefore, that the line ought not to be drawn where Mr. Livingston has drawn it. But it is with great diffidence that we bring forward our own proposition. It is open to objections: cases may be put in which it will operate too severely, and cases in which it will operate too leniently: but we are unable to devise a better

What we propose is this, that where acts are made punishable on the ground that they have caused, or have been intended to cause, or have been known to be likely to cause, a certain evil effect, omissions which have caused, which have been intended to cause, or which have been known to be likely to cause, the same effect, shall be punishable in the same manner: provided that such omissions were, on other grounds, illegal. An omission is illegal if it be an offence, if it be a breach of some direction of law, or if it be such a wrong as would be a good ground for a civil action.

We cannot defend this rule better than by giving a few illustrations of the way in which it will operate. A omits to give Z food, and by that omission voluntarily causes Z's death. Is this murder? Under our rule it

REPORT OF THE INDIAN LAW COMMISSIONERS ON OFFENCES AGAINST THE BODY—*contd.*

is murder if A was Z's gaoler, directed by the law to furnish Z with food. It is murder if Z was the infant child of A, and had, therefore, a legal right to sustenance, which right a Civil Court would enforce against A. It is murder if Z was a bed-ridden invalid, and A, a nurse, hired to feed Z. It is murder if A was detaining Z in unlawful confinement, and had thus contracted a legal obligation to furnish Z, during the continuance of the confinement, with necessaries. It is not murder if Z is a beggar who has no other claim on A than that of humanity.

A omits to tell Z that a river is swollen so high that Z cannot safely attempt to ford it, and by this omission voluntarily causes Z's death. This is murder, if A is a peon stationed by authority to warn travellers from attempting to ford the river. It is not murder if A is a guide who had contracted to conduct Z. It is not murder if A is a person on whom Z has no other claim than that of humanity.

A savage dog fastens on Z. A omits to call off the dog, knowing that, if the dog be not called off, it is likely that Z will be killed. Z is killed. This is a murder in A if the dog belonged to A, inasmuch as his omission to take proper order with the dog is illegal. But if A be a mere passer-by, it is not murder.

We are sensible that, in some of the cases which we have put, our rule may appear too lenient. But we do not think that it can be made more severe without disturbing the whole order of society. It is true that the man, who, having abundance of wealth, suffers a fellow-creature to die of hunger at his feet, is a bad man—a worse man, probably than many of those for whom we have provided very severe punishment. But we are unable to see where, if we make such a man legally punishable, we can draw the line. If the rich man who refuses to save a beggar's life at the cost of a little copper is a murderer, is the poor man just one degree above beggary also to be a murderer if he omits to invite the beggar to partake his hard-earned rice? Again if the rich man is a murderer for refusing to save the beggar's life at the cost of a little copper, is he also to be a murderer if he refuses to save the beggar's life at the cost of a thousand rupees? Suppose A to be fully convinced that nothing can save Z's life unless Z leave Bengal, and reside a year at the Cape, is A, however wealthy he may be, to be punished as a murderer because he will not, at his own expense, send Z to the Cape? Surely not. Yet it will be difficult to say on what principle we can punish A for not spending an anna to save Z's life, and leave him unpunished for not spending a thousand rupees to save Z's life. The distinction between a legal and an illegal omission is perfectly plain and intelligible. But the distinction between a large and a small sum of money is very far from being so: not to say that a sum which is small to one man is large to another.

The same argument holds good in the case of the ford. It is true that none but a very depraved man would suffer another to be drowned when he might prevent it by a word. But if we punish such a man, where are we to stop? How much exertion are we to require? Is a person to be a murderer if he does not go fifty yards through the sun of Bengal at noon in May in order to caution a traveller against a swollen river? Is he to be a murderer if he does not go a hundred yards?—If he does not go a mile?—If he does not go ten? What is the precise amount of trouble and inconvenience which he is to endure? The distinction between the guide who is bound to conduct the traveller as safely as he can, and a mere stranger, is a clear distinction. But the distinction between a stranger who will not give a halloo to save a man's life and a stranger who will not run a mile to save a man's life, is very far from being equally clear.

It is, indeed, most highly desirable that men should not merely abstain from doing harm to their neighbours, but should render active services to their neighbours. In general, however, the penal law must content itself with keeping men from doing positive harm, and must leave to public opinion, and to the teachers of morality and religion, the office of furnishing men with motives for doing positive good. It is evident that to attempt to punish men by law for not rendering to others all the service which it is their duty to render to others would be preposterous. We must grant impunity to the vast majority of those omissions which a benevolent morality would pronounce reprehensible, and must content ourselves with punishing such omissions only when they are distinguished from the rest by some circumstance which marks them out as peculiarly fit objects of penal legislation. Now, no circumstance appears to us so well fitted to be the mark as the circumstance which we have selected. It will generally be found in the most atrocious cases of omission; it will scarcely ever be found in a venial case of omission; and it is more clear and certain than any other mark that has occurred to us. That there are objections to the line which we propose to draw, we have admitted. But

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there are objections to every line which can be drawn, and some line must be drawn.

The next point to which we wish to call the attention of His Lordship in Council is the unqualified use of the words "to cause death" in the definition of voluntary culpable homicide.

We long considered whether it would be advisable to except from this definition any description of acts or illegal omissions on the ground that such acts or illegal omissions do not ordinarily cause death, or that they caused death very remotely. We have determined, however, to leave the clause in its present simple and comprehensive form.

There is undoubtedly a great difference between acts which cause death immediately and acts which cause death remotely, between acts which are almost certain to cause death, and acts which cause death only under very extraordinary circumstances. But that difference, we conceive, is a matter to be considered by the tribunals when estimating the effect of the evidence in a particular case, not by the Legislature in framing the general law. It will require strong evidence to prove that an act of a kind which very seldom causes death, or an act which has caused death very remotely, has actually caused death in a particular case. It will require still stronger evidence to prove that such an act was contemplated by the person who did it as likely to cause death. But, if it be proved by satisfactory evidence that death has been so caused, and has been caused voluntarily, we see no reason for exempting the person who caused it from the punishment of voluntary culpable homicide.

Mr. Livingston, we observe, excepts from the definition of homicide cases in which death is produced by the effect of words on the imagination or the passions. The reasoning of that distinguished jurist has by no means convinced us that the distinction which he makes is well-founded. Indeed, there are few parts of his Code which appear to us to have been less happily executed than this. His words are these: "The destruction must be by the act of another. Therefore self-destruction is excluded from the definition. It must be operated by some act. Therefore, death, although produced by the operation of words on the imagination or the passions, is not homicide. But if words are used which are calculated to produce, and do produce, some act which is the immediate cause of death, it is homicide. A blind man or a stranger in the dark directed by words only to a precipice where he falls and is killed, a direction verbally given to take a drug that it is known will prove fatal, and which has that effect, are instances of this modification of the rule."

This appears to us altogether incoherent. A verbally directs Z to swallow a poisonous drug. Z swallows it, and dies. And this, says Mr. Livingston, is homicide in A. It certainly ought to be so considered. But how, on Mr. Livingston's principles, it can be so considered, we do not understand. "Homicide," he says, "must be operated by an act." Where, then, is the act in this case. Is it the speaking of A? Clearly not, for Mr. Livingston lays down the doctrine that speaking is not an act. Is it the swallowing by Z? Clearly not for the destruction of life, according to Mr. Livingston, is not homicide unless it be by the act of another, and this swallowing is an act performed by Z himself.

The reasonable course, in our opinion, is to consider speaking as an act, and to treat A as guilty of voluntary culpable homicide, if, by speaking, he has voluntarily caused Z's death, whether his words operated circuitously by inducing Z to swallow poison, or directly by throwing Z into convulsions.

There will, indeed, be few homicides of this latter sort. It appears to us that a conviction, or even a trial in such a case, would be an event of extremely rare occurrence. There would probably not be one such trial in a century. It would be most difficult to prove to the conviction of any Court that that death had really been the effect of excitement produced by words. It would be still more difficult to prove that the person who spoke the words anticipated from them an effect which, except under very peculiar circumstances, and on very peculiar constitutions, no words would produce. Still it seems to us that both these points might be made out by overwhelming evidence; and, supposing them to be so made out, we are unable to perceive any distinction between the case of him who voluntarily causes death in this manner, and the case of him who voluntarily causes death by means of a pistol or a sword. Suppose it to be proved to the entire conviction of a Criminal Court that Z, the deceased, was in a very critical state of health; that A, the heir to Z's property, had been informed by Z's physicians that Z's recovery absolutely depended on his being kept quiet in mind, and that the smallest mental excitement would endanger his life; that A immediately broke into Z's sick room, and told him a dreadful piece of intelligence which was a pure invention; that Z went into fits, and died on the spot; that A had after-

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wards boasted of having cleared the way for himself to a good property by this artifice. These things being fully proved, no Judge could doubt that A had voluntarily caused the death of Z; nor do we perceive any reason for not punishing A in the same manner in which he would have been punished if he had mixed arsenic in Z's medicine.

Again, Mr. Livingston excepts from the definition of homicide the case of a person who dies of a slight wound which, from neglect, or from the application of improper remedies, has proved mortal. We see no reason for excepting such cases from the simple general rule which we propose. It will, indeed, be in general more difficult to prove that death has been caused by a scratch than by a stab which has reached the heart; and it will, in a still greater degree be more difficult to prove that a scratch was intended to cause death than that a stab was intended to cause death. Yet both these points might be fully established. Suppose such a case as the following. It is proved that A inflicted a slight wound on Z, a child who stood between him and a large property. It is proved that the ignorant and superstitious servants about Z applied the most absurd remedies to the wound. It is proved that, under their treatment, the wound mortified, and the child died. Letters from A to a confidant are produced. In those letters, A congratulates himself on his skill, remarks that he could not have inflicted a more severe wound without exposing himself to be punished as a murderer, relates with exultation the mode of treatment followed by the people who have charge of Z, and boasts that he always foresaw that they would turn the slightest incision into a mortal wound. It appears to us that, if such evidence were produced, A ought to be punished as a murderer.

Again, suppose that A makes a deliberate attempt to commit assassination. In the presence of numbers, he aims a knife at the heart of Z. But the knife glances aside and inflicts only a slight wound. This happened in the case of Jean Chatel, of Damien, of Guiscard, and of many other assassins of the most desperate character. In such cases, there is no doubt whatever as to the intention. Suppose that the person who received the wound is under the necessity of exposing himself to a moist atmosphere immediately afterwards, and that, in consequence, he is attacked with tetanus, and dies. Here, again, however slight the wound may have been, we are unable to perceive any good reason for not punishing A as a murderer.

We will only add that this provision of the Code of Louisiana appears to us peculiarly ill-suited to a country in which, we have reason to fear, neglect and bad treatment are far more common than good medical treatment.

The general rule, therefore, which we propose is, that the question, whether a person has, by an act or illegal omission, voluntarily caused death, shall be left a question of evidence to be decided by the Courts according to the circumstances of every case.

We propose that all voluntary culpable homicide shall be designated as murder unless it fall under one of three heads. We are desirous to call the particular attention of His Lordship in Council to the law respecting the three mitigated forms of voluntary culpable homicide; and first to the law of manslaughter.

We agree with the great mass of mankind, and with the majority of jurists, ancient and modern, in thinking that homicide committed in the sudden heat of passion, on great provocation, ought to be punished, but that, in general, it ought not to be punished so severely as murder. It ought to be punished in order to teach men to entertain a peculiar respect for human life; it ought to be punished in order to give men a motive for accustoming themselves to govern their passion; and in some few cases, for which we have made provisions, we conceive that it ought to be punished with the utmost rigour.

In general, however, we would not visit homicide committed in violent passion which had been suddenly provoked with the highest penalties of the law. We think that to treat a person guilty of such homicide as we should treat a murderer would be a highly inexpedient course—a course which would shock the universal feeling of mankind, and would engage the public sympathy on the side of the delinquent against the law.

His Lordship in Council will remark one important distinction between the law as we have framed it, and some other systems.

Neither the English law nor the French Code extends any indulgence to homicide which is the effect of anger excited by words alone. Mr. Livingston goes still further; "No words whatever," says the Code of Louisiana, "are an adequate cause, no gestures merely showing derision or contempt, no assault or battery so slight as to show that the intent was not to inflict great bodily harm."

We greatly doubt whether any good reason can be assigned for this distinction. It is an indisputable fact that gross insults by words or gesture have as great tendency to move many persons to violent passion, as dangerous or painful bodily injuries. Nor does it appear to us that passion excited by insult is entitled to less indulgence than passion excited by pain. On the contrary, the circumstance that a man resents an insult more than a wound is anything but a proof that he is a man of a peculiarly bad heart. It would be a fortunate thing for mankind if every person felt an outrage which left a stain upon his honour more acutely than an outrage which had fractured one of his limbs. If so, why should we treat an offence produced by the blameable excess of a feeling, which all wise Legislators desire to encourage, more severely than we treat the blameable excess of feelings certainly not more respectable?

One outrage which wounds only the honour and the affections is admitted by Mr. Livingston to be an adequate provocation "A discovery of the wife of the accused, in the act of adultery with the person killed is an adequate cause" The law of France, the law of England, and the Mahomedan law are also indulgent to homicide committed under such circumstances. We must own that we can see no reason for making a distinction between this provocation and many other provocations of the same kind. We cannot consent to lay it down as an universal rule that, in all cases, this provocation shall be considered as an adequate provocation. Circumstances may easily be conceived which would satisfy a Court that a husband had, in such a case, acted from no feeling of wounded honour or affection, but from mere brutality of nature, or from disappointed cupidity On the other hand, we conceive that there are many cases in which as much indulgence is due to the excited feelings of a father or a brother as to those of a husband That a worthless, unfaithful, and tyrannical husband should be guilty only of manslaughter for killing the paramour of his wife, and that an affectionate and high-spirited brother should be guilty of murder for killing in a paroxysm of rage the seducer of his sister, appears to us inconsistent and unreasonable.

There is another class of provocations which Mr. Livingston does not allow to be adequate in law, but which have been, and, while human nature remains unaltered, will be, adequate in fact to produce the most tremendous effects. Suppose a person to take indecent liberties with a modest female in the presence of her father, her brother, her husband, or her lover. Such an assault might have no tendency to cause pain or danger; yet history tells us what effects have followed from such assaults. Such an assault produced the Sicilian Vespers. Such an assault called forth the memorable blow of Wat Tyler. It is difficult to conceive any class of cases in which the intemperance of anger ought to be treated with greater lenity. So far, indeed, should we be from ranking a man who acted like Tyler with murderers that we conceive that a Judge would exercise a sound discretion in sentencing such a man to the lowest punishment fixed by the law for manslaughter.

We think it right to add that, though in our remarks on this part of the law we have used illustrations drawn from the history and manners of Europe, the arguments which we have employed apply as strongly to the state of society in India as to the state of society in any part of the globe. There is, perhaps, no country in which more cruel suffering is inflicted, and more deadly resentment called forth, by injuries which affect only the mental feelings

A person, who should offer a gross insult to the Mahomedan religion in the presence of a zealous professor of that religion, who should deprive some high-born Rajpoot of his caste, who should rudely thrust his head into the covered palanquin of a woman of rank, would probably move those whom he insulted to more violent anger than if he had caused them some severe bodily hurt. That on these subjects our notions and usages differ from theirs is nothing to the purpose. We are legislating for them; and though we may wish that their opinions and feelings may undergo a considerable change, it is our duty, while their opinions and feelings remain unchanged, to pay as much respect to those opinions and feelings as if we partook of them We are legislating for a country where many men, and those by no means the worst men, prefer death to the loss of caste; where many women, and those by no means the worst women, would consider themselves as dishonoured by exposure to the gaze of strangers; and to legislate for such a country as if the loss of caste, or the exposure of a female face, were not provocations of the highest order, would, in our opinion, be unjust and unreasonable.

The second mitigated form of voluntary culpable homicide is that to which we have given the name of voluntary culpable homicide by consent. It appears to us that this description of homicide ought to be punish-

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ed, but that it ought not to be punished so severely as murder. We have elsewhere given our reasons for thinking that this description of homicide ought to be punished.

Our reasons for not punishing it so severely as murder are these. In the first place, the motives which prompt men to the commission of this offence are generally far more respectable than those which prompt men to the commission of murder. Sometimes it is the effect of a strong sense of religious duty, sometimes of a strong sense of honour, not unfrequently of humanity. The soldier who, at the entreaty of a wounded comrade, puts that comrade out of pain, the friend who supplies laudanum to a person suffering the torment of a lingering disease, the freed man who in ancient times held out the sword that his master might fall on it, the high-born native of India who stabs the females of his family at their own entreaty in order to save them from the licentiousness of a band of marauders, would, except in Christian societies, scarcely be thought culpable, and even in Christian societies would not be regarded by the public, and ought not to be treated by the law, as assassins.

Again, this crime is by no means productive of so much evil to the community as murder. One evil ingredient of the utmost importance is altogether wanting to the offence of voluntary culpable homicide by consent. It does not produce general insecurity. It does not spread terror through society. When we punish murder with such signal severity, we have two ends in view. One end is that people may not be murdered. Another end is that people may not live in constant dread of being murdered. This second end is perhaps the more important of the two. For, if assassination were left unpunished, the number of persons assassinated would probably bear a very small proportion to the whole population. But the life of every human being would be passed in constant anxiety and alarm. This property of the offence of murder is not found in the offence of voluntary culpable homicide by consent. Every man who has not given his consent to be put to death is perfectly certain that this latter offence cannot at present be committed on him, and that it never will be committed, unless he shall first be convinced that it is his interest to consent to it. We know that two or three midnight assassinations are sufficient to keep a city of a million of inhabitants in a state of consternation during several weeks, and to cause every private family to lay in arms and watchmen's rattles. No number of suicides, or of homicides committed with the unextorted consent of the person killed, could possibly produce such alarm among the survivors.

The distinction between murder and voluntary culpable homicide by consent has never, as far as we are aware, been recognized by any Code in the distinct manner in which we propose to recognize it. But it may be traced in the laws of many countries, and often, when neglected by those who have framed the laws, it has had a great effect on the decisions of the tribunals, and particularly on the decisions of tribunals popularly composed. It may be proper to observe that the burning of a Hindu widow by her own consent, though it is now, as it ought to be, an offence by the Regulations of every Presidency, is in no Presidency punished as murder.

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CULPABLE HOMICIDE AND ABORTION.

The third mitigated form of voluntary culpable homicide is that which we have designated as voluntary culpable homicide in defence.

We have been forced to leave the law on the subject of private defence, as we have elsewhere said, in an unsatisfactory state; and though we hope and believe that it may be greatly improved, we fear that it must always continue to be one of the least precise parts of every system of jurisprudence. That portion of the law of homicide which we are now considering is closely connected with the law of private defence, and must necessarily partake of the imperfections of the law of private defence. But wherever the limits of the right of private defence may be placed, and with whatever degree of accuracy they may be marked, we are inclined to think that it will always be expedient to make a separation between murder, and what we have designated as voluntary culpable homicide in defence.

The chief reason for making this separation is that the law itself invites men to the very verge of the crime which we have designated as voluntary culpable homicide in defence. It prohibits such homicide indeed. But it authorizes acts which lie very near to such homicide. And this circumstance, we think, greatly mitigates the guilt of such homicide.

That a man who deliberately kills another in order to prevent that other from pulling his nose should be allowed to go absolutely unpunished would be most dangerous. The law punishes and ought to punish such killing. But we cannot think that the law ought to punish such killing as murder. For the law

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itself has encouraged the slayer to inflict on the assailant any harm short of death which may be necessary for the purpose of repelling the outrage—to give the assailant a cut with a knife across the fingers which may render his right hand useless to him for life, or to hurl him downstairs with such force as to break his leg. And it seems difficult to conceive that circumstances which would be a full justification of any violence short of homicide should not be a mitigation of the guilt of homicide. That a man should be merely exercising a right by fracturing the skull and knocking out the eye of an assailant, and should be guilty of the highest crime in the Code if he kills the assailant—that there should be only a single step between perfect innocence and murder, between perfect impunity and liability to capital punishment—seems unreasonable. In a case in which the law itself empowers an individual to inflict any harm short of death, it ought hardly, we think, to visit him with the highest punishment if he inflicts death.

It is to be considered also that the line between those aggressions which it is lawful to repel by killing, and those which it is not lawful so to repel, is in our Code, and must be in every Code, to a great extent, an arbitrary line, and that many individual cases will fall on one side of that line which, if we had framed the law with a view to those cases alone, we should place on the other. Thus, we allow a man to kill if he has no other means of preventing an incendiary from burning a house, and we do not allow him to kill for the purpose of preventing the commission of a simple theft. But a house may be a wretched heap of mats and thatch, propped by a few bamboos, and not worth altogether twenty rupees. A simple theft may deprive a man of a pocket-book which contains bills to a great amount the savings of a long and laborious life, the sole dependence of a large family. That in these cases the man who kills the incendiary should be pronounced guiltless of any offence, and that the man who kills the thief should be sentenced to the gallows, or, if he is treated with the utmost lenity which the Courts can show, to perpetual transportation or imprisonment, would be generally condemned as a shocking injustice. We are, therefore, clearly of opinion that the offence which we have designated as voluntary culpable homicide in defence ought to be distinguished from murder in such a manner that the Courts may have it in their power to inflict a slight or a merely nominal punishment on acts which, though not within the letter of the law which authorizes killing in self-defence, are yet within the reason of that law.

We have hitherto been considering the law of voluntary culpable homicide. But homicide may be culpable yet not voluntary. There will probably be little difference of opinion as to the expediency of providing a punishment for the rash and negligent causing of death. But it may be thought that we have dealt too leniently by the offender who, while committing a crime, causes death which he did not intend to cause, or know himself to be likely to cause.

The law as we have framed it differs widely from the English law. "If," says Sir William Blackstone, "one intends to do another felony, and undesignedly kills a man, this is murder;" and he gives the following illustration of the rule. "If one gives a woman with child a medicine to produce abortion, and it operates so violently as to kill the woman, *this is murder in the person who gave it.*"

Under the provisions of our Code, this case would be very differently dealt with according to circumstances. If A kills Z by administering abortives to her with the knowledge that those abortives are likely to cause her death, he is guilty of voluntary culpable homicide, which will be voluntary culpable homicide by consent if Z agreed to run the risk, and murder, if Z did not so agree. If A causes miscarriage to Z, not intending to cause Z's death, not thinking it likely that he shall cause Z's death, but so rashly or negligently as to cause her death. A is guilty of culpable homicide not voluntary, and will be liable to the punishment provided for the causing of miscarriage, increased by imprisonment for a term not exceeding two years. Lastly, if A took such precautions that there was no reasonable probability that Z's death would be caused, and if the medicine were rendered deadly by some accident which no human sagacity could have foreseen, or by some peculiarity in Z's constitution, such as there was no ground whatever to expect, A will be liable to no punishment whatever on account of her death, but will, of course, be liable to the punishment provided for causing miscarriage.

It may be proper for us to offer some arguments in defence of this part of the Code.

It will be admitted that, when an act is in itself innocent, to punish the person who does it, because bad consequences which no human wisdom could have foreseen have followed from it, would be in the highest degree barbarous and absurd

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A pilot is navigating the Hooghly with the utmost care and skill: he directs the vessel against a sand bank which has been recently formed, and of which the existence was altogether unknown till this disaster. Several of his passengers are consequently drowned. To hang the pilot as a murderer on account of this misfortune would be universally allowed to be an act of atrocious injustice. But, if the voyage of the pilot be itself a high offence, ought that circumstance alone to turn his misfortune into a murder? Suppose that he is engaged in conveying an offender beyond the reach of justice, that he has kidnapped some natives, and is carrying them to a ship which is to convey them to some foreign slave colony, that he is violating the laws of quarantine at a time when it is of the highest importance that those laws should be strictly observed, that he is carrying supplies, deserters, and intelligence to the enemies of the State. The offence of such a pilot ought, undoubtedly, to be severely punished. But to pronounce him guilty of one offence, because a misfortune befel him while he was committing another offence—to pronounce him the murderer of people whose lives he never meant to endanger, whom he was doing his best to carry safe to their destination, and whose death has been purely accidental—is surely to confound all the boundaries of crime.

Again, A heaps fuel on a fire, not in an imprudent manner, but in such a manner that the chance of harm is not worth considering. Unhappily the flame bursts out more violently than there was reason to expect. At the same moment a sudden puff of wind blows Z's light dress towards the hearth. The dress catches fire, and Z is burned to death. To punish A as a murderer on account of such an unhappy event would be senseless cruelty. But suppose that the fuel which caused the flame to burst forth was a will, which A was fraudulently destroying. Ought this circumstance to make A the murderer of Z? We think not. For the fraudulent destroying of wills, we have provided, in other parts of the Code, punishments which we think sufficient. If not sufficient, they ought to be made so. But we cannot admit that Z's death has in the smallest degree, aggravated A's offence, or ought to be considered in apportioning A's punishment.

To punish as a murderer every man who, while committing a heinous offence, causes death by pure misadventure, is a course which evidently adds nothing to the security of human life. No man can so conduct himself as to make it absolutely certain that he shall not be so unfortunate as to cause the death of a fellow-creature. The utmost that he can do is to abstain from every thing which is at all likely to cause death. No fear of punishment can make him do more than this, and therefore to punish a man who has done this can add nothing to the security of human life. The only good effect which such punishment can produce will be to deter people from committing any of those offences which turn into murders what are in themselves mere accidents. It is, in fact, an addition to the punishment of those offences, and it is an addition made in the very worst way. For example, hundreds of persons in some great cities are in the habit of picking pockets. They know that they are guilty of a great offence. But it has never occurred to one of them, nor would it occur to any rational man, that they are guilty of an offence which endangers life. Unhappily one of these hundreds attempts to take the purse of a gentleman who has a loaded pistol in his pocket. The thief touches the trigger: the pistol goes off: the gentleman is shot dead. To treat the case of this pick-pocket differently from that of the numerous pick-pockets who steal under exactly the same circumstances, with exactly the same intentions, with no less risk of causing death, with no greater care to avoid causing death—to send them to the house of correction as thieves, and him to the gallows as a murderer—appears to us an unreasonable course. If the punishment for stealing from the person be too light, let it be increased, and let the increase fall alike on all the offenders. Surely the worst mode of increasing the punishment of an offence is to provide that, besides the ordinary punishment, every offender shall run an exceedingly small risk of being hanged. The more nearly the amount of punishment can be reduced to a certainty the better. But, if chance is to be admitted, there are better ways of admitting it. It would be a less capricious, and therefore a more salutary, course to provide that every fiftieth or every hundredth thief selected by lot should be hanged, than to provide that every thief should be hanged who, while engaged in stealing, should meet with an unforeseen misfortune such as might have befallen the most virtuous man while performing the most virtuous action.

We trust that His Lordship in Council will think that we have judged correctly in proposing that, when a person engaged in

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the commission of an offence causes death by pure accident, he shall suffer only the punishment of his offence without any addition on account of such accidental death.

When a person engaged in the commission of an offence causes death by rashness or negligence, but without either intending to cause death, or thinking it likely that he shall cause death, we propose that he shall be liable to the punishment of the offence which he was engaged in committing, superadded to the ordinary punishment of involuntary culpable homicide.

The arguments and illustrations which we have employed for the purpose of showing that the involuntary causing of death without either rashness or negligence ought, under no circumstances, to be punished at all, will, with some modifications which will readily suggest themselves, serve to show that *the involuntary causing of death by rashness or negligence, though always punishable,* ought, under no circumstances, to be punished as murder.

It gives us great pleasure to observe that Mr. Livingston's provisions on this subject, though in details they differ widely from ours, are framed on the principles which we have here defended.

We wish next to call the attention of His Lordship in Council to clauses 308 and 309. These clauses appear to us absolutely necessary to the completeness of the Code. We have provided, under the head of bodily hurt, for cases in which hurt is inflicted in an attempt to murder: under the head of assaults, for assaults committed in attempting to murder; under the head of criminal trespass, for some criminal trespasses committed in order to murder. But there will still remain many atrocious and deliberate attempts to murder which are not trespasses, which are not assaults, and which cause no hurt. A, for example, digs a pit in his garden, and conceals the mouth of it, intending that Z may fall in and perish there. Here A has committed no trespass, for the ground is his own, and no assault, for he has applied no force to Z. He may not have caused bodily hurt, for Z may have received a timely caution, or may not have gone near the pit. But A's crime is evidently one which ought to be punished as severely as if he had laid hands on Z with the intention of cutting his throat.

Again, A sets poisoned food before Z. Here A may have committed no trespass, for the food may be his own; and, if so, he violates no right of property by mixing arsenic with it. He commits no assault, for he means the taking of the food to be Z's voluntary act. If Z does not swallow enough of the poisoned food to disorder him, A causes no bodily hurt. Yet it is plain that A has been guilty of a crime of a most atrocious description.

Similar attempts may be made to commit voluntary culpable homicide in any of the three mitigated forms A, for example, is excited to violent passion by Z, and fires a pistol intending to kill Z. If the shot proves fatal, A will be guilty of manslaughter; and he surely ought not to be exempted from all punishment if the ball only grazes the intended victim.

It is to meet cases of this description that clauses 308 and 309 are intended.

With respect to the law on the subject of abortion, we think it necessary to say only that we entertain strong apprehensions that this or any other law on that subject may, in this country, be abused to the vilest purposes. The charge of abortion is one which, even where it is not substantiated, often leaves a stain on the honour of families. The power of bringing a false accusation of this description is, therefore, a formidable engine in the hands of unprincipled men. This part of the law will, unless great care may be taken, produce few convictions, but much misery and terror to respectable families, and a large harvest of profit to the vilest pests of society. We trust that it may be in our power in the Code of Procedure to lay down rules which may prevent such an abuse. Should we not be able to do so, we are inclined to think that it would be our duty to advise His Lordship in Council rather to suffer abortion where the mother is a party to the offence, to remain wholly unpunished, than to repress it by provisions which would occasion more suffering to the innocent than to the guilty

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**299.** Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely, by such act, to cause death, commits the offence of culpable homicide.

Culpable homicide.

*Illustrations.*

(*a*.) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in, and is killed. A has committed the offence of culpable homicide.

(*b*.) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires, and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(*c*.) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush, A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

*Explanation 1*.—A person who causes bodily injury to another, who is labouring under a disorder, disease, or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

*Explanation 2*.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although, by resorting to proper remedies and skilful treatment, the death might have been prevented.

*Explanation 3*.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

THE accused was tried for murder. The first verdict of the jury was: "Guilty of murder under grave and sudden provocation." The Sessions Judge told the jury that it was their duty, after considering the question of provocation, to return a simple verdict of guilty or not guilty. The jury, therefore, brought in a second verdict of "not guilty." The Judge, considering this verdict to be perverse referred the case to the High Court under s. 307 of the Code of Criminal Procedure (Act X. of 1882). *Held* that the discretion given to the jury after the first verdict was wrong, as the case fell under s. 238 of the Criminal Procedure Code (Act X. of 1882). Although the charge was only one of murder, the jury had a right to bring in a verdict of culpable homicide, if there was grave and sudden provocation so as to deprive the prisoner of the power of self-control. *Held*, also, that the jury were not bound to find a simple verdict of guilty or not guilty. They might have found a special verdict, or findings on matters of fact to which the Judge applies the law. *Held*, also, that the first verdict was a verdict of murder as the jury did not find that the provocation had destroyed the power of self-control. It is not a necessary consequence of anger, or other emotion, that the power of self-control should be lost. Except where unsoundness of mind or real fear of instant death is proved, the pressure of temptation is no excuse for breaking the law. *Held*, lastly, that the High Court will not interfere with the verdict of a jury unless it is shown to be clearly and manifestly wrong. A verdict ought to be considered a proper and not a perverse verdict if it is one which reasonable men might find on the facts in evidence. *Queen-Empress* v. *Dada Anna* (I. L. R., 15 Bom. 452) and *Queen-Empress* v. *Maganlal* (I. L. R., 14 Bom. 115) followed.—QUEEN-EMPRESS *v.* DEVJI GOVINDJI, I. L. R., 20 Bom. 215. Jardine and Ranade, JJ. July 29, 1895.

**300.** Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or,

Murder.

*2ndly*, if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or,

*Secondly*, if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient, in the ordinary course of nature, to cause death, or

*Thirdly*, if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

*Illustrations.*

(*a*.) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(*b*.) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient, in the ordinary course of nature, to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not, in the ordinary course of nature, kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death or such bodily injury as, in the ordinary course of nature, would cause death.

(*c*.) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(*d*.) A, without any excuse, fires a loaded cannon into a crowd of persons, and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

When culpable homicide is not murder.

*Exception 1.*—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:*—

*Firstly.*—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

*Secondly.*—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

*Thirdly.*—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

*Explanation.*—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

*Illustrations.*

(*a*.) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(*b*.) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

* As to the application of these provisos in the case of causing hurt on provocation, see s. 335, explanation, *infra*.

(*c*.) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(*d*.) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(*e*.) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(*f*.) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

*Exception 2.*—Culpable homicide is not murder if the offender, in the exercise, in good faith, of the right of private defence of person or property, exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence, without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

*Illustration.*

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A, believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

*Exception 3.*—Culpable homicide is not murder if the offender, being a public servant, or aiding a public servant, acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant, and without ill-will towards the person whose death is caused.

*Exception 4.*—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender's having taken undue advantage, or acted in a cruel or unusual manner.

*Explanation.*—It is immaterial in such cases which party offers the provocation, or commits the first assault.

*Exception 5.*—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death, or takes the risk of death, with his own consent.

*Illustration.*

A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death. A has therefore abetted murder.

IN a case in which it was found that all the accused were guilty of rioting armed with deadly weapons, that the fight was premeditated and pre-arranged, a regular pitched battle or trial of strength between the two parties concerned in the riot, and that one of the accused, in the course of the riot and in prosecution of the common object of the assembly, killed, or attempted to kill, a man under such circumstances that his act amounted to an attempt to murder, the question arose whether that act could be said to bear a less grave character by reason of excep. 5 to s. 300 of the Penal Code. *Per Curiam.*—*Held* that upon such finding the case did not fall within the exception. *Per* Pigot, J.

(Petheram, C.J., and Macpherson, J., concurring).—The 5th exception to s. 300 should receive a strict and not a liberal construction; and in applying the exception, it should be considered with reference to the act consented to or authorized, and next with reference to the person or persons authorized, and as to each of those some degree of particularity at least should appear upon the facts proved before the exception can be said to apply. *Shamshere Khan* v. *Empress* (I. L. R., 6 Cal 154) and *Queen* v. *Kukier Mather* (unreported) dissented from, so far as they decide that from such a finding as the above consent to take the risk of death is inferred *Per* O'Kinealy, J.—Before excep. 5 can be applied, it must be found that the person killed, with a full knowledge of the facts determined to suffer death, or take the risk of death, and that this determination continued up to, and existed at, the moment of his death. *Queen* v. *Kukier Mather* (unreported) observed on *Per* Ghose, J.—No general rule of law can be laid down in determining in cases of this description whether the person killed or wounded suffered death, or took the risk of death, with his own consent, it being a question of fact, and not of law, to be decided upon the circumstances of each case as it arises. *Shamshere Khan* v. *Empress* (I. L. R. 6 Cal 154) and *Queen* v. *Kukier Mather* (unreported) observed on, and the propositions of law laid down therein concurred with.—QUEEN-EMPRESS *v.* NAYAMUDDIN, I. L. R. 18 Cal. 484. (Petheram, C.J., and Pigot, O'Kinealy, Macpherson, and Ghose, JJ. May 10 1891.

THE accused was tried for murder. The first verdict of the jury was "Guilty of murder under grave and sudden provocation." The Sessions Judge told the jury that it was their duty, after considering the question of provocation, to return a simple verdict of guilty or not guilty. The jury, therefore, brought in a second verdict of "not guilty." The Judge, considering this verdict to be perverse, referred the case to the High Court under s. 307 of the Code of Criminal Procedure (Act X of 1882). *Held* that the discretion given to the jury after the first verdict was wrong as the case fell under s. 238 of the Criminal Procedure Code (Act X. of 1882). Although the charge was only one of murder, the jury had a right to bring in a verdict of culpable homicide if there was grave and sudden provocation so as to deprive the prisoner of the power of self-control. *Held*, also, that the jury were not bound to find a simple verdict of guilty or not guilty. They might have found a special verdict, or findings on matters of fact to which the Judge applies the law. *Held*, also, that the first verdict was a verdict of murder, as the jury did not find that the provocation had destroyed the power of self-control. It is not a necessary consequence of anger or other emotion, that the power of self-control should be lost. Except where unsoundness of mind or real fear of instant death is proved, the pressure of temptation is no excuse for breaking the law. *Held*, lastly, that the High Court will not interfere with the verdict of a jury unless it is shown to be clearly and manifestly wrong. A verdict ought to be considered a proper and not a perverse verdict if it is one which reasonable men might find on the facts in evidence. *Queen-Empress* v. *Dada Anna* (I. L. R., 15 Bom. 452) and *Queen-Empress* v. *Maganlal* (I. L. R., 14 Bom. 115) followed.—QUEEN-EMPRESS *v.* DEVJI GOVINDJI, I. L. R., 20 Bom. 215. [Jardine and Ranade, JJ. July 29, 1895.]

THE deceased H lived in the house of the accused A. H contracted an intimacy with L, the wife of A in consequence of which he was turned out of the house. Subsequently on a certain night H, at the invitation of L, went to the house of A and was taken inside by her. Thereupon A and the other accused relatives of his seized H, carried him off to some distance, beat him, broke his arms and a leg and left him. Three days later H died in consequence of the injuries. All the accused were convicted under s. 302 of the Penal Code, and sentenced to transportation for life. *Held* that the circumstances under which H was found in the house of A on the night of the crime were sufficient to cause grave and sudden provocation to A and his relatives, within the meaning of s. 300, excep. (1) of the Penal Code, and that the provocation was of a nature that would continue to influence the feelings of the accused for a considerable period after H was caught in the house in the company of L. Conviction altered to one under s. 304 of the Penal Code and sentence reduced.—ABAI U' DAS *v.* KING-EMPEROR, I. L. R., 28 Cal. 571. Rampini and Gupta, JJ. April 16, 1901.

**Culpable homicide by causing death of person other than person whose death was intended.**

**301.** If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is

of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

Cr. of Ses. Cognizable. Warrant. Not bailable. Not comp.

**Punishment for murder.**

**302.** Whoever commits murder shall be punished with death or transportation for life, and shall also be liable to fine.

CHARGE.—That you, on or about the day of , at , committed murder by causing the death of , and thereby committed an offence punishable under s. 302 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court.—Crim. Pro. Code (Act V. of 1898), Sch. V., Form XXVIII. (II).

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or the intention of any other person to commit, any offence punishable under s. 302 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act V. of 1898), s 44.

IF the act by which death is caused does not in itself constitute the crime of murder, it does not constitute murder, because it is coupled with dacoity.—QUEEN v. RAMCHUNDER CHUNG, 1 Ind. Jur. O. S. 108 [Steer, Seton-Karr, and Jackson, JJ. Nov. 17, 1862.]

WHERE the intention of causing death was not sufficiently established, a sentence of death was commuted to transportation for life.—QUEEN v. SHOBHA SHEIKH GORMAN, W. R., Gap. 1864, 2. [Loch and Steer, JJ. Jan. 27, 1864.]

THERE can be no conviction for abetment of murder without proof of murder.—QUEEN v. ASKUR, W. R., Gap. 1864, 12. [Steer and Seton-Karr, JJ. Feb. 27, 1864.]

IN a case of murder committed in a drunken squabble, it was held that voluntary drunkenness, though it did not palliate any offence, may be taken into account as throwing light upon the question of intention.—QUEEN v. RAM SAHOY BHUR, W. R., Gap. 1864, 24. [Steer and Glover, JJ. April 29, 1864.]

S. 380 of the Code of Criminal Procedure (Act XXV. of 1861), does not authorize a Sessions Judge to sentence a prisoner convicted of murder to anything less than transportation for life, but only requires the Judge, if he sentence such prisoner to transportation for life instead of capitally, to assign his reasons for so doing. If there are circumstances which render expedient or advisable a mitigation of the sentence required by the law to be passed in such cases, the Judge may record those circumstances and submit them for the consideration of the Government, and the Government may, under s. 54 of Act XXV. of 1861, act as to it seems proper.—QUEEN v. DABEE, W. R., Gap. 1864, 27. [Loch and Glover, JJ. May 2, 1864.]

IF a person concerned in a dacoity unintentionally commits murder, he is liable to punishment under s. 396 of the Penal Code, but he cannot be separately convicted of murder under s. 302, and of committing dacoity under s. 395. Where the law gives the alternative punishment of death, transportation for life, and rigorous imprisonment extending to ten years, a sentence of fourteen years' transportation is illegal. If the Judge thinks it proper to pass a sentence of transportation short of life, he should pass a sentence of imprisonment for the term fixed by law, and then, under s. 59, change it to transportation for that period.—QUEEN v. RUGHOO, W. R., Gap. 1864, 30. [Loch and Jackson, JJ. May 3, 1864.]

IN order to convict a person of murder arising out of grievous hurt, it is indispensable that the death should be clearly and directly connected with the act of violence.—QUEEN v. MAHOMED HOSSEIN, W. R., Gap. 1864, 31. [Seton-Karr and Glover, JJ. May 12, 1864.]

A CONVICTION for murder was held to be wrong in a case where a prisoner, taking advantage of an incident which occurred in what till then had been a fair fight, struck his opponent, and knocked him over.—QUEEN v. KEWUT DOSAD, W. R., Gap. 1864, 36. [Seton-Karr and Campbell, JJ. June 19, 1864.]

COURSE to be pursued by Sessions Judges in the case of apparently insane persons charged with murder. [See the procedure prescribed in s. 465, *et seq.*, of Act V. of 1898.—Ed.]—QUEEN v. SHEIKH MUSTAFA, 1 W. R. 1. [Loch and Seton-Karr, JJ. Aug. 1, 1864.]

A MAN and a dog died a few hours after eating the same food, but no traces of poison were found in their bodies or in the possession of the accused. The mode of investigation by the police and by the Magistrates in such cases fully laid down.—IN THE MATTER OF CHUTTOO CHAMAR, 1 W. R. 3. [Campbell and Glover, JJ. Aug. 9, 1864.]

THE prisoner was convicted of murder by the Sessions Judge, and sentenced to death,

subject to confirmation by the High Court. The High Court directed the Sessions Judge to take any evidence that might be forthcoming to prove the alleged confession before the Magistrate, which, as recorded, was inadmissible, not being taken as prescribed in s. 205 of the Criminal Procedure Code (Act XXV. of 1861), and to certify the result of such inquiry and evidence to the Court. Evidence of the confession having been taken by the Sessions Judge, and certified as directed, the High Court confirmed the conviction and the sentence of death.—REG. *v.* GANU BAPU, 2 Bom. H. C. R. 398. [Arnould, Acting C J., and Newton and Janardan, JJ. Aug. 18, 1864.]

THE two prisoners having confessed that, having caught the deceased in the act of having sexual intercourse with the wife of one of them, they then and there killed him *Held* that the very grave provocation given to them was such as to reduce their crime from murder to culpable homicide not amounting to murder.—QUEEN *v.* GOUR CHUNDER POLIE, 1 W. R. 17. [Kemp and Glover, JJ. Sep 26, 1864.]

AN unpremeditated assault (ending in an affray in which death is caused) committed in the heat of passion, upon a sudden quarrel, it being immaterial which party offered the provocation or committed the first assault, was held to come within excep 4 of s 300 of the Penal Code.—QUEEN *v.* ZALIM RAI 1 W. R. 33. [Kemp and Glover, JJ Nov. 25 1864.]

A JUDGE can alter or amend a charge at any stage of the trial. The subject of an Independent State, though not amenable to the British Courts on a charge of culpable homicide committed out of British territories, may be so amenable on a charge of kidnapping from those territories.—QUEEN *v.* DHURMONARAIN MOITRO, 1 W. R. 39 Kemp and Glover, JJ. Dec. 9, 1864 ]

IN a case of murder, after the finding and discharge of the assessors, the Judge altered the charge to culpable homicide not amounting to murder, and convicted the accused on that charge. *Held* that the conviction was illegal.—QUEEN *v.* DYEE BHOLA, 1 W. R. 40. [Kemp and Glover, JJ. Dec. 9. 1864 ]

A CAPITAL sentence mitigated in the case of murder committed while under the influence of provocation caused by an intrigue with the wife of the prisoner.—QUEEN *v.* BHEKYE *alias* SHEIK ANSER, 1 W. R. 40. [Kemp and Glover, JJ. Dec. 19, 1864 ]

THOUGH the evidence was held to be sufficient to convict the accused of murder, yet, as the evidence gave rise to doubts as to the precise part taken by the prisoner, it was thought safer to remit the capital sentence, and pass one of transportation for life.—QUEEN *v.* BABOO LALL JHAH, 1 W. R. 48. [Kemp and Glover, JJ. Dec. 26, 1864.]

WHEN two persons take an active part in a murder, they become principals in the first degree, though one of them only may have been the actual killer If one stood by whilst the crime was being committed, he would be an abettor.—QUEEN *v.* JAN MAHOMED, 1 W. R. 49. [Kemp and Glover, JJ. Dec. 26, 1864 ]

THE conviction of a police-inspector for having abetted the bringing of a false charge of murder was quashed, because it was not distinctly shown that he preferred the charge *malâ fide*.—QUEEN *v.* MUTHOORAPERSHAD PANDAY, 2 W. R. 10 [Kemp and Glover, JJ. Jan. 18, 1865 ]

THE prisoner was convicted of murder, and sentenced to death. But, before confirming the sentence, as doubts were entertained of her sanity, the case was referred to the Sessions Judge with instructions for further inquiry.—QUEEN *v.* ARZAO BEBEE, 2 W. R. 33. [Kemp and Glover, JJ Feb. 4, 1865 ]

WHEN murder is committed in the commission of a dacoity, every one of the persons concerned in the dacoity is liable to be punished with death.—QUEEN *v.* RUCHEE AHEN, 2 W R 39. [Kemp and Glover, JJ. Mar. 9, 1865

THE case of a prisoner who, after having committed dacoity attended with murder, absconded to Bhootan. On the annexation of the Bhootan Dooars by the British Government, he was arrested, and after conviction, was sentenced to transportation for life.—QUEEN *v.* ROOPA, 2 W. R. 49. [Glover, J. Mar. 21, 1865 ]

DISCUSSION as to the sufficiency of the evidence in a case of murder, and the necessity of applying to Government for a pardon on behalf of the prisoner.—QUEEN *v.* GOVIND BAGDEE, 3 W. R 1. [Jackson and Glover, JJ. April 24, 1865.]

CASE of conviction of murder, on the confession of the accused, together with evidence as to his conduct both before and after the murder.—QUEEN *v.* PETER RAM THAPPA, 3 W. R. 11. Jackson and Glover, JJ. May 11, 1865.]

WHAT is necessary to bring a case of murder under the 4th exception to s. 300 of the Penal Code, so as to change the offence into culpable homicide not amounting to murder. —QUEEN *v.* AKAL MAHOMED, 3 W. R. 18. [Jackson and Glover, JJ. May 23, 1865.]

A is guilty of murder if he several times kicks B, who, after having been severely

beaten, has fallen down senseless; as A must have known that such kicks were likely to cause death in B's state at that time.—QUEEN *v.* NILMADHUB SIRCAR, 3 W. R. 22. [Jackson and Glover, JJ. June 2, 1865.]

PRISONER acquitted of attempt to murder, but directed to be proceeded with by the Magistrate under s. 297 of the Code of Criminal Procedure (Act XXV. of 1861), with a view to security being taken for his peaceable future behaviour.—QUEEN *v.* BEHARFE *alias* KURREEM BUX, 3 W. R. 23. [Jackson and Glover, JJ. June 3, 1865.]

SENTENCE of transportation for life in a case of murder instead of capital punishment, there being some reason to suppose that, at the time of the murder, both the deceased and the prisoner were drunk, and that the murdered man excited the prisoner's passion by calling him a thief.—QUEEN *v.* RAM NATH GWALA, 3 W. R. 27. [Campbell, Jackson and Glover, JJ. June 11, 1865.]

THE Sessions Judge having found the prisoners guilty of striking the deceased with the knowledge that the act was likely to cause death—in other words, guilty of murder—convicted and punished them for culpable homicide not amounting to murder. Case remanded for a new trial (Jackson, J., dissenting).—QUEEN *v.* BERIA BANIKYE, 3 W. R. 38. [Kemp, Jackson, and Glover, JJ. July 6, 1865.]

THE absence of premeditation will not reduce the crime from murder to culpable homicide not amounting to murder.—QUEEN *v.* MAHOMED ELIM, 3 W. R. 40. [Kemp and Glover, JJ. July 7, 1865.]

WHEN prisoners confess in the most circumstantial manner to having committed a murder, the finding of the body is not absolutely essential to a conviction.—QUEEN *v.* PETTA GAZI, 4 W. R. 19. [Glover, J. Oct. 26, 1865.]

THE *offences of murder and of culpable homicide not amounting to murder* suppose either an intention to cause death, or a knowledge of likelihood of the causing of death. In the absence of such intention or knowledge, the offence committed may be the offence of causing grievous hurt.—QUEEN *v.* BHADOO PORAMANICK, 4 W. R. 23. [Loch and Glover, JJ. Nov. 10, 1865.]

HELD by the majority that, where two members of an unlawful assembly use spears, and deliberately pierce another man through the chest and abdomen, with the knowledge that death is likely to ensue, although without proof of any intention to cause death, all the members of the unlawful assembly are jointly guilty of murder.—QUEEN *v.* NAZOO FAKIR, 4 W. R. 26. [Kemp, Seton-Karr, and Campbell, JJ. Nov. 27, 1865.]

WHEN the *corpus delicti* is not established, there can be no conviction for culpable homicide not amounting to murder, nor for intentional omission to give notice of an offence which has not been proved to have been committed.—QUEEN *v.* RAM RUCHEA SINGH, 4 W. R. 29. [Kemp and Seton-Karr, JJ. Nov. 28, 1865.]

INTRIGUING with a sister is sufficient grave provocation to justify a conviction of culpable homicide not amounting to murder as against the brothers who, finding the deceased lying with their sister in the same bed ill-treated him, from the effects of which ill-treatment he died.—QUEEN *v.* KASSEEMUDDEEN, 4 W. R. 38. [Kemp, J. Dec. 2, 1865.]

THE Judge having convicted the prisoners of culpable homicide not amounting to murder, after having found that the act by which death was caused was undoubtedly done with the intention of causing such bodily injury as was likely to cause death, the conviction was quashed as illegal, because inconsistent with the finding, and a new trial ordered.—QUEEN *v.* SOOMBER GWALA, 4 W. R. 32. [Kemp and Seton-Karr, JJ. Dec. 5, 1865.]

HELD by the majority that, when four men beat another at intervals, and so severely that death ensues from the injury received, they must be presumed to have known that by such acts they were likely to cause death; that, moreover, when these acts were done when there was no grave or sudden provocation, or no sudden fight or quarrel, the offence which they have committed, is murder; and that the offence of murder is not reduced to culpable homicide not amounting to murder by the absence of intention to cause death.—QUEEN *v.* POOSHOO, 4 W. R. 33. [Kemp, Seton-Karr, and Jackson, JJ. Dec. 14, 1865.]

HELD by the majority (Campbell, J., dissenting) that, if a man strikes another on the head with a stick when he is asleep, and fractures his skull, knowledge of likelihood of causing death must be presumed; and that, if none of the exceptions under s. 300 of the Penal Code are pleaded or probable, the offence committed is murder.—QUEEN *v.* SHEIKH CHOLLYE, 4 W. R. 35. [Kemp, Jackson, and Campbell, JJ. Dec. 16, 1865.]

A JUDGE should clearly acquit a prisoner of murder when so charged instead of merely finding him guilty of culpable homicide not amounting to murder. When a Judge acquits a prisoner of murder, the High Court cannot, either as a Court of Appeal, or

as a Court of Revision, find that, according to the evidence, the prisoner caused death with the knowledge mentioned in cl. 4, s. 300, of the Penal Code; nor can the High Court, however wrong it may think the Judge to have been in acquitting of murder, or however inadequate it may think the sentence to be, correct the error or enhance the sentence.—QUEEN v. TOYAB SHEIKH, 5 W. R. 2; 1 Ind. Jur. N. S. 58, 87. [Peacock, C.J., and Kemp and Seton-Karr JJ. Jan 12, 1866.]

WHERE a man of full age (*i.e.*, above 18 years) submits himself to emasculation, performed neither by a skilful hand, nor in the least dangerous way, and dies from the injury, the persons concerned in the act are guilty of culpable homicide not amounting to murder.—QUEEN v. BABOOLUN HIJRAH, 5 W. R. 7. [Norman and Campbell, JJ. Jan. 15, 1866.]

THE punishment of death should not be inflicted in a case where there was no intention to cause death, but merely a reckless assault with a deadly weapon, which inflicted a bodily injury likely in the ordinary course of nature to cause death.—QUEEN v. KHOZA SHEIK, 5 W. R. 20. [Campbell and Macpherson, JJ. Jan 27, 1866.]

IT is not murder, if a person kills another without intending to take his life, and if the acts done are not such as conclusively indicate an intention to cause such injury as was likely to cause death. In a referred case, and not an appeal, if the High Court deems a conviction wrong the only course open to it is to annul the conviction, and order a new trial for the proper offence.—QUEEN v. SHEIKH SOLIM, 5 W. R. 41. [Seton-Karr and Macpherson, JJ. Feb 8, 1866.]

UNDER the Penal Code no constructive, but an actual, intention to cause death is required to constitute murder. Thus, where a lad of 15 years, in the heat of discovery of the deceased in the act of adultery with a near relative's wife, and without the use of any lethal or other weapon, joined the relative in committing an assault on the deceased, who died from the effects thereof, *held* that the offence committed was culpable homicide not amounting to murder.—QUEEN v. GUREEBOOLLAH, 5 W. R. 42. [Norman and Campbell, JJ. Feb. 12, 1866.]

WHERE a Judge acquits a prisoner of intention to kill, but admits that the prisoner struck the deceased with a highly lethal weapon with the knowledge that the act was such as was likely to cause death, the conviction should be for murder, and not culpable homicide not amounting to murder. The failure of the Judge to convict the prisoner on the graver charge is not an error of law with which the High Court can interfere under its revising power.—QUEEN v. SOBEEL MAHEE, 5 W. R. 32. [Glover, J. Feb. 22, 1866.]

HELD by the majority of the Court that the offence committed was murder where the death of a weak half-starved old woman, who was detected stealing, was caused in the exercise of the right of private defence, by the doing of more harm than was necessary for the purpose of such defence; Campbell, J., *contra*, being of opinion that a man who detects a thief stealing his property, and who, acting on the sudden impulse of the moment, inflicts on the thief blows so severe as to be likely to cause death, but which he did not at the time know or feel to be likely to cause death, and which would not necessarily have caused death to a person in ordinary health, but which, owing to abnormal weakness in the deceased not known to him, did cause death is not guilty of murder but of culpable homicide not amounting to murder.—QUEEN v. GOKOOL BOWREE, 5 W. R. 33. [Norman, Campbell, and Phear, JJ. Feb. 26, 1866.]

UNDER s. 404 of the Criminal Procedure Code (Act XXV. of 1861), the High Court may set aside a judgment of acquittal for error in law. The High Court, as a Court of Revision, has power to enhance a punishment. The High Court may send the case back to the Court of Session with an order to pass the proper sentence. The High Court may act as a Court of Revision after it has acted as a Court of Appeal, in order to correct an error which cannot be set right by appeal. Culpable homicide and murder distinguished.—QUEEN v. GORACHAND GOPE, B. L. R. Sup. Vol. 443; 5 W. R. 45; 1 Ind. Jur. N. S. 177. [Peacock, C.J., and Trevor, Norman, Campbell, Jackson, and Glover, JJ. Mar. 3, 1866.]

INTOXICATION is no excuse for a man throttling to death another and a weaker man, who was intoxicated also. The assessors having brought the case within excep. 4 of s. 300 of the Penal Code without any good evidence or substantial grounds, the Sessions Judge was held to have correctly overruled their verdict, and found the prisoner guilty of murder.—QUEEN v. AKULPUTTEE GOSSAIN, 5 W. R. 58. [Seton-Karr, J. Mar. 26, 1866.]

PRISONER found deceased in the act of house-breaking by night in his house, and killed him with a *kodali*, which he had called for, as he admitted, for that purpose. He was convicted of murder, and sentenced to death by the Sessions Judge. The sentence being referred to the High Court for con-

firmation, it was held that the prisoner had been legally convicted of murder, that he had intentionally done to the deceased more harm than was necessary for any purpose of defence, and that not whilst deprived of the power of self-control. But the sentence was mitigated to transportation for life, than which, it was held, no less sentence could be legally passed. The Judge, however, in a letter to Government, suggested the mitigation of the punishment which was accordingly reduced to imprisonment for six months.—QUEEN *v* DURWAN GEER, 5 W. R. 73 : 1 Ind. Jur. N. S. 253. [Jackson, Campbell, and Macpherson, JJ. April 7, 1866.]

THE prisoners having abetted an assault, and murder having been committed, *held*, under the peculiar circumstances of the case, that they were guilty of abetment of grievous hurt, and not abetment of murder.—QUEEN *v.* GOLUCK CHUNG, 5 W. R. 75 [Campbell and Macpherson, JJ. April 28 1866.]

A PERSON who beats another brutally and continuously, so that the back of the victim is reduced to a state of pulp, and yet studiously avoids breaking a bone (the very fact of his taking such a precaution evincing deliberation), is guilty of murder or culpable homicide not amounting to murder, according as there may or may not have been grave provocation.—QUEEN *v.* TEPRAH FUKEER, 5 W. R. 78. [Kemp and Glover, JJ. May 9, 1866.]

HELD in a case of murder that the Judge had not given a proper direction to the jury in telling them that it was for them to consider whether the evidence of the accomplice was strictly corroborated as to the prisoners; that it was not enough that the evidence should disclose a state of facts consistent with the possibility of the truth of the accomplice's story; and that the Judge ought to have gone through the history of the crime as detailed by the accomplice to point out any independent evidence proving facts showing that the prisoners were, or must have been, present at, or cognizant of, the murder. —QUEEN *v.* KANOO, 6 W. R. 44. [Norman and Campbell, JJ. July 24, 1866.]

THE sentence of death reduced to transportation for life in a case of murder committed rather by way of retaliation for injury than under the influence of any worse passion.—QUEEN *v* TONOO, 6 W. R. 46. [Kemp and Markby, JJ. July 26, 1866.]

IN a case of murder by consent, *held* that evidence of consent, which would be sufficient in a civil transaction must be equally sufficient in exculpation of a prisoner's guilt.—QUEEN *v.* ANUNTO RUNNAGAL, 6 W. R. 57. [Kemp and Markby, JJ. Aug 25, 1866.]

A PERSON may be convicted of murder on his own confession. Where a master accompanies a servant knowing the latter's intention to commit murder, and is present at the commission of the murder, although he struck no blow, still he is guilty as a principal, the only reasonable presumption being that both were acting with a common intent.—QUEEN *v.* HYDER JOLAHA, 6 W. R. 83. [Kemp and Markby, JJ. Sep 21, 1866.]

A SENTENCE of death was commuted into one of transportation for life in case of a prisoner who committed murder in the belief that the deceased was a wizard and the cause of his child's illness, and that, by killing the deceased, the child's life might be saved.—QUEEN *v* OORAM SUNGRA, 6 W. R. 82. [Kemp and Markby, JJ. Oct. 5, 1866.]

A SENTENCE of transportation, other than *for life*, is illegal in the case of a prisoner convicted of murder.—QUEEN *v.* BHOOTOO MULLICK, 6 W. R 85. [Loch and Macpherson, JJ. Nov. 27, 1866.]

HEAVY sentences reduced by the Chief Court to terms of imprisonment for two and three years, where death was caused on provocation in a sudden fight, no unfair advantage being taken on the deceased.—CROWN *v.* AMEERA, Panj Rec., No. 12 of 1866; and KESUR SINGH *v.* CROWN, Panj. Rec., No. 13 of 1866.

ATTEMPT at murder must not be confounded with causing grievous hurt with dangerous weapons — GHOLAM RUSSOOL *v.* CROWN, Panj. Rec., No 32 of 1866.

SENTENCE of confiscation of property in a case of murder annulled, as the accused had a mother and young children.—CROWN *v.* SUNT SINGH, Panj. Rec., No. 35 of 1866.

THOUGH voluntary drunkenness cannot excuse the commission of an offence, yet, where as upon a charge of murder, the question is whether the act was premeditated or done only from sudden heat or impulse, the fact of the party being intoxicated was held to be a circumstance proper to be taken into consideration —CROWN *v.* BOODH DASS, Panj. Rec. No 41 of 1866

ACCUSED, a police-constable, in the course of an inquiry into a theft-case, violently beat deceased, who died about nine days afterwards from the effects of the beating. *Held* that a conviction for culpable homicide could not be sustained, as there was nothing to show that the beating was likely, to the knowledge of the prisoner, to cause death. Conviction altered to one under s. 330, Penal Code. Sentence — seven years' imprisonment and Rs. 200 fine.—MEEAH MAHOMED *v.* CROWN, Panj. Rec., No. 86 of 1866.

PRISONER was charged with murdering his wife. She had eloped from her husband, and, on his bringing her back, she was sulky and obstinate, refused to cook his food, or to eat and cohabit with him. Provoked by this, he struck her a violent blow with an axe, which killed her. *Held* that the offence was culpable homicide. Fourteen years' transportation. —FUZL SHAH *v.* CROWN, Panj. Rec., No. 87 of 1866.

BY his own confession and the other evidence prisoner killed with a hatchet Mussammat Almo, his sister, and Choohur, having found them sleeping together at Choohur's cattle-enclosure. The accused, on information received, had gone in search of her and Choohur, expecting to find them together. He had gone armed with a hatchet, but he stated in his defence that he lost control over himself on finding them together, and so killed them both. *Held*, with regard to the punishment, that the injury to the feelings of the accused, though hardly to be deemed sudden or unexpected, considering that he had himself gone to the spot expecting to find Almo, as, in fact, he found her, was great. Nor was the absence of sufficient sudden provocation inconsistent with the absence of premeditation, for murder may result from the reckless anger of the moment. Moreover, in this case, the existence of premeditation was not necessarily to be inferred from the prisoner's conduct. Once before there had been violence on such an occasion, and the prisoner's taking the hatchet was open to the doubt that he might have thought proper to do so without designing murder at the time of setting out. Sentence of death commuted. —CROWN *v.* MAHOMED, Panj. Rec., No. 107 of 1866.

IN a case of murder, where a man was struck on the head in a boat with a heavy paddle, and knocked overboard in a large river in the height of the rains, and never been heard of since, it was *held* impossible to suppose that the man was still alive.—QUEEN *v.* POORUSOOLLAH SIKHDAR, 7 W. R. 14. [Norman, J. Jan. 21, 1867.

WHERE a man suddenly cut his wife's throat, it was *held* that, in order to establish that the act was not done under grave provocation so as to bring the case under excep. 1 of s. 300 of the Penal Code, it is not sufficient to state that the deceased ceased abusing the prisoner then, but it is necessary to show what interval elapsed between the time when the deceased ceased to speak and the instant when the prisoner attacked her.—QUEEN *v.* NOKUL NUSHYE, 7 W. R. 27. Norman and Seton-Karr, JJ. Feb. 4, 1867.

JUDGES must not shrink from doing their duty, and they are bound to pass a capital sentence in a case of murder when they believe the evidence.—QUEEN *v.* SIBNARAIN PALODHEE, 7 W. R. 33. [Seton-Karr, J. Feb. 18, 1867.]

WHERE a prisoner, convicted of murder against the opinion of assessors, was sentenced to transportation for life, the High Court reduced the sentence to ten years' rigorous imprisonment, remarking on the severity of the Penal Code, and on the necessity of administering it, so as to make it apply to the various gradations and degrees of crime in this country.—QUEEN *v.* HOSSEIN ALLY, 7 W. R. 47. [Seton-Karr and Shumbhoonath Pundit, JJ. Mar. 19, 1867.]

PROOF of motive or previous ill-will is not necessary to sustain a conviction for murder in a case where a person is coolly and barbarously put to death.—QUEEN *v.* JAICHAND MUNDLE, 7 W. R. 60. [Seton-Karr, J. April 29, 1867.

CURIOUS case of murder, where a father sacrificed his son, because wealth had not accompanied its birth, and afterwards cut his own throat as a protest against his deity's injustice.—QUEEN *v.* BISHENDHAREE KHARA, 7 W. R. 64. [Glover and Hobhouse, JJ. May 7, 1867.]

WHERE a quiet peaceful man suddenly, and without the least motive or provocation, runs amuck against all round him, his case is different from an ordinary case of deliberate murder deserving of the extreme penalty.—QUEEN *v.* BISHONATH BUNNERA, 8 W. R. 53. [Kemp and Glover, JJ. July 29, 1867.]

TWO parties met each other in a drunken state, and commenced a quarrel, during which they became grossly abusive to each other. This lasted for about half an hour, when one of them ran to his own house, distant 30 yards from the spot, and came back with a heavy pestle, with which he struck the other a violent blow on the left temple as the latter was rising, or had just risen, from the ground, causing instant death. *Held* that the act was done with the intention of causing such bodily injury as was likely to cause death, and also with the knowledge that such act was likely to cause death, and that the offence committed was murder within the provisions of cls. 2 and 3, s. 300, Penal Code.—QUEEN *v.* DASSEE BHOOYAN, 8 W. R. 71 [Kemp, Seton-Karr and Mitter, JJ. Sep. 11, 1867.]

WHERE an accused killed A, whom he had no intention of killing, by a blow with a highly lethal weapon, like a sharp dao, intended to kill B, he was held guilty of the murder of A.—QUEEN *v.* PHOMONEE AHUM, 8 W. R. 78. [Glover, J. Oct. 29, 1867.]

IN order to constitute the offence of attempt to murder under s. 307 of the Penal Code,

the act committed by the prisoner must be an act capable of causing death in the natural and ordinary course of events. *Aliter* under s. 511 taken in connection with ss. 299 and 300. Therefore, where the prisoner presented an uncapped gun at F G (believing the gun to be capped) with the intention of murdering him, but was prevented from pulling the trigger, *held* that he could not be convicted of an attempt to murder upon a charge framed under s. 307 of the Penal Code, but that, under the same circumstances, he might be convicted upon a charge of simple attempt to murder framed under s. 511 in connection with ss. 299 and 300. Unnecessary allegations in a charge may be rejected as surplusage. Apparent inconsistency between the English law, with reference to attempt as laid down in *Reg.* v. *Collins* (33 Law. J., M. C., 177) and the provisions of the Penal Code explained.—REG. v. FRANCIS CASSIDY, 4 Bom. H. C. R. 17. [Couch, C.J., and Westropp, J. Dec. 23, 1867.]

THE three accused were convicted of murdering their cousin, who had supplanted one of the accused in an intrigue with Mussammat F. The accused caught the deceased and Mussammat F together. *Held* that, with due advertence to the state of society in the Rawalpindi district (where the case occurred), the sentences of death should be commuted.—CROWN v. FUZL, Panj. Rec. No. 2 of 1867.

ACCUSED confessed to a charge of murder. His confession, made before the Magistrate and Sessions Court, was, in fact, corroborated by other evidence, but conflicted with the medical evidence, and the Sessions Judge considered it not improbable that accused had been influenced by the police to confess. *Held* by the Chief Court that it would be safer not to confirm the sentence.—CROWN v. MEER KHAN, Panj. Rec., No. 3 of 1867.

WHEN a prisoner is on his trial by a jury upon a charge of murder, it is the duty of the Judge to point out to the jury accurately the difference between murder and culpable homicide not amounting to murder, and to direct the attention of the jury to the evidence, and to leave them to find the facts, and say (under the direction of the Judge as regards the law) of what offence the prisoner is guilty. Where the provision of s. 379 of the Code of Criminal Procedure (Act XXV. of 1861) was neglected, and the Judge did not sum up the evidence at all, a new trial was ordered. *Elahee Baksh's Case* (5 W. R. 80) considered.—QUEEN v. SHUMSHERE BEG, 9 W. R. 5. [Macpherson and Glover, JJ. Mar. 28, 1868.]

To bring a case under cl. 4, s. 300, it must be proved that the accused, in committing the act charged knew that it must, in all probability, be likely to cause death, or that it would bring about such bodily injury as would be likely to cause death. *Held* that a case in which the accused person pursued a thief, and killed him after house-trespass had ceased, did not fall within the 2nd exception to s. 300 the right of private defence of property continuing under cl. 5, s. 105, only so long as the house trespass continues.—QUEEN v. BALAKEE JOLAHEE, 10 W. R. 9; 1 B. L. R., S. N., 8. [Glover, J. July 3, 1868.]

IN determining whether a declaration alleged to have been made by a deceased person is admissible as a dying declaration under s. 371, Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 32 of the Indian Evidence Act (I. of 1872), a Sessions Judge ought to direct his attention to the point whether the declarant believed himself to be in danger of approaching death. The evidence of persons who cannot speak of their personal knowledge to such declaration should not be admitted; and, in deciding whether the accused is guilty of the charge of murdering the deceased declarant, the Court should confine itself to inquiring into the facts which occurred on the day of the murder. The evidence as to the motives with which a prisoner commits an offence should be of the strictest kind.—QUEEN v. ZUHIR, 10 W. R. 11. [Phear and Hobhouse, JJ. July 8, 1868.]

To give an accused the benefit of excep. 1, s. 300 of the Penal Code, it ought to be shown distinctly, not only that the act was done under the influence of some feeling which took away from the person doing it all control over his action, but that that feeling had an adequate cause.—QUEEN v. HURI GIREE, 10 W. R. 26; 1 B. L. R. A. Cr. 11. [Loch and Glover, JJ. Aug. 7, 1868.]

HELD that, where, from the circumstances, it appeared that a child who had been exposed by the prisoner did not die in consequence of the exposure, except in a remote degree, the prisoner, though guilty under s. 317 of the Penal Code, could not be convicted of murder. That section contemplates cases in which death is caused from cold or some other result of exposure.—QUEEN v. KHODABUX FAKEER *alias* KHUDIRAM FAKEER, 10 W. R. 52. [Loch and Glover, JJ. Nov. 19, 1868.]

To bring a case under cl. 4, s. 300, of the Penal Code, it must be proved that the accused, in committing the act charged, knew that it must, in all probability, be likely to cause death, or that it would bring about such bodily injury as would be likely to cause death. When a poisonous drug was administered to a woman to procure miscarriage, and death

resulted, and it was not proved that the accused knew that the drug would be likely to cause death, &c, they were acquitted by the High Court of murder, and convicted of an offence under s. 314 of the Penal Code—QUEEN v. KALACHAND GOPE, 10 W. R. 59. [Phear and Hobhouse, JJ. Dec. 8, 1868.]

ACCUSED was out in the jungles with his gun. An altercation arose between him and deceased, the former interfering to prevent the latter from committing real or supposed cattle-trespass. Deceased, thereupon, with a large club, attacked accused, who fired without any particular aim, but lowering the muzzle of the gun, so as not to hit a vital part; and death ultimately resulted from the wound inflicted. *Held* that accused's act was not a legal exercise of the right of private defence, as it was not necessary for his defence that he should fire; he had only to stand back and let deceased alone, and he was safe. *Held* accordingly, that the accused was rightly convicted of culpable homicide not amounting to murder.—CROWN v. KURREEM BUKSH, Panj. Rec., No. 13 of 1868.

GUILTY intention or knowledge is a constituent part of the offence of culpable homicide, and although every unlawful act is presumed to be wrongly intended until the contrary is shown, yet it is for the Court to consider whether the whole case does not disclose circumstances (whether they come from the accused or the prosecutor) which negative the existence of such intention. It is only in the exceptional cases mentioned in s. 300—of which there should be evidence—that culpable homicide can be taken out of the category of murder, and reduced to an offence of lower degree.—JEHANGEER KHAN v. CROWN, Panj. Rec., No. 22 of 1868.

A JUDGE was held to have exercised a proper discretion in not passing sentence of death in a case in which the dead body was not found.—QUEEN v. BUDDURUDDEEN, 11 W. R. 20. [Norman and Jackson, JJ. Mar. 9, 1869.]

A LARGE body of men belonging to one faction waylaid another body of men belonging to a second faction, and a fight ensued, in the course of which a member of the first-mentioned faction was wounded, and retired to the side of the road, taking no further active part in the affray. After his retirement a member of the second faction was killed. *Held* by Norman, J. (whose opinion prevailed), that the wounded man had ceased to be a member of the unlawful assembly when he retired wounded, and that he could not, under s. 149 of the Penal Code, be made liable for the subsequent murder. *Held* by E. Jackson, J., that he remained a member of the unlawful assembly.—QUEEN v. KABIL CAZEE, 3 B. L. R. A. Cr. 1. [Norman and Jackson, JJ. April 8, 1869.]

THE legal right of private defence of the body and property is not exceeded by a person who is attacked by another with a spear, and who strikes a blow with a lathi which results in the death of the party attacking; and such right of private defence of the body extends, under s. 100 of the Penal Code, to the taking of life where grievous hurt is reasonably apprehended.—QUEEN v. MOIZUDIN, 11 W. R. 41. [Jackson and Markby, JJ. April 29, 1869.]

THE accused, who professed to be snake-charmers, persuaded the deceased to allow themselves to be bitten by a poisonous snake, inducing them to believe that they had power to protect them from harm. *Held* that the offence would have been murder under s. 300 of the Penal Code, if, under the circumstances of the case, it did not fall within the 5th exception to that section. *Held* that the consent given by the deceased allowing themselves to be bitten did not protect the accused, such consent having been founded on a misconception of facts, that is, in the belief that the accused had power by charms to cure snake-bites, and the accused knowing that the consent was given in consequence of such misconception (s. 90, Penal Code).—QUEEN v. POONAI FATTEMAH, 12 W. R. 7; 3 B. L. R. A. Cr. 25. [Norman and Jackson, JJ. June 14, 1869.]

PRISONER caused to be given to deceased some substance which he alleged to have been given with intent to bring on madness. *Held* that the act of the prisoner was, known to him to be likely to cause death, and therefore he was properly convicted of murder; but as death was not the immediate object of his intention, the sentence of death was commuted.—CROWN v. KHEMA, Panj. Rec., No. 8 of 1869.

UPON an inoffensive remark made by deceased, Fazl Khan picked a quarrel with him, and, after some words had passed between the two, Fazl Khan held the deceased's arms down by his side, while Muhammad Khan inflicted a stab which caused death. *Held* that the prisoner was improperly convicted of culpable homicide not amounting to murder, and should have been convicted of murder. A Court should find clearly the exception under s. 300, which, in the Court's opinion, exists as a reason for reducing the offence to culpable homicide not amounting to murder.—MAHOMED KHAN v. CROWN, Panj. Rec., No. 12 of 1869.

WHERE there was no direct evidence of a murder having been committed, but the ac-

cused confessed that he had burnt the body of the deceased after death, though he denied that he had murdered her, or that she had been murdered, the Court presumed from all the acts and statements of the accused, and the presence of motive and other circumstances, that deceased was violently put to death, and by the hands of the accused, and confirmed the sentence of death accordingly.—CROWN v. BUNNA, Panj. Rec., No. 13 of 1869.

WHERE the accused were convicted of rioting and murdering a jamadar of chaukidars, who was assisting the police to apprehend a proclaimed offender, *held* that the fact of the murder being committed without preconcertion or personal enmity did not warrant the Sessions Judge in abstaining from passing sentence of death.—CROWN v. DITTA, Panj. Rec., No. 31 of 1869.

UNDER excep. 1, s. 300, the finding of a jury as to whether the offence of murder was committed under grave and sudden provocation sufficient to prevent the offence from amounting to murder is a question of fact with which the High Court cannot interfere —QUEEN v. SOHRAIE, 13 W. R. 33. [Jackson and Hobhouse, JJ. Feb 19, 1870.]

WHERE the accused pleads guilty before a Sessions Judge to a charge of murder, the Sessions Judge might either convict him on that plea of that charge, or proceed to try him on the evidence; but he cannot, without trial, convict the accused of culpable homicide not amounting to murder, to which offence the accused did not plead guilty. *Held* with reference to the provisions of ss. 97, 99, and 102 of the Penal Code, that on the facts of this case the accused had no reasonable apprehension of danger to himself from the threats of the deceased whom he killed, and that, therefore, the right of private defence of the body did not arise, and the case was not taken out of the category of murder by reason of the 2nd exception to s. 300 of the Penal Code.—QUEEN v. GOBARDUR BHOOYN, 13 W. R. 55; 4 B. L. R. Ap 101 [Jackson and Glover, JJ. April 6 1870.]

ON a conviction for murder, the only punishments that can legally be awarded are death or transportation for life.—QUEEN v. BANI DOSS, 14 W. R. 2. [Bayley and Markby, JJ. June 4, 1870.]

A, OF Allyghur, obtained a decree against B and C of Kasheepoor for their share in certain property. A sent four men to take possession and plough the land, which was opposed by six men of Kasheepoor. A fight ensued, resulting in the death of one of the Kasheepoor men, caused by a blow inflicted by one of the Allyghur men. The Deputy Commissioner convicted the four Allyghur, and five surviving Kasheepoor, men of being members of an unlawful assembly, and of culpable homicide. *Held*, on appeal, that there was no common object on the part of the two factions, and therefore they did not jointly form an unlawful assembly under s. 141; that the Kaseepoor men merely exercised the right of private defence under s. 97; and that the Allyghur men, being less than five in number, did not compose an unlawful assembly, but that the Allyghur man who struck the fatal blow was guilty of culpable homicide, and the rest of his party of abetting that offence.—KULLEN v. CROWN, Panj. Rec., No. 13 of 1870.

CONVICTION by a jury set aside in a case of murder in which there was a total absence of all evidence to show that the prisoner had committed the crime.—QUEEN v. BAHAR ALI KAHAR, 15 W. R. 46. [Jackson and Mookerjee, JJ. Mar 25, 1871.]

CAPITAL sentence should be pronounced on a conviction for murder, even if the accused be pregnant, although the execution of the sentence should be deferred till after delivery.—QUEEN v. PANHEE AURUT, 15 W. R. 66. [Bayley and Paul, JJ. May 3, 1871.]

PERSONS found guilty of rioting may, if the circumstances warrant it, be convicted of the several offences of rioting armed with deadly weapons, culpable homicide, and grievous hurt.—QUEEN v. HURGOBIND, 3 N.-W. P. 174 [Turner, J. July 7, 1871.]

IN a case in which the prisoner was charged with murder and he made a confession that he did strike the deceased with a stick, the Sessions Judge after considering the evidence discredited the confession and all the evidence except that of the medical officer, and discharged the prisoner, not considering it necessary that the case should go before a jury. *Held* that the Sessions Judge had no right to pronounce his own judgment on the credibility of the evidence, and to withdraw the consideration of the due weight to be given to the evidence from the jury.—*In re* HURRO SINGH, 16 W. R. 20 [Ainslie and Paul, JJ. July 20 1871.]

THE Court has no power even where there is ground for doing so, to mitigate a sentence of transportation for life, passed on persons found guilty of murder.—QUEEN v. JAMAL, 10 W. R. 65. [Kemp and Jackson, JJ. Dec. 9, 1871.]

WHERE the Sessions Judge convicted the accused of culpable homicide *not amounting* to murder, and sentenced him to seven years' rigorous imprisonment, the Chief Court on the Revision Side, not finding any of the exceptions under s. 300 established, altered the conviction to one of murder, and sen-

fenced the accused to transportation for life.—CROWN *v.* GHOLAM MAHOMED, Panj. Rec., No. 11 of 1871.

ACCORDING to the prisoner's statement (the only direct evidence in the case), Mussamnat Wahabji solicited him to continue a criminal intercourse which had existed between them; and, on his declining, she kicked him, on which he struck her a blow over the region of the heart, throttled her till she ceased breathing, and then flung the body into a well. *Held* that there was not such grave and sudden provocation as reduced the offence to culpable homicide, and that the case did not fall under the 4th exception of s. 300 Penal Code (sudden fight, &c.), because the prisoner acted in a cruel and unusual manner, but that the provocation received by the accused was a sufficient reason for not passing sentence of death. Sentence commuted accordingly.—CROWN *v.* SUMUNDUR, Panj. Rec., No. 4 of 1872.

J, WITH three others, all of them unarmed, attempted late at night to steal wood from H S's field. M S, who was in charge of the field, raised an alarm and H S, with K S and L S, came up and seized J and S D, another of the thieves. H S and his party, who were armed with sticks, struck J and S D, and took them into the village. J being senseless from the blows, and S D uninjured. J died next morning from one of the blows received, which had broken one of his ribs, and which was the only serious blow inflicted. The Deputy Commissioner convicted H S, M S K S, and L S, of culpable homicide, holding that, though it was not shown which of the four inflicted the fatal blow, they were all found guilty as they were acting together for a common purpose. *Held* by the Chief Court that, with reference to the common purpose of the accused to arrest the deceased, who, with others, was attempting to commit theft, and other circumstances in the case, and as it had not been found that the accused had used excessive violence, the conviction must be set aside.—HIRA SINGH *v.* CROWN, Panj. Rec., No. 26 of 1872.

WHERE it appeared that the prisoner, a Rajput, had allowed his female child, after the mother's death, to gradually languish away and die from want of proper sustenance, and had persistently ignored the wants of the child, although repeatedly warned of its state and the consequences of his neglect of it, and there was nothing to show that the prisoner was not in a position to support the child, *held* that the offence which the prisoner committed was murder, and not simply culpable homicide not amounting to murder.—QUEEN *v.* GUNJA SINGH, 5 N.-W. P. 44 [Spankie, J., Feb. 19, 1873.]

IN a case of murder, the statement made by the deceased in the presence of his neighbours and of a head-constable was admitted as relevant evidence under s. 22, cl. 1, Act I. of 1872, that section providing that such statement is relevant, whether the person who made the statement was or was not at the time when it was made under expectation of death.—QUEEN *v.* DEGUMBER THAKOOR, 19 W. R. 44. [Kemp and Glover, JJ. Mar. 12, 1873.]

WHERE a person under sentence of transportation for life on a conviction for murder is found guilty of murder on a subsequent and different charge, the only sentence that can be passed on him according to s. 303, Penal Code, is that of death. The prisoner, who was charged with having committed murder, was found by the jury who tried him to have been of unsound mind at the time he committed the offence. The Sessions Judge, differing in that point from the jury, referred the case to the High Court under s. 263 of the Code of Criminal Procedure (Act X. of 1872). *Held* that, in a case of this kind, the High Court will not interfere, without the very clearest proof that the jury were mistaken and that the interests of justice imperatively required the Court to take action under the extraordinary powers conferred upon it by s. 263, Code of Criminal Procedure, 1872. On a consideration of the medical evidence, the Court declined to interfere with the verdict of acquittal which the jury came to.—QUEEN *v.* DOORJODHUN SHAMONTO *alias* DEEJOBOR, 19 W. R. 45 [Kemp and Glover, JJ. Mar. 15, 1873.]

THE accused confessed to a police-constable, on being assured by him that nothing would happen to her, that she had killed her new-born child, and had buried it in the enclosure of her house. This statement led to the discovery of some bones of the head of an infant, a stone stained with blood, and a knife, with which stone and knife she said that she had killed her child. Before the committing Magistrate she made the same statement. In her trial before the Sessions Judge, she admitted the birth of the child. She stated that it did not cry, and that she buried it, not knowing whether it was alive or dead. She also stated that the police-constable had pressed and threatened her, and told her that, if she confessed the truth, nothing would happen to her. She denied having killed the child with the stone and sickle, and said that she had merely pressed it on the ground, and then buried it. There was no evidence to show that the child was born alive. *Held* that the confession before the Magistrate was irrelevant, and that the Court was not prepared to say that the confession made before the Ses-

sions Judge was made after the impression caused by the promise of the police-constable had been fully removed, and that, looking at the fact that a promise of safety had been made, the confession was, even if accepted, of a limited character, and there was nothing to show that the child was born alive; and considering that, if the child was born dead, the accused might, under fear of exposure and disgrace, have wished to conceal the body, the accused must be acquitted of murder.—QUEEN v. MUSSUMAT LUCHOO, 5 N.-W. P. 86. [Spankie, J. April 5, 1873.]

THE prisoner having admitted before the Court of Session that he had killed his wife, no assessors were empannelled. At the end, however, of his confession, he pleaded that he was not in his right mind at the time. The Judge, therefore, proceeded to record medical and other evidence on the point, and, having come to the conclusion that there was no reason to doubt from the prisoner's conduct, either prior or subsequent to the murder, that, in committing the murder, he knew that he was doing a wrong act, convicted the prisoner. *Held* that the plea was, in effect, one of not guilty, and that the trial should not have proceeded without assessors, and that it should be quashed.—QUEEN v. CHEIT RAM, 5 N.-W. P. 110 [Spankie, J. April 14, 1873.]

THE statement of a Judge, who presides at a criminal trial, is, upon a case reserved under the 25th clause of the Charter of the High Court, or upon a case certified by the Advocate-General under its 26th clause, conclusive as to what has passed at the trial. Neither the affidavits of bystanders or of jurors, nor the notes of counsel or of shorthand-writers, are admissible to controvert the statement of the Judge. It is in the discretion of the Judge, who presides at a criminal trial, whether or not he will reserve a point of law for the opinion of the High Court, and such discretion will not be reviewed by the High Court sitting as a Court of Review, under cl. 26 of the Letters Patent. *Semble*—Non-direction by a Judge is not a matter upon which the Advocate-General should grant a certificate under cl. 26 of the Letters Patent. In considering whether a Judge has misdirected the jury, the tenor and general effect of the whole summing-up should be looked at, and if, upon the whole summing-up, the Court is of opinion that substantially the proper direction has been given to the jury, it will not interfere, though the Judge has omitted to direct the jury expressly on some important point. *Quære*—Whether abetment of murder by sorcery or other impossible means is an offence under the Penal Code? In criminal cases the High Court will not in general, grant leave to appeal to the Privy Council, unless some important question of law or practice, or jurisdiction, is involved. Considerations that guide the Court in granting leave to appeal in such cases stated, and instances in which such leave has been granted mentioned.—REG. v. PESTANJI DINSHA, 10 Bom. H. C. R. 75. [Westropp, C.J., and Gibbs, Sargent, Bayley, and Melvill, JJ. May 21, 1873.]

IN a case in which the accused were charged with murder (s. 302), culpable homicide not amounting to murder (s. 304), and voluntarily causing grievous hurt (s. 325), the Sessions Judge at the trial added a further charge of house-breaking by night in order to the commission of an offence (s. 457). The jury unanimously acquitted the prisoners of the three original charges, and a majority of the jury (four out of five) acquitted them also of the last charge. The Sessions Judge agreed with the verdict of the jury as regards the three original charges and recorded a formal order acquitting and discharging the prisoners on these three charges. He differed from the majority as to the fourth charge, and referred the case to the High Court under s. 263 of the Code of Criminal Procedure (Act X. of 1872). *Held* that, where (as in this case) the Sessions Judge has approved a verdict on certain charges, and finally acquitted and discharged the accused as to these charges, the High Court cannot, under s. 263, convict on the facts on these very charges. That section seems to contemplate only a case in which, without recording any order of acquittal or conviction, the Sessions Judge refers the whole case. As there was nothing in this case to show on what grounds the majority of the jury acquitted the prisoners on the additional charge, and as the Sessions Judge agreed with the unanimous verdict as to the three original charges, the High Court presumed that the reason which weighed with the majority of the jury in finding the prisoners not guilty on the additional charge must have weighed with the whole jury in finding them not guilty on all the three other charges, and accordingly the Court could not set aside the verdict of the majority on the last count without practically finding directly in the teeth of the verdict of the unanimous jury on the first three counts.—QUEEN v. UDYA CHANGA, 20 W. R. 73. [Macpherson and Glover, JJ. Nov. 3, 1873.]

IN a case in which the accused was tried on charges of murder, culpable homicide, and causing grievous hurt, the jury acquitted him of murder, but convicted him on the other counts. The verdict was recorded by the Sessions Judge, who then, in accordance

with s. 263, Code of Criminal Procedure (Act X. of 1872), questioned the jury as to the grounds for their verdict, and the jury eventually intimated their willingness to convict of murder. The Sessions Judge differed from the first verdict of the jury; but as he had recorded the first verdict, he doubted whether he could accept the second verdict, and referred the case to the High Court under s. 263. *Held* that s. 263 did not apply to such a case as this. There could be no verdict delivered, and no verdict finally recorded, until the last of the questions put by the Sessions Judge to the jury was answered; and, as it appeared from the answers of the jury that their findings of facts disclosed that the verdict ought to have been one of guilty on the charge of murder, the Sessions Judge should have entered the verdict of the jury as the verdict of guilty of murder. The case was accordingly returned to the Sessions Judge to enable him to do that, and to pass such sentence as the law directed. It is only when it is necessary in order to ascertain what the verdict of a jury really is that a Judge is justified under s. 263 in putting questions to the jury.—QUEEN v. SUSTIRAM MANDAL, 21 W. R. 1. [Phear and Morris, JJ. Nov. 19, 1873.]

THE knowledge that an act is likely to cause death does not constitute culpable homicide amounting to murder. It must be shown that the act was committed with the knowledge that it must, in all probability cause death.—QUEEN v. GRIDHAREE SINGH, 6 N.-W. P. 26. [Turner, J. Nov. 29, 1873.]

WHEN a Sessions Judge finds the accused guilty of murder, the sentence of death must be passed, unless there is some extenuating circumstance, some excuse, which, though the law does not regard it as sufficient to reduce the killing to the offence of culpable homicide, is ground for looking leniently on the act. The fact that the accused was not arrested when actually committing the crime, or in the act of escaping from the spot, is no reason for not passing sentence of death.—KAMAL v. CROWN, Panj. Rec., No. 13 of 1873.

UNDER s. 280 of the Code of Criminal Procedure (Act X. of 1872), the High Court altered the conviction in this case from culpable homicide into one for murder, and enhanced the sentence accordingly.—QUEEN v. SHEIKH ROHEEM, 21 W. R. 39. [Jackson and Ainslie, JJ. Feb. 5, 1874.]

IN a case in which the accused was charged with murder, the Sessions Judge considered the evidence given before him by the witnesses for the prosecution to be false, but nevertheless convicted the accused, acting under s. 249 of the Code of Criminal Procedure, and relying on the evidence which had been given by the same witnesses before the committing officer. *Held* that s. 249 did not apply to this case; that the discretion conferred by that section should be exercised upon substantial materials rightly before the Court, and reasonably sufficient to guide the judgment of the Court to the truth of the matter, and not upon mere speculation or conjecture; and that, under that section, a Judge may base his judgment on the evidence given before the Magistrate in the presence of the accused, when there are special and particular reasons for considering that evidence to be honest and true, and when that evidence is, to a certain extent, corroborated by independent testimony before himself.—QUEEN v. AMANULLAH, 21 W. R. 49; 12 B. L. R. Ap. 15 [Phear and Morris, JJ. Mar. 16, 1874.]

THE High Court, in exercise of the powers conferred on it by s. 280 of the Code of Criminal Procedure (Act X of 1872), altered the conviction in this case by the Sessions Judge from grievous hurt into one for murder, and enhanced the punishment accordingly.—QUEEN v. SAFIRUDDI PALWAN, 22 W. R. 5, 13 B. L. R. Ap. 23. [Kemp and Birch, JJ. April 22, 1874.]

THE evidence of a child of immature age—who, the Sessions Judge considered, understood the questions which were put to her, and who was therefore a competent witness under s. 118 of the Evidence Act—taken by the Sessions Judge on a simple affirmation, because he was not aware of the responsibility of an oath, was held to be admissible as evidence under s. 13 of the Oaths Act (X. of 1873). *Case of Dwarkanath Dutt* (7 W. R. 15), which ruled that a Court, before which a second trial is held, has nothing to do with the evidence given in the former trial, except for the purpose of ascertaining whether the offence in the two trials is the same, followed. A prisoner originally charged with an offence under one section (302), and acquitted of that charge, was committed, the day following that on which she was acquitted, for trial under another section (307), without any witnesses being examined on the charge under s. 307, and without having any opportunity of cross-examining the witnesses on the first charge, with respect to the second charge. *Held* that the irregularity was one which was not covered by s. 283, Code of Criminal Procedure (Act X. of 1872), and that the prisoner had been prejudiced thereby in her defence. The trial under s. 307 was accordingly quashed, and a new trial ordered.—QUEEN v. MUSSAMUT ITWARYA, 22 W. R. 14; 14 B. L. R. 54. [Kemp and Birch, JJ. May 9, 1874.]

WHERE a blow is struck by A in the presence of, and by the order of, B, both are principals in the transaction; and where two persons join in beating a man, and he dies, it is not necessary to ascertain exactly what the effect of each blow was.—QUEEN v. MOHAMED ASGER, 23 W. R. 11. [Markby and McDonell, JJ. Dec. 12. 1874.]

A PARTY charged along with others with murder, having had a conditional pardon granted to him by the Deputy Magistrate, retracted before the Sessions Judge the statements he had made before the Deputy Magistrate. On being sent back to the Deputy Magistrate, that officer committed him for trial on a charge of giving false evidence. The Sessions Judge considered that the Deputy Magistrate was bound under s. 349, Code of Criminal Procedure (Act X. of 1872), to commit on the original charge of murder, and not on that of giving false evidence; and he recommended that the order of commitment should be quashed, and the Deputy Magistrate directed to commit on the charge of murder. The High Court declined to interfere, as there was evidence on the record tending to support the charge for giving false evidence, and as s. 349 did not have the effect of taking away from Magistrates the power to entertain a charge of this kind.—QUEEN v. MULLIK JEECHOO, 23 W. R. 12. [Phear and Morris, JJ. Jan. 4. 1875.]

A SESSIONS JUDGE is bound to decide whether the offence committed is murder, or culpable homicide not amounting to murder, even if the person who struck the fatal blow is not under trial. If an accused has not his witnesses present, the Judge should under s. 251, Criminal Procedure Code (Act X. of 1872), if he sees grounds for proceeding, first call upon him for his defence, and then postpone the case.—QUEEN v. JUMIRUDDIN AND FAIZUDDIN *alias* FAGOO, 23 W. R. 58 [Jackson and McDonell, JJ. April 8, 1875.]

WHERE a murder is not premeditated, transportation for life is a sufficient punishment. A Sessions Judge should not import into his judgment the opinion of an assessor derived from personal knowledge, and unsupported by evidence on record.—QUEEN v. RAM CHURN KUKMOKAR, 24 W. R. 28. [Birch and Lawford, JJ. July 13, 1875.]

WHERE a person, accused of murder, acknowledged having struck his victim, but repudiated the intention to murder, and the Sessions Judge accepted this acknowledgment as a plea of guilty, and omitted to record any further evidence, *held* that the Judge was bound to accept the statement of the accused as a whole, if it was taken as a confession at all. Conviction for murder accordingly set aside, and new trial ordered.—QUEEN v. SONAOOLLAH, 25 W. R. 23. [Macpherson and Morris, JJ. Mar. 14, 1876.]

WHERE an act which causes death is done with an intention to kill, the offence is always murder. Where the act causing death is done without any intention to cause death or bodily injury, whether the offence is culpable homicide or murder, depends on the decree of risk to human life. If death is a likely result, it is culpable homicide; if it is the most probable result, it is murder. When the act causing death is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, the offence is murder, if the offender knows that the particular person injured is likely from peculiarity of constitution, or immature age, or other special circumstance, to be killed by an injury which would not ordinarily cause death. When the act causing death is done with the intention of causing such bodily injury as is *likely* to cause death, it is culpable homicide; if done with the intention of causing such bodily injury as is sufficient in the ordinary course of nature to cause death, it is murder. When the prisoner knocked his wife down, put one knee on her chest, and struck her two or three violent blows on the face with his clenched fist, producing extravasation of blood on the brain, and she died in consequence, either on the spot, or very shortly afterwards, *held*, there being no intention to cause death, and the bodily injury not being sufficient in the ordinary course of nature to cause death, the offence was culpable homicide, and not murder.—REG. v. GOVINDA, I. L. R., 1 Bom. 342. [Kemball and Nanabhai Haridas, JJ. July 18, 1876.]

WHERE an accused person had been charged with the murder of a woman whom he was proved to have attempted to take away from her husband, and the assessors who had heard the case with the Judge found him guilty, but the Judge, without any evidence to support his hypothesis, had thrown out the supposition that the accused was the victim of a conspiracy, and acquitted him, and the Local Government appealed from the sentence of acquittal: Found by the High Court that there was no evidence in support of the Judge's supposition of the innocence of the accused, and *held* that his wrongful acquittal by the Judge could not stand between him and the sentence of death which was the punishment for his offence. The accused was accordingly sentenced to be hanged.—QUEEN v. RIDHAY PATRO, 26 W. R. 1. [Jackson and McDonell, JJ. Dec. 14. 1876.]

DECEASED who had an enlarged spleen, was struck by the accused in the course of a quarrel, and died owing to his bodily infirmity. *Held* that, in the absence of any knowledge on the part of the accused of the diseased condition of the deceased, the offence was not culpable homicide, but using criminal force under s. 352, Penal Code.—CROWN *v.* JAI DYAL, Panj. Rec. No. 12 of 1870.]

ON the trial by a jury of a person on a charge of murder, the jury found the accused not guilty of the offence of murder, but convicted him of culpable homicide not amounting to murder. The Sessions Judge, although he disagreed with the verdict, declined to submit the case to the High Court under s. 263 of the Criminal Procedure Code (Act X of 1872). The Local Government thereupon directed the Legal Remembrancer to appeal under s. 272 of the Code (or s. 417 of the Code of 1882), and in pursuance of this direction an appeal was preferred by the Junior Government Pleader. *Held* that the appeal was duly made. *Held* further that a judgment passed by the Court of Session, following the verdict of a jury acquitting the prisoner, is a judgment of acquittal within the meaning of s. 272 (or s. 417 of the new Code). *Held* also that, there being an acquittal on the charge of murder, the appeal lay.—EMPRESS *v.* JUDOONATH GANGOOLY, I. L. R., 2 Cal. 273. [Jackson and McDonell, JJ. Jan. 18, 1877.]

THE prisoner was found guilty, and sentenced, under Reg. IV. of 1797, to transportation for life, for a murder committed in 1861, before the Penal Code came into operation and the case was sent up to the High Court to confirm the sentence. Reg. IV of 1797 was repealed by Act XVII. of 1862, and that Act was wholly repealed by Acts VIII. of 1868 and X. of 1872. *Held* on a reference to a Full Bench, that the conviction was illegal, s. 6 of Act I. of 1868, which provides that the repeal of any Act or Regulation shall not affect any offence committed before the repealing Act shall have come into operation not being applicable.—EMPRESS *v.* DHOJOO MISSER, I. L. R., 8 Cal. 225. [Garth, C.J., and Kemp, Macpherson, Markby and Ainslie, JJ. Feb. 20, 1877.]

WHERE a jury found an accused person guilty of murder, but refused to convict him, because there had been no eye-witnesses of his crime, and on a second charge from the Judge refused to find him guilty at all, *held* by the High Court, to whom the case was referred, that the Judge ought to have explained to the jury that the testimony of eye-witnesses was not necessary to the establishment of a charge of murder, and that the jury, if they had no doubt of the guilt of the accused, were bound to give effect to the conclusion at which they had arrived.—QUEEN *v.* GOKOOL KAHAR, 25 W. R. 36. [Ainslie and Mitter, JJ. April 28, 1877.]

THE provocation contemplated by s. 300 of the Penal Code should be of a character to deprive the offender of his self-control. In determining whether it was so, it is admissible to take into account the condition of mind in which the offender was at the time of the provocation.—EMPRESS *v.* KHOGAYI, I. L. R., 2 Mad. 122. [Innes and Muttusami Ayyar, JJ. Jan. 22, 1878.]

UP to the 1st January 1862, a person committing the offence of murder was liable to trial and punishment under the Regulations. By Act XVII. of 1862, the Regulations prescribing punishments for offences were repealed, "except as to any offence committed before the 1st January 1862." By the same Act, it was declared that no person who should claim the same should be deprived of any right of appeal or reference, which he would have enjoyed under such Regulations. By s. 6 of Act I. of 1868, the repeal of an Act does not affect anything done, or any offence committed, or any fine or penalty incurred before the repealing Act shall have come into operation. Under the provisions of this section the repeal of Act XVII. of 1862 by Act VIII. of 1868 and Act X of 1872 did not, in respect of offences committed before the 1st January 1862, affect the penalties prescribed by such Regulations, nor were any of the Regulations prescribing punishments for offences, which were in force before the passing of Act XVII. of 1862, repealed in respect of offences committed before the 1st January 1862, prior to the passing of Act I. of 1868. *Held*, accordingly, where a person committed murder in the year 1855, that such person was punishable under the Regulation. *Held* also that inasmuch as such right as the right of reference given by s. 3 of Reg. IV. of 1797 accrues on conviction, and therefore in the present case had not accrued before Act XVII. of 1862 was repealed it is doubtful whether a person convicted of murder committed before the 1st January 1862 has such right.—EMPRESS *v.* MUTTA, I. L. R., 1 All. 599. [Turner and Spankie, JJ. Feb. 15, 1878.]

THE appellant, having armed himself with a sword, struck in the dark at certain persons in a house, causing wounds which resulted in the death of one person. *Held per* Jackson, J.—That such conduct raises an inference that he intended to cause death. *Per* Ainslie, J.—That, though he probably did not see how his blows were directed, as he struck them with a deadly weapon regardless of consequences, he must have known that

his act is so imminently dangerous that it must, in all probability, cause such bodily injury as was likely to cause death. *Per* Cunningham, J.—That the offence was culpable homicide, and not murder, being an unpremeditated act of reckless violence rather than an act done with the knowledge or intention which is essential to constitute murder.—IN THE MATTER OF BEJADHUR RAI, 2 C. L. R. 211. [Jackson, Ainslie, and Cunningham, JJ. April 1, 1878.]

WHERE the condition of the convict rendered it likely that, if he were hanged, decapitation would ensue, the sentence of death was commuted to one of transportation for life. —IN THE MATTER OF BOODHOO JOLAHO, 2 C. L. R. 215. [Markby and Prinsep, JJ. April 15, 1878.]

IF a body of men armed with lathis, and under the leadership of one who, to the knowledge of the rest, is armed with a gun, assemble for the purpose of forcibly carrying off another man's property, and if, in effecting that purpose, any one of the party, taking the gun, shoots and kills a person who is making a lawful resistance, the whole party may properly be convicted of murder under s. 149 of the Penal Code —HARI SINGH *v.* EMPRESS, 3 C. L. R. 49. [Jackson, Mitter, and Maclean, JJ. June 4, 1878.]

L, C, K, AND D, conspired to kill S. In pursuance of such conspiracy, L first, and then C, struck S on the head with a lathi, and S fell to the ground. While S was lying on the ground, K and D struck him on the head with their lathis. *Held* (Stuart, C.J., dissenting) that, inasmuch as K and D did not commence the attack on S, and it was doubtful whether S was not dead when they struck him, transportation for life was an adequate punishment for their offence. Observations by Stuart, C.J., on the impropriety of a judicial officer adding a "note" to his judgment in a criminal case impugning the correctness of the conclusion he has arrived at on the evidence in such case.—EMPRESS *v.* CHATTAR SINGH, I. L. R., 2 All. 33. [Stuart, C.J., and Pearson and Oldfield, JJ. Aug. 15, 1878.]

IN the course of a serious riot one S was killed by a shot from a gun. The first prisoner and others were charged with murder. The Sessions Judge, believing the statement of the first prisoner and his witnesses that he had fired in self-defence, acquitted him of the charge. Upon a petition presented by the widow of the deceased, praying the Court to exercise their powers of revision, *held*, 1st, that, under the provisions of s. 297 of the Criminal Procedure Code (Act X. of 1872), the High Court may exercise its powers of revision upon information in whatever way received; 2ndly, that it was not intended by the Legislature that the powers given by cl. 1 of s. 297 should be exercised only in the particular instances of error, and in the particular manner given in the succeeding clauses, which are merely intended to show the particular course which may be taken in those particular instances of error; 3rdly, that it is not a ground for revision by the High Court that all the evidence for the prosecution which might have been brought before the Sessions Judge has not been brought before him; 4thly, that the words 'material error' in that section cannot be held to include error in the appreciation of evidence; 5thly, that under the 1st clause of s. 227, the High Court cannot set aside findings of fact except in case of an appeal from a conviction.—IN THE MATTER OF AUROKIAM, I. L. R., 2 Mad. 28. [Innes, Offg. C.J., and Muttusami Ayyar, J. Oct. 25, 1878.]

S. 304A of the Penal Code does not apply to a case in which there has been the voluntary commission of an offence against the person. If a man intentionally commits such an offence, and consequences beyond his immediate purpose result, it is for the Court to determine how far he can be held to have the knowledge that he was likely, by such act, to cause the actual result; and, if such knowledge can be imputed, the result is not to be attributed to mere rashness; if it cannot be imputed, still the wilful offence does not take the character of rashness, because its consequences have been unfortunate. Acts probably or possibly involving danger to others but which in themselves are not offences, may be offences under s. 336, 337, 338, or 304A, if done without due care to guard against the dangerous consequences. Acts which are offences in themselves must be judged with regard to the knowledge or means of knowledge of the offender, and placed in their appropriate place in the class of offences of the same character —EMPRESS *v.* KETABDI MUNDUL, I. L. R., 4 Cal. 764, 2 C. L. R. 507 [Ainslie and Broughton, JJ. Feb. 26, 1879.]

HELD (Stuart, C.J., dissenting) that a Native Indian subject of Her Majesty, being a soldier in Her Majesty's Indian army, who committed a murder in Cyprus while on service in such army, and who was accused of such offence at Agra, might under s. 9 of Act XI of 1872, be dealt with in respect of such offence by the Criminal Courts at Agra, Cyprus being a "Native State" in reference to Native Indian subjects of Her Majesty within the meaning of that Act. *Per* Stuart, C.J.—The power of the Governor-General of India in Council to make laws for the trial and punishment in British India of offences

committed by British Indian subjects in British territories other than British India discussed. A Division Court of the High Court ordered the Magistrate (who had refused to inquire in a charge of murder on the ground that he had no jurisdiction) to inquire into such charge, considering that the Magistrate had jurisdiction to make such inquiry. The Magistrate inquired into the charge, and committed the accused person for trial. The Court of Session convicted the accused person on the charge, and sentenced him to death. The proceedings of the Court of Session having been referred to the High Court for confirmation of the sentence, the case came before the Full Court. *Held per* Stuart, C.J., Spankie, J., and Oldfield, J., that, in determining whether such sentence should be confirmed, the Full Court was not precluded by the order of the Division Court from considering whether the accused person had been convicted by a Court of competent jurisdiction.—EMPRESS *v.* SARMUKH SINGH, I. L. R., 2 All. 218. [Stuart, C.J. and Pearson, Spankie, and Oldfield, JJ. Mar. 28, 1879.]

WHERE an accused was charged with culpable homicide, and the evidence showed that the deceased had an enlarged spleen, and that his death was caused by rupture of the spleen occasioned by blows inflicted by the accused on the body of the deceased, *held* that it was not sufficient, in order to find the accused guilty of a rash act under s. 304A of the Penal Code, that the jury should be satisfied only of the prevalence of the disease of enlargement of the spleen in the district, and infer therefrom criminal rashness in beating the deceased; but that they should also be satisfied that the accused was aware of the prevalence of such disease in the district and also aware of the risk to life involved in striking a person afflicted with that disease.—EMPRESS *v.* SAFATULLA, I. L. R., 4 Cal. 815. [Morris and White, JJ. Mar. 31, 1879.]

EXCEP. 5 to s. 300 refers to cases where a man consents to submit to the doing of some particular act, either knowing that it will certainly cause death, or that death will be the likely result; but it does not refer to the running of a risk of death from something which a man intends to avert if he possibly can do so, even by causing the death of the person from whom the danger is to be anticipated. *Per* Broughton, J.—Excep. 5 to s. 300 is not applicable to the case of a premeditated fight, but points to a case of a different character, such as suttee.—EMPRESS *v.* ROHIMUDDIN (No. 1), NAZIR MAHOMED (No. 2), AND SOMIRUDDIN (No. 3), I. L. R., 5 Cal. 31; 4 C. L. R. 285. [Ainslie and Broughton, JJ. April 22. 1879.] *Contra*, *Shamshere Khan* v. *Empress*, 7 C. L. R., 158 I. L. R., 6 Cal. 154, *infra*.

WHERE death results in fight between two bodies of men deliberately fighting together, a greater proportion of the men composing both sides being armed with deadly weapons, and it being further apparent from the evidence that the man slain was an adult, and that no unfair advantage was taken by the one side or the other during the fight, the offence committed is culpable homicide, but does not amount to murder.—SAMSHERE KHAN *v.* EMPRESS, I. L. R., 6 Cal. 154; 7 C. L. R. 158. [White and Field, JJ. July 31, 1880.] *Contra*, *Empress* v. *Rohimuddin*, I. L. R., 5 Cal. 31; 4 C. L. R. 285, *supra*.

A HEAD-CONSTABLE, making an investigation into a case of house-breaking and theft, searched the tents of certain gipsies for the stolen property, but discovered nothing. After he had completed the search, the gipsies gave him a certain sum of money, which he accepted, but at the same time, not deeming it sufficient, he demanded a further sum from them. They refused to give anything more, on the ground that they were poor, and had no more to give. Thereupon he unlawfully ordered one of them to be bound and taken away. On his subordinates proceeding to execute such order, all the gipsies in the camp, men, women, and children, turned out, some four or five of the men being armed with sticks and stones, and advanced in a threatening manner towards the place such gipsy was being bound and the head-constable was standing. Before any actual violence was used by the crowd of advancing gipsies, the head-constable fired with a gun at such crowd, when it was about five paces from him, and killed one of the gipsies and, having done so, ran away. Any apprehension that death or grievous hurt would be the consequence of the acts of such crowd would have ceased had he released the gipsy he had unlawfully arrested, and withdrawn himself and his subordinates, or had he effected his escape. *Held* that such head-constable had not a right of private defence against the acts of such gipsies, as those acts did not reasonably cause the apprehension that death or grievous hurt would be their consequence, and such head-constable was guilty of culpable homicide amounting to murder.—EMPRESS *v.* ABDUL HAKIM, I. L. R., 3 All. 253. [Pearson and Straight, JJ. Oct. 5, 1880.]

THE mere fact that the body of the murdered person has not been found is not a ground for refusing to convict the accused person of the murder.—EMPRESS *v.* BHAGIRATH, I. L. R., 3 All. 383. [Pearson and Straight, JJ. Dec. 24, 1880.]

WHERE the accused was, on a cry of "thief" being raised against him, pursued by certain private persons, in whose view he had not committed any non-bailable or cognizable offence, whereupon he turned and shot dead one of his pursuers who was on the point of seizing him, *held* that the offence was one of culpable homicide not amounting to murder, as the accused, although he was entitled to resist the attempt of his pursuers to capture him in the exercise of his right of private defence, had exceeded the power given him by law when he caused the death of the person against whom he was exercising that right, but without an intention of doing more harm than was necessary for the purpose of defence. *Held*, further, that the accused must be taken to have acted with the intention of causing such bodily injury as was likely to cause death, though he may have intended specifically to cause death, and was, therefore, guilty of culpable homicide in the greater degree.—EMPRESS *v.* SHER BAZ, Panj. Rec., No. 1 of 1880.

A WOMAN who, with her infant child, eloped from her husband's house, was afterwards arrested on a charge of murdering the child which was missing. She made three different statements; (1) that she had left it with her husband; (2) that she had been enticed away by one R, who had taken the child from her; (3) that one H had drowned the child. The Sessions Judge believed the last statement and convicted her under s. 201 of the Penal Code. *Held* that the conviction was wrong and must be set aside. S. 201 of the Penal Code does not apply to a case where the person who is the probable or possible offender makes statements exculpating himself by inculpating another.—IN THE MATTER OF BEHALA BIBI; EMPRESS *v.* BEHALA BIBI, I. L. R., 6 Cal. 789; 8 C. L. R. 207. [Pontifex and Field, JJ. Mar. 7, 1881.]

A PRISONER was charged with 'causing the death of A by inflicting a wound on him with a 'chheni' with the intention of causing bodily injury, such as was sufficient, in the course of nature, to cause death, or which he knew to be likely to cause death.' *Held* that the charge was defective and inexact as regarded the second and third clauses of the definition of murder in s. 300 of the Penal Code. With reference to the second clause, it should have run "likely to cause the death of A, the person to whom the harm was caused." With reference to the third clause, it should have said "ordinary course of nature."—EMPRESS *v.* SAMIRUDDIN, I. L. R., 8 Cal. 211. [Pontifex and Field, JJ. Dec. 14, 1881.]

P, ACCUSED of the murder of a girl, gave to a police-officer a knife, saying it was the weapon with which he had committed the murder. He also said that he had thrown down the girl's anklets at the scene of the murder, and would point them out. On the following day he accompanied the police-officer to the place where the girl's body had been found, and pointed out the anklets. *Held* that such statements, being confessions made to a police-officer, whereby no fact was discovered, could not be proved against P. Observations on the use of confessions made to police-officers. *Reg. v. Jora Hasji* (11 Bom. H. C. R. 242) and *Empress v. Ramabirapa* (I. L. R., 3 Bom. 12) referred to.—EMPRESS *v.* H. PANCHAM, I. L. R., 4 All. 198. [Stuart, C.J., and Straight, J. Jan. 10, 1882.] Discussed and commented on in *Adu Shikdar v. Queen-Empress*, I. L. R., 11 Cal. 635, *infra*.

WHERE a prisoner is constructively guilty of murder under s. 34 of the Penal Code, it is doubtful if he can be said to have committed the offence of murder within the meaning of s. 149, so as to make other prisoners, by a double construction, guilty of murder.—IN THE MATTER OF JHUBBOO MAHTON; EMPRESS *v.* JHUBBOO MAHTON, I. L. R., 8 Cal. 739; 12 C. L. R. 233. [McDonell and Field, JJ. April 28, 1882.]

AN accused, who was charged with murder, not being found, the witnesses were examined under s. 327 of Act X. of 1872 in his absence. The accused was subsequently arrested, and committed on the strength of the evidence taken in his absence. Before the Sessions Court he pleaded not guilty. *Held* that the prisoner having been put upon his trial, and having pleaded the commitment could not be quashed. *Held* that, if, in course of a trial, the Sessions Judge should be of opinion that the prosecution has not laid a proper basis for the reception of evidence in the absence of the accused, his proper course is to adjourn the trial under s. 264 of the Criminal Procedure Code (Act X. of 1872), and then, under s. 351 of Act X of 1872 summon such witnesses as he may deem material. *Semble*.—The mere absence of questions in the record of a prisoner's statement does not render it inadmissible.—EMPRESS *v.* SAGAMBUR, 12 C. L. R. 120. [McDonell and O'Kinealy, JJ. Aug. 10, 1882.]

A WAS tried on a charge (1) of murder; (2) of abetting B to commit the said murder. The jury, having considered their verdict, were asked by the Clerk of the Crown if they were agreed. The foreman replied that they were, and that their verdict was guilty, and when further asked, he said, "Guilty of abetment—of abetment generally." On the application of counsel for the prosecution a charge was then added of "abetment of mur-

der committed by some person or persons unknown." The additional charge was read aloud to the jury, but was not specially explained to the prisoner, nor was he called upon to plead to it. Counsel for the prisoner was asked by the Judge if he desired to have a new trial on the charge as amended, but he declined. The three charges (*i.e.*, the two original charges and the additional charge) were then read to the jury, who, after deliberation, returned a verdict of "not guilty" on charges Nos. 1 and 2, and of "guilty" on charge No. 3, *viz.*, of abetment of murder by a certain person or persons unknown. On the application of counsel for the prisoner the following points were reserved. (1) whether, under the circumstances, the Court had power to add a new charge; (2) whether the verdict returned on the new charge was valid, the prisoner not having been called on to plead to it. *Held* (Scott, J., *diss.*) that the Judge was wrong in framing a new charge in addition to the original charges. The error, however was one of form, and not of substance and under s. 537 of the Criminal Procedure Code (Act X. of 1882), the Court declined to interfere with the conviction. *Held* also that the power exercised by a Court sitting as a Court to decide questions of law reserved in criminal cases under s. 434 of the Criminal Procedure Code (Act X. of 1882), is the power of review, and the Court is a Court of Reference and Revision. *Held* also that having regard to ss. 228, 229, and 230 of the Criminal Procedure Code, the charge of abetment of murder by B might have been charged into one of abetment generally. *Held* also that, in any case, the conviction was good under ss. 236 and 237 of the Criminal Procedure Code. It was doubtful whether the evidence would establish the offence of murder, abetment of murder by B, or abetment of murder by some one unknown. Even if there had been no charge properly framed, the Judge might, under s. 237, have accepted the verdict returned by the jury, and entered it on the record. The fact that the Judge framed a charge which, *ex hypothesi*, was beyond his authority, and accepted a verdict on that charge, did not affect the legality of the conviction. *Held* that the omission to read and explain the charge to the prisoner, did not, under the circumstances, prejudice the prisoner, and was therefore immaterial. In the Criminal Procedure Code generally the word "charge" is used as the statement of a specific offence, and not as indicating the entire series of offences of which a prisoner is accused. There is nothing in the Code to indicate that the word is to have a different construction in ss. 226 and 227 from what it has in other sections. The words "without a charge" in s. 226 of the Criminal Procedure Code (Act X. of 1882) will properly apply, not only to a case in which there is no charge at all, but also to a case in which there is no charge of such an offence as the Sessions Judge or Clerk of the Crown may think the prisoner ought to be tried for. If the word "alter" in s. 227 is to be taken to include "addition," as it does in s. 226, the addition permitted must be an addition to some specific charge in the nature of an alteration, and not the addition of a new charge. The words "return of the verdict" in s. 227 mean the return of the final verdict which the Judge is bound to record. Where, on the application of counsel for the prisoner, a question of law has been reserved for the decision of the Court under s. 434 of the Criminal Procedure Code (Act X. of 1882), the prisoner's counsel has the right to begin. *Per* Scott, J.—The test of the admissibility of proposed amendments to a charge is whether such amendment will prejudice the prisoner. The word "charge" is used in the Code both as indicating the whole series of counts or heads of charge, and also as indicating a charge of one specific offence. In s. 227 it is used in the former sense. The word "alter" in s. 227 must be taken to be equivalent to the words "add to or otherwise alter," which are used in s. 226; and consequently the addition of a new "head of charge" is an alteration within the meaning of s. 227.—QUEEN-EMPRESS *v.* APPA SUBHANA, I. L. R., 8 Bom. 200 (Sargent, C.J., and Bayley and Scott, JJ. Feb. 19, 1884).

UPON the trial of A for murder and B for abetment thereof, a confession by A implicating B cannot be taken into consideration against B under s. 30 of the Evidence Act, 1872.—BADI *v.* QUEEN-EMPRESS, I. L. R., 7 Mad 579. (Kernan and Hutchins, JJ. July 30, 1884.)

IN a trial upon a charge of murder, it appeared that the deceased, shortly before her death, was questioned by various persons as to the circumstances in which the injuries had been inflicted on her, and that she was at that time unable to speak, but was conscious and able to make signs. Evidence was offered by the prosecution, and admitted by the Sessions Judge, to prove the questions put to the deceased, and the signs made by her in answer to such questions. *Held* by the Full Bench (Mahmood, J., dissenting) that the questions and the signs taken together might properly be regarded as "verbal statements" made by a person as to the cause of her death within the meaning of s. 32 of the Evidence Act, and were, therefore, admissible in evidence under that section. *Per* Straight, J., that statements by the witnesses as to their impression of what the signs meant were inadmissible, and should be eliminated; but that, assuming

that the questions put to the deceased were responded to by her in such a manner as to leave no doubt in the mind of the Court as to her meaning, it was not straining the construction to hold that the circumstances were covered by s. 32. *Per* Mahmood, J., that the expression "verbal statements" in s. 32 should be confined to statements made by means of a word or words, and that the signs made by the deceased, not being verbal statements in this sense, were not admissible in evidence under that section. *Per* Petheram, C.J., that the signs could not be proved as "conduct" within the meaning of s. 8 of the Evidence Act, inasmuch as taken alone, and without reference to the questions leading to them, there was nothing to connect them with the cause of death, and so to make them relevant, while the questions could not be proved either under expl. 2 of s 8 or under s 9, inasmuch as the condition precedent to their admissibility under either of these provisions was the relevancy of the conduct which they were alleged to affect, or of the facts which they were intended to explain The "conduct" made relevant by s 8 is conduct which is directly and immediately influenced by a fact in issue or relevant fact, and it does not include actions resulting from some intermediate cause, such as questions or suggestions by other persons. *Per* Mahmood, J., that the word "conduct" as used in s. 8 does not mean only such conduct as is directly and immediately influenced by a fact in issue or relevant fact, that the signs made by the deceased were the conduct of "a person an offence against whom was the subject of any proceeding," and were relevant as such under s. 8; and that the questions put to her were admissible in evidence, either under expl. 2 of the same section or under s. 9, by way of an explanation of the meaning of the signs.—QUEEN-EMPRESS v. ABDULLAH, I. L. R., 7 All. 385. Petheram, C.J., and Straight, Oldfield, Brodhurst, and Mahmood, JJ. Feb. 27, 1885.

AN accused person, in answer to a charge of murder, stated that he had killed his wife, but that he had done so in consequence of his having discovered her in an act of adultery on the previous day. *Held* that such a statement did not amount to a plea of guilty on the charge, and that it was the duty of the Court to try whether the provocation therein disclosed was sufficiently grave and sudden to reduce the offence.—NETAI LUSKAR v. QUEEN-EMPRESS, I. L. R., 11 Cal. 410. [Field and Beverley, JJ. Mar. 25, 1885.]

No judicial officer dealing with the provisions of s. 27 of Act I of 1872 should allow one word more to be deposed to by a police-officer, detailing a statement made to him by an accused, in consequence of which he discovered a fact, than is absolutely necessary to show how the fact that was discovered is connected with the accused, so as, in itself, to be a relevant fact against him. S. 27 was not intended to let in a confession generally, but only such particular part of it as set the person to whom it was made in motion, and led to his ascertaining the fact or facts of which he gives evidence. *Queen-Empress* v. *Pancham* (I. L. R., 4 All. 198) and *Queen-Empress* v. *Babu Lall* (I. L. R., 6 All. 509) discussed and commented on. Thus, when a police-officer deposed that an accused had told him that he had robbed K of Rs 48, whereof he had spent Rs 8, and had got Rs 40, and that he had made over Rs 40 to him, *held* that the statement that he had robbed K of Rs. 48 was not necessarily preliminary to the surrender of the Rs. 40, and was inadmissible in evidence against him When also a police-officer deposed to the fact that the accused, who was charged with murder, had stated to him that he and K had stolen some hides from C, and, upon such statement, he had sent for C, and recorded his information, and when it appeared that C had already informed the police of the fact of the theft, though the witness was not aware of it: *held* that the statement was inadmissible upon the ground that it would be most dangerous to extend the provisions of s 27, and allow a police-officer, who is investigating a case, to prove an information received from a person accused of an offence in the custody of a police-officer, on the ground that a material fact was thereby discovered by him, when that fact was already known to another police-officer. Although, under some circumstances a charge of murder may be sustained, when the body of the person said to have been murdered is not forthcoming; still, when that is the case, the strongest possible evidence as to the fact of the murder should be insisted on before an accused is convicted. When an accused charged with murder was alleged to have taken a boat from a place where it had been secured by its owner, and after proceeding some distance in it had abandoned it, and when he was charged with the theft of the boat, *held* that the charge was unsustainable, inasmuch as it was evidently not his intention to convert it to his own use, and make it permanently his own property, but merely to make use of it for the purpose of aiding him in escaping.—ADU SHIKDAR v. QUEEN-EMPRESS, I. L. R., 11 Cal. 635. [Mitter and Norris JJ. May 29, 1885.]

L AND N were tried by a Sessions Court on charges of dacoity and murder. The jury returned a verdict of guilty on both charges. The Judge, contrary to the provisions of s 269 of the Code of Criminal Procedure, treated the jury as assessors in respect of the

charge of murder, and, convicting L and N of dacoity, acquitted them of murder. *Held* that the irregular procedure of the Judge could not deprive the verdict of the jury of its proper legal effect.—QUEEN-EMPRESS *v.* LAKSHMANA, I. L. R., 9 Mad. 42. [Muttusami Ayyar and Hutchins, JJ. Aug. 27, 1885.]

HELD that the Island of Perim, having been occupied with a view to its permanent retention by officers of the Government of Bombay, became a part of British India within the definition of Stat. 21 and 22 Vict., c 106, and vested in Her Majesty along with the other Indian territories under that Act, which became law on 2nd September 1858. The Penal Code (Act XLV of 1860) and the Code of Criminal Procedure (Act X. of 1882) extend in their entirety to the whole of British India, and therefore to the Island of Perim. S 7 of the Criminal Procedure Code (Act X. of 1882) gives to the Local Government the power to alter the local limits of Sessions Divisions, and continues the Divisions existing when that Code came into force. A notification was issued by the Government of Bombay on the 6th May 1884 under the above section, including the Island of Perim within the Sessions Division or District of Aden, and empowering the officer from time to time commanding the troops stationed at Perim, in virtue of his office, to exercise the powers of a Magistrate of the second class within the island, and to commit persons for trial to the Court of Session at Aden. *Held*, having regard to the language of Act II. of 1864, that for the purposes of s. 7 of the Criminal Procedure Code (Act X. of 1882), the Resident's Court at Aden might be considered as a Court of Session, and that the local area to which Act II. of 1864 applied was the Sessions Division which was in existence at the date of the above notification when the limits thereof were altered by the inclusion of the Island of Perim. A prisoner charged with having committed murder in the Island of Perim was committed by the Magistrate at Perim to be tried before the Political Resident at Aden. Having been found guilty and sentenced to death, he appealed to the High Court of Bombay. By the Aden Act (II. of 1864), s. 29, it is provided that "no appeal shall lie from an order or sentence passed by the Resident in any criminal case." The High Court, however, admitted the appeal, being doubtful as to whether the above provision applied to cases arising in the Island of Perim.—QUEEN-EMPRESS *v.* MANGAL TEKCHAND, I. L. R., 10 Bom. 258. [Birdwood and Jardine, JJ. Dec. 6. 1885.]

S. 84 of the Penal Code lays down the legal test of responsibility in cases of alleged unsoundness of mind. It is by this test, as distinguished from the medical test, that the criminality of an act is to be determined. The accused killed his two young children with a hatchet. The reason given for the crime was that, while he was laid up with fever, the crying of the children annoyed him. It was alleged that the fever had made him irritable and sensitive to sound, but it did not appear that he was delirious at the time of perpetrating the crime. There was no attempt at concealment, and the accused made a full confession. *Held* that, as the accused was conscious of the nature of his act, he must be presumed to have been conscious of its criminality. He was, therefore, guilty of murder.—QUEEN-EMPRESS *v.* LAKSHMAN DAGDU, I. L. R., 10 Bom. 512. [Birdwood and Jardine, JJ. Mar. 4. 1886.] Approved in *Queen-Empress* v. *Venkatasami*, I. L. R., 12 Mad 459, *infra*; and distinguished in *Queen-Empress* v. *Sakharam valad Ramji*, I. L. R., 14 Bom. 564, *infra*.

THE High Court cannot, under s. 526 of the Criminal Procedure Code (Act X. of 1882), any more than under s. 25 of the Civil Procedure Code (Act XIV. of 1882), direct the transfer of a case, which is not properly before a Subordinate Court of competent jurisdiction to receive and try it. *Peary Lall Mazoomdar* v. *Komul Kishore Dassi* (I. L. R., 6 Cal 30) followed. *Queen-Empress* v. *Thaku* (I. L. R., 8 Bom. 312) distinguished. Under s. 5 of the Scheduled Districts Act (XIV. of 1874), the Local Government cannot, by extending an Act which is of necessarily restricted application, make its provisions applicable to an entirely new subject-matter, *viz.*, the litigation of a new local area. Accordingly, where the Government of Bombay issued the following notification, No. 823 of 1886: "In exercise of the powers conferred by s. 5 of the Scheduled Districts Act (XIV. of 1874), the Governor of Bombay in Council is pleased, with the previous sanction of the President in Council, to extend to the Island of Perim the whole of Act II of 1864 of the Governor-General in Council, with the exception of ss. 2, 17, and 23. The Governor in Council is further pleased, in exercise of the powers conferred by s 6 of the Scheduled Districts Act (XIV. of 1874), and by any other enactment, to direct that the Resident at Aden shall be Sessions Judge and Court of Session for the Island of Perim, and shall exercise the same jurisdiction and powers in respect of the administration of civil and criminal justice in the said island, and in respect of the trial of persons committed for trial by the Court of Session for offences committed in the said island as are vested in him in Aden by the said Act:" *Held* that the provisions

of the Aden Act (II. of 1864), which (as appears from the preamble) deals with the litigation of Aden alone, could not be extended to Perim without enlarging the subject-matter of the Act. *Held* also that the appointment of the Political Resident at Aden as a Sessions Judge and Court of Session for the Island of Perim, made under cl. (*a*) of s. 6 of the Scheduled Districts Act (XIV. of 1874), was valid and effectual with reference only to the provisions of the Criminal Procedure Code, and that that portion of the notification which regulates the exercise by the Resident of his powers with reference to Act II. of 1864 should be treated as surplusage. A prisoner charged with having committed murder at Perim was committed by the Magistrate there on the 26th August 1885 for trial before the Political Resident at Aden, by whom he was convicted and sentenced to death on the 14th September 1885. On the 26th January 1886, the High Court of Bombay reversed the conviction and sentence, on the ground that the Court of the Resident had no jurisdiction over the Island of Perim, and that the Resident, not having been appointed a Judge of a Court of Session for that island, was not competent to try the prisoner. The High Court ordered a re-trial before a competent Court. On the 10th February 1886, the Government of Bombay issued the notification (No. 823) above set forth. On the 11th March 1886, an application was made to the High Court of Bombay for the transfer of the case to another Court of Session or to the High Court for trial. *Held* that Perim is a Sessions Division, and that, after the establishment, under the Code of Criminal Procedure, of a Court of Session for the Perim Sessions Division, and the appointment of the Resident at Aden as Sessions Judge of that Court, the accused stood properly committed to a Court of Session. The High Court, therefore, could transfer the case from that Court, under s. 526 of the Code, to any other Court of equal or superior jurisdiction or to the High Court of Bombay. *Per* Jardine, J.—After the High Court had annulled the proceedings in the Court of the Resident at Aden as without jurisdiction, the case could not be treated as still pending in his Court, and, as there was no Court of Session in existence at the time of the commitment, it necessarily followed that the case remained in the Magistrate's Court. But, whether the case was considered as pending in the Court of a Magistrate, or of a Resident, or of a Sessions Judge, the High Court has the power to transfer it, and that, under the circumstances, the case should be so transferred to the High Court for trial.—QUEEN-EMPRESS *v.* MANGAL TEKCHAND, I. L. R., 10 Bom. 274. [Birdwood and Jardine, JJ. Mar. 11, 1886.]

UPON the trial of a person charged with the murder of his wife, it was proved that the accused had entertained well-founded suspicions that his wife had formed a criminal intimacy with another person; that one night the deceased, thinking that her husband was asleep, stealthily left his side; and the accused took up an axe and followed her, found her in conversation with her paramour in a public place, and immediately killed her. *Held* that the act of the accused constituted the crime of murder, the facts not showing "grave and sudden provocation" within the meaning of s. 300, excep. 1, of the Penal Code, so as to reduce the offence to culpable homicide not amounting to murder. *Queen-Empress* v. *Damarua* (Weekly Notes, 1885, p. 197) distinguished by Straight, Offg. C.J.—QUEEN-EMPRESS *v.* MOHAN, I. L. R., 8 All. 622. [Straight, Offg. C.J., and Brodhurst, J. June 26, 1886.] Referred to in *Queen-Empress* v. *Lochan*, I. L. R., 8 All. 635, *infra*.

AN accused person was convicted of culpable homicide not amounting to murder in respect of the widow of his cousin, who lived with him. The evidence showed that the accused was seen to follow the deceased for a considerable distance with a gandasa or chopper, under circumstances which indicated a belief on his part that she was going to keep an assignation, and with the purpose of detecting her in doing so. He found her in the act of connection with her paramour, and killed her with the chopper. *Held* that the conviction must be altered to one of murder, as the accused went deliberately in search of the provocation sought to be made the mitigation of his offence, and, under the circumstances disclosed, it could not be said that he was deprived of self-control by grave and sudden provocation. *Queen-Empress* v. *Damarua* (Weekly Notes, 1885 p. 197) and *Queen-Empress* v. *Mohan* (I. L. R., 8 All. 622) referred to.—QUEEN-EMPRESS *v.* LOCHAN, I. L. R., 8 All. 635. [Straight, Offg. C.J., and Mahmood, J. Aug. 2, 1886.]

AT a trial before a Sessions Court, a charge was read out to the prisoners to the effect that they, at a certain place, on a certain date, committed murder by causing the death of M, and that they had thereby committed an offence punishable under s. 302 of the Penal Code, and within the cognizance of the Court of Session. The prisoners pleaded guilty, and were convicted on their plea. The charge was not explained to the prisoners. In answer to questions put by the Court, prisoners stated that they had killed M, and that they made the admissions of their own accord, and not on the persuasion of any one. *Held* that the conviction must be quashed, and a new trial ordered.—AIYAVU *v.* QUEEN-EM-

PARAS, I L. R., 9 Mad. 61. [Muttusami Ayyar and Hutchins, JJ. Aug. 27, 1886.]

THE accused stabbed a child (his brother's wife) with a sword and killed her. He was charged with murder, and plea of insanity was set up at the trial. No motive could be assigned for his attack on the child, in which he persisted in the presence of other persons; and it appeared that he had been in the habit of treating the child kindly and affectionately. He was suffering from fever and want of food at the time, and the medical evidence showed it was possible that the act was committed under a sudden attack of homicidal mania. It was in evidence that he had abused some of his relations a short time before, the abuse being probably due to irritability of mind caused by fever. He confessed the crime to the Village-Magistrate, and answered questions put to him rationally, but before the committing Magistrate and the Sessions Judge he denied that he had killed the child. He was convicted of murder. *Held* that, as the accused was not proved to have been, by reason of unsoundness of mind, incapable of knowing the nature of his act, or that he was doing what was wrong or contrary to law, the conviction was right. *Queen-Empress* v. *Lakshman Dagdu* (I. L. R., 10 Bom. 512) approved.—QUEEN-EMPRESS v. VENKATASAMI, I. L. R., 12 Mad. 459. [Collins, C.J., and Muttusami Ayyar, JJ. April 15, 1889.]

WHERE a prisoner was convicted of murder on a confession retracted at the trial, corroborated by depositions read under s. 288 of the Code of Criminal Procedure, and also retracted at the trial *held* that the prisoner should not have been convicted on such evidence.—QUEEN-EMPRESS v. BHARMAPPA, I. L. R., 12 Mad. 123. [Collins, C.J., and Parker, J. Oct. 24, 1888.]

THE accused who was a habitual *ganja*-smoker, was charged with the murder of his wife and infant son. In his confession he stated that he had killed his wife, because she quarrelled with him, and objected to go to another village, when he proposed a change of house on account of their poverty. He adhered to this statement when placed for trial before the Court of Session. The Sessions Judge treated this statement as a plea of guilty on the charge of murder, convicted the accused, and sentenced him to death, subject to confirmation by the High Court. *Held* (*per* Jardine and Candy, JJ.) that the accused's statement did not amount to a plea of guilty on the charge of murdering his wife. He alleged a sudden provocation: he ought, therefore, to have been put on his trial, in order that the Court might ascertain whether the provocation was grave and sudden enough to prevent the offence from amounting to murder. *Held* (*per* Birdwood and Jardine, JJ.) that, unless the accused's habit of smoking *ganja* had induced in him such a diseased state of mind as to make him incapable of knowing the nature of his act or its criminality, s. 84 of the Indian Penal Code did not apply in his favour. *Queen-Empress* v. *Lakshman Dagdu* (I. L. R., 10 Bom. 512) distinguished.—QUEEN-EMPRESS v. SAKHARAM VALAD RAMJI, I. L. R., 14 Bom. 564. [Birdwood, Jardine, and Candy, JJ. Feb. 25, 1890.]

THE accused struck the deceased three blows on the head with a stick with the intention of killing him. The deceased fell down senseless on the ground. The accused, believing that he was dead, set fire to the hut in which he was lying, with a view to remove all evidence of the crime. The medical evidence showed that the blows struck by the accused were not likely to cause death, and did not cause death, and that death was really caused by injuries from burning when the accused set fire to the hut. *Held* (Parsons, J. dissenting) that the accused was guilty of attempt to murder under s. 307 of the Penal Code. *Per* Parsons, J.—The accused was guilty of murder under s. 302 of the Penal Code.—QUEEN-EMPRESS v. KHANDU, I. L. R., 15 Bom. 194. [Sargent, C.J., and Birdwood and Parsons, JJ. Sep. 23, 1890.]

S. 511 of the Indian Penal Code does not apply to attempts to commit murder, which are fully and exclusively provided for by s. 307 of the said Act. A person is criminally responsible for an attempt to commit murder when, with the intention or knowledge requisite to its commission, he has done the last proximate act necessary to constitute the completed offence, and when the completion of the offence is only prevented by some cause independent of his volition.—QUEEN-EMPRESS v. NIDDHA, I. L. R., 14 All. 38. [Straight, J. Aug. 5, 1891.]

THE law gives no discretion to a Court which convicts of an offence to award or not the punishment provided for that offence in the Penal Code. When convicting of murder, the only discretion which the law allows to the Court is to determine which of the two punishments prescribed should be awarded, regard being had to the circumstances of the particular case. On a case the decision of which is vested by law in him sitting with assessors, a Sessions Judge is bound to form his own opinion, aided by the assessors indeed, but quite independent of any expression of opinion on the part of the committing Magistrate. The Judge's reference in his judgment to the opinion of the committing Magistrate was held to be wholly irrelevant and wrong.—DEWAN SINGH v. QUEEN-EMPRESS,

I. L. R., 22 Cal. 805. [Norris and Beverley, JJ. Jan. 8, 1895.]

WHERE three prisoners assaulted the deceased, and gave him a beating, in the course of which one of the prisoners struck the deceased a blow on the head, which resulted in death: *Held* that, in the absence of proof that the prisoners had the common intention to inflict injury likely to cause death, they could not be convicted of murder. The punishment of penal servitude is only applicable to Europeans and Americans.—QUEEN-EMPRESS *v* DUMA BAIDYA, I. L. R., 19 Mad. 483. [Subramania Ayyar and Davies, JJ Sep. 4, 1896.]

A CAUSED crops to be sown on land, as to the enjoyment of which there was a dispute between her and B. Persons having proceeded to reap the crops on behalf of B, the servants of A went to the place with the station-house-officer and some constables, who were armed. The station-house-officer ordered the reapers to leave off reaping, and to disperse; but they did not do so. He then told one of the constables to fire, and he fired into the air. Some of the reapers remained, and assumed a defiant attitude. The station-house-officer, without attempting to make any arrests, and without warning the reapers that, if they did not desist from reaping, they would be fired at, gave orders to shoot, and one of the constables fired, and mortally wounded one of the reapers. It was found that neither the station-house-officer nor the last-mentioned constable believed that it was necessary for the public security to disperse the reapers by firing on them. *Held* that the station-house-officer and the constable were not acting in good faith, and that the order to shoot was illegal, and did not justify the constable, and that both he and the station-house-officer were guilty of murder.—QUEEN-EMPRESS *v* SUBBA NAIK, I. L. R., 21 Mad. 249. [Collins, C.J., and Shephard, J. Mar. 11, 23, 1898.]

AN accused person who had been for some time confined in a lunatic asylum was tried and committed to the Sessions by a Deputy Magistrate on a charge of murder. The accused was deaf and dumb, and could not be made to understand the proceedings which had been taken. On the proceedings being forwarded to the High Court under section 341 of the Code of Criminal Procedure, it was held that the law does not contemplate that the Sessions trial should necessarily take place. That it is discretional with the High Court on a commitment made to order the Sessions trial to be held, and the High Court must consider whether any benefit would be likely to result, especially to the accused by such trial. The High Court, in this case having come to the conclusion that no benefit would be likely to result to the accused by his being tried by the Court of Session, found that the accused was guilty of the alleged murder, but that he was by reason of unsoundness of mind not responsible for his action, and directed him to be kept in the District Jail to await the orders of Government.—QUEEN-EMPRESS *v.* SOMIR BOWRA, I. L. R., 27 Cal. 368. [Prinsep and Stanley, JJ. Nov. 30, 1899.]

THE deceased H lived in the house of the accused A. H contracted an intimacy with L, the wife of A, in consequence of which he was turned out of the house. Subsequently on a certain night H, at the invitation of L, went to the house of A, and was taken inside by her. Thereupon A and the other accused relatives of his seized H, carried him off to some distance, beat him, broke his arms and a leg, and left him. Three days later H died in consequence of the injuries. All the accused were convicted under s. 302 of the Penal Code, and sentenced to transportation for life. *Held* that the circumstances under which H was found in the house of A on the night of the crime were sufficient to cause grave and sudden provocation to A and his relatives, within the meaning of s. 300, excep. (*1*) of the Penal Code, and that the provocation was of a nature that would continue to influence the feelings of the accused for a considerable period after H was caught in the house in the company of L. Conviction altered to one under s 304 of the Penal Code and sentence reduced.—ARALU DAS *v.* KING-EMPEROR, I L. R., 28 Cal. 571. [Rampini and Gupta, JJ. April 16, 1901.]

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

**Punishment for murder by life-convict.**

**303.** Whoever, being under sentence of transportation for life, commits murder, shall be punished with death.

EVERY person, whether within or without the presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 303 of the Penal Code, shall forthwith give information to the nearest Magistrate or police officer of such commission or intention. —Crim. Pro. Code (Act V of 1898), s. 44.

WHERE a person under sentence of transportation for life on a conviction for murder is found guilty of murder on a subsequent and different charge, the only sentence that can be passed on him according to s. 303, Penal Code, is that of death.—QUEEN *v.* DOORJODHUN SHAMONTO *alias* DEEJOBOR, 19 W. R. 45. [Kemp and Glover, JJ. Mar. 15, 1873.]

**304.** Whoever commits culpable homicide not amounting to murder shall be punished with transportation for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

**Punishment for culpable homicide not amounting to murder.**

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

CHARGE.—That you, on or about the day of , at , committed culpable homicide not amounting to murder, by causing the death of , and thereby committed an offence punishable under s. 304 of the Indian Penal Code, and within the cognizance of the Court of Session *or* High Court.—Crim. Pro. Code (Act V of 1898), Sch. V., Form XXVIII (*II*)

EVERY person, whether within or without the presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 304 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention. —Crim. Pro Code (Act V. of 1898), s. 44

THE two prisoners having confessed that, having caught the deceased in the act of having sexual intercourse with the wife of one of them, they then and there killed him: *Held* that the very grave provocation given to them was such as to reduce their crime from murder to culpable homicide not amounting to murder.—QUEEN v. GOUR CHUNDER POLIE, 1 W. R. 17. [Kemp and Glover, JJ. Sep. 20, 1864.]

To convict a prisoner of being a member of an unlawful assembly and of culpable homicide not amounting to murder, it must be shown that he had an illegal object in common with, and took part in, the illegal act done by the others.—*In re* FOIZ ALI *alias* IMDAD ALI, 1 W. R. 20. [Loch and Glover, JJ. Nov. 4, 1864.]

THE prisoner, having struck the deceased a hasty though fatal blow with a stick in his hand at the time for abusing his mother, was held guilty of culpable homicide not amounting to murder, and not of murder.—QUEEN v. SULEEM SHEIKH, 1 W. R. 23. [Kemp and Glover, JJ. Nov. 11, 1864.]

AN unpremeditated assault (ending in an affray in which death is caused) committed in the heat of passion upon a sudden quarrel, it being immaterial which party offered the provocation or committed the first assault, was held to come within excep. 4 of s. 300 of the Penal Code.—QUEEN v. ZALIM RAI, 1 W. R. 33. [Kemp and Glover, JJ. Nov. 25, 1864.]

A CAPITAL sentence mitigated in the case of murder committed while under the influence of provocation caused by an intrigue with the wife of the prisoner.—QUEEN v. BHEKYE *alias* SHEIK ANSER, 1 W. R. 46. Kemp and Glover, JJ. Dec. 19, 1864.]

THE finding of a jury that, although the accused killed the deceased, the crime was not murder, not because it fell under any of the exceptions allowed by law, but because the accused had no object in killing him, is not a legal finding, and does not amount to a conviction of culpable homicide not amounting to murder.—QUEEN v. LUCKOO GHOSE, 1 W. R. 50. [Glover, J. Dec. 30, 1864.]

WHEN there is neither intention, knowledge, nor likelihood that the injury inflicted in an assault will or can cause death, the offence is not culpable homicide not amounting to murder, but grievous hurt.—QUEEN v. MEGHA MEEAH *alias* JUCKON MEEAH, 2 W. R. 39. Kemp and Glover, JJ. Mar. 8, 1865.]

WHAT is necessary to bring a case of murder under the 4th exception to s. 300 of the Penal Code, so as to change the offence into culpable homicide not amounting to murder. —QUEEN v. AKAL MAHOMED, 3 W. R. 18. [Jackson and Glover, JJ. May 23, 1865.]

THE Sessions Judge having found the prisoners guilty of striking the deceased with the knowledge that the act was likely to cause death—in other words, guilty of murder—convicted and punished them for culpable homicide not amounting to murder. Case remanded for a new trial (Jackson, J., dissenting).—QUEEN v. BERIA BAZIKUR, 3 W. R. 38. [Kemp, Jackson, and Glover, JJ. July 6, 1865.]

THE absence of premeditation will not reduce the crime from murder to culpable homicide not amounting to murder.—QUEEN v.

WHERE a man suddenly cut his wife's throat it was *held* that, in order to establish that the act was not done under grave provocation, so as to bring the case under excep. 1 of s. 300 of the Penal Code, it is not sufficient to state that the deceased ceased abusing the prisoner then, but it is necessary to show what interval elapsed between the time when the deceased ceased to speak and the instant when the prisoner attacked her.—QUEEN *v.* NOKUL NUSHYO, 7 W. R. 27. [Norman and Seton-Karr, JJ. Feb. 4, 1867.]

CAUSING death by branding a thief without the knowledge that the act was so immediately dangerous that it would, in all probability, cause death, or such bodily injury as was likely to cause death, is punishable under s. 304 of the Penal Code as culpable homicide not amounting to murder.—QUEEN *v.* KHEDUM MISSER, 7 W. R. 54. Norman and Seton-Karr, JJ. April 8, 1867.

PROOF of motive or previous ill-will is not necessary to sustain a conviction for murder in a case where a person is coolly and barbarously put to death.—QUEEN *v.* JAICHAND MUNDLE, 7 W. R. 60 [Seton-Karr, J. April 29, 1867.]

THERE was a dispute between the villagers of A on one side and the villagers of D on the other side, in respect of the right of use in a water-course. The D villagers erected a dam, and thereby obstructed the free passage of the water from the river. The A party were composed of a much larger number of persons, said to be about one hundred, and were armed with heavy sticks and gorasses—a description of battle-axe of a deadly character—facts which showed that they went to anticipating a fight, and with the intention, by means of criminal force, to enforce a supposed right at all risks. There was time to have had recourse to the protection of the public authorities: indeed, if they had not gone to the disputed bund, there would have been no riot at all. A man was killed in this riot, struck down by a blow on the head. *Held* that the offence was culpable homicide *not amounting to murder*; and as the offence was committed in carrying out the common and unlawful object of the meeting, the whole of the members of that unlawful assemblage were liable. The D party were equally to blame though they were, simply from inequality in numbers, worsted in the fight. They were wrong in the first instance in damming up the water-course by show of force, and in opposing the A party instead of retreating and seeking the protection of the law. —*QUEEN v. MANA SINGH AND OTHERS*, 7 W. R. (103) 67. [Kemp and Glover JJ. May 7, 1867.]

WHERE a person snatches up a log of heavy wood, and strikes another with it on a vital part with so much force and vindictiveness as to cause that other person's death almost on the spot, the act must be held to have been done with the knowledge that it was likely to cause death; but if done without premeditation in the heat of passion on a sudden quarrel, the offence committed is culpable homicide not amounting to murder.—QUEEN *v.* RAJOO GHOSE, 7 W R. 17 [Jackson and Hobhouse, JJ. May 20, 1867.]

EXPLANATION of the difference between murder, culpable homicide not amounting to murder, and grievous hurt.—QUEEN *v.* MADUR JOLAHA, 8 W. R. 28. [Loch, J. June 27, 1867. See also *Queen v. Hurry Doss Paul*, 6 W. R. 86, *supra*.

WHERE the accused, whose property had frequently been stolen, went out with a lathi to watch his property, and with the lathi *struck a thief*, who died from the effects of the blows, it was *held* (having regard to the nature of the injuries inflicted, and to the subsequent conduct of the accused) that the case did not fall within the 4th exception to s. 99, and that the prisoner was not guilty of culpable homicide not amounting to murder, but was protected by ss. 97 and 104 of the Penal Code, and had not exceeded the legal right of private defence of property.—QUEEN *v.* MOKEE, 12 W. R. 15. [Norman and Jackson JJ. June 28, 1867.]

A PRISONER'S confession must be taken in its entirety. Where a prisoner confessed that he did not suspect his wife's fidelity; that he left home on business; that on his return he saw what convinced him of his wife's infidelity and that, maddened at the sight, he killed both her and her paramour; *held* that he was guilty of culpable homicide not amounting to murder, and that the case was one in which he ought to be treated with lenity.—QUEEN *v.* SHEIKH BOODHOO, 8 W. R. 38. [Kemp and Glover, JJ. July 9, 1867.]

CULPABLE homicide is not murder unless the case comes expressly within the provisions of cl. 1, 2, 3, or 4 of s. 300 of the Penal Code. Under s. 299, an offence may amount only to culpable homicide, not murder, although none of the exceptions specified in s. 300 are applicable to the case. An express finding by the Sessions Judge, that the case does not fall under any of the clauses of s. 300, is tantamount to an acquittal of murder, and after such an acquittal, the High Court cannot, either as a Court of Appeal, or as a Court of Revision, look at the evidence for the purpose of reversing the acquittal, and of convicting the prisoner of murder. There had been a riot and fight between two factions, and some members of one party (A) were charged with the murder of the leader of the other party (B), and some members of the other

party (B), were charged with causing grievous hurt to the leader of (A). *Held* that the members of each party should have been committed for trial separately, and that the Magistrate was wrong in committing the members of party (A) and of party (B) for trial all together upon a joint-charge as if they had had one common object.—QUEEN *v.* SHEIK BAZU, 8 W. R. 47; B. L. R. Sup. Vol. 750. [Peacock, C.J., and Loch, Bayley, Kemp, Seton-Karr, Phear, and Macpherson, JJ. July 27, 1867.]

IN charging a jury on the point of provocation in a case of culpable homicide, a Judge should tell the jury that, to bring the case within the exception to s. 300 of the Penal Code, the prisoner must have been deprived of the power of self-control by grave and sudden provocation; that there ought to have been sufficient cause for such loss of self-control; and that the provocation was not voluntarily provoked by the prisoner as an excuse for doing harm.—QUEEN *v.* GUNESH LUSKUR, 9 W. R. 72. [Glover, J. May 28, 1868.

To give an accused the benefit of excep. 1, s. 300 of the Penal Code, it ought to be shown distinctly, not only that the act was done under the influence of some feeling which took away from the person doing it all control over his action, but that that feeling had an adequate cause.—QUEEN *v.* HURI GIREE, 10 W. R. 26, 1 B. L. R. A. Cr. 11. [Loch and Glover, JJ. Aug. 7, 1868.]

ACCUSED was out in the jungles with his gun. An altercation arose between him and deceased, the former interfering to prevent the latter from committing real or supposed cattle-trespass. Deceased thereupon, with a large club, attacked accused, who fired without any particular aim, but lowering the muzzle of the gun, so as not to hit a vital part, and death ultimately resulted from the wound inflicted. *Held* that accused's act was not a legal exercise of the right of private defence, as it was not necessary for his defence that he should fire: he had only to stand back, and let deceased alone, and he was safe. *Held* accordingly that the accused was rightly convicted of culpable homicide not amounting to murder.—CROWN *v.* KUREEM BUKSH. Punj. Rec., No. 13 of 1868.

CERTAIN persons, whom the accused, a ferryman, was rowing across the river, were drowned by the sinking of a boat. *Held* on the facts of this case, that the accused could not be convicted of culpable homicide not amounting to murder, as there was nothing to shew that he acted with the knowledge that he was likely by such act to cause death within the terms of s. 299 of the Penal Code. The prisoner was convicted under s. 282 of that Code of negligently conveying persons by water for hire in a vessel overloaded or unsafe.—*In re* MAGENEE BEHARA, 11 W. R. 3. [Norman and Jackson, JJ. Jan. 26, 1869.]

WHERE the accused, whose property had frequently been stolen, went out with a *lathi* to watch his property, and with the *lathi* struck a thief, who died from the effects of the blows, it was held (having regard to the nature of the injuries inflicted and to the subsequent conduct of the accused) that the case did not fall within the 4th excep. to s. 99, and that the prisoner was not guilty of culpable homicide not amounting to murder, but was protected by ss. 97 and 104 of the Penal Code, and had not exceeded the legal right of private defence of property.—QUEEN *v.* MOKEE, 12 W. R. 15. [Norman and Jackson, JJ. June 28, 1869.]

THE wife of the prisoner had been forcibly taken to the house of the deceased, a native physician, who alleged that her presence was necessary to the due performance of certain incantations. The prisoner, armed with a sword, and watching from the roof of the house, saw his wife being actually violated by the deceased. He jumped down from the roof, and struck deceased with his sword in several places, from the effects of which he died. *Held* that the prisoner's conviction for murder could not be sustained. The offence committed was culpable homicide not amounting to murder.—QUEEN *v.* RAMTAHAL KAHAR, 3 B. L. R. A. Cr. 33. [Norman and Jackson, JJ. July 12, 1869.]

IN charging a jury in a case of culpable homicide not amounting to murder, a Judge should call upon the jury to state which description of culpable homicide they consider the accused to have committed, s. 304 of the Penal Code prescribing different punishments for that offence. Where the Judge omitted to require the jury to do this, the High Court held that the conviction was for the lighter description of the offence.—QUEEN *v.* AMEER KHAN, 12 W. R. 35; 6 B. L. R. Ap. 87n. [Jackson and Mitter, JJ. July 23, 1869.

To take the offence of homicide out of the category of murder by reason of grave and sudden provocation, the act must be done whilst the person doing it is deprived of self-control by the grave and sudden provocation. But when the act is done after the excitement had passed away, and there was time to cool, it is murder.—QUEEN *v.* YASIN SHEIK, 12 W. R. 68; 4 B. L. R. A. Cr. 6. [Loch and Glover, JJ. Nov. 23, 1869.]

WHERE the accused pleads guilty before a Sessions Judge to a charge of murder, the

Sessions Judge might either convict him on that plea of that charge, or proceed to try him on the evidence; but he cannot, without trial, convict the accused of culpable homicide not amounting to murder, to which offence the accused did not plead guilty. *Held*, with reference to the provisions of ss. 97, 99, and 102 of the Penal Code, that, on the facts of this case, the accused had no reasonable apprehension of danger to himself from the threats of the deceased whom he killed, and that, therefore, the right of private defence of the body did not arise, and the case was not taken out of the category of murder by reason of the 2nd exception to s. 300 of the Penal Code.—QUEEN *v.* GOBADUR BHOOYAN, 13 W. R. 55, 4 B. L. R. Ap. 101. [Jackson and Glover, JJ. April 6, 1870.

CERTAIN persons made a sudden attack upon the prisoners for the purpose of cutting their crops. The prisoners resisted, and, having no time to complain to the police, inflicted a wound upon one of the assailants with a bamboo, from the effects of which he afterwards died. The Sessions Judge convicted the prisoners under ss. 148 and 304 of the Penal Code. In appeal, the High Court held on the facts of the case (and following 7 W. R. 113) that the accused, who were in peaceable possession of their property, and were attacked while in such possession, did not exceed the right of private defence of property under s. 103, Penal Code. The High Court accordingly directed an acquittal.—QUEEN *v.* GOOROO CHURN CHUNG, 14 W. R. 69, 6 B. L. R. Ap. 9. [Kemp and Glover, JJ. Nov. 19, 1870.]

WHERE a Sessions Judge, in charging a jury in a case of culpable homicide not amounting to murder, omitted to draw their attention to the two classes of the culpable homicide mentioned in s. 304 of the Penal Code, the High Court considered that the accused were found guilty of the lighter description, and sentenced the accused to the punishment for such lighter description.—QUEEN *v.* KALICHURN DASS, 15 W. R. 17; 6 B. L. R. Ap. 86. [Mitter and Ainslie JJ. Feb. 11, 1871.]

WHERE an old woman of 70 so beat a lad of 18 as to cause his death, and the Assistant Commissioner was of opinion that the beating was in the shape of chastisement, such as a mother would inflict on a disobedient child, and convicted the accused under s. 304A of the Penal Code, *held* that the Assistant Commissioner had no jurisdiction in the case, and that he should have committed the accused for trial before the Sessions Court on a charge under s. 304.—MUSSAMUT AUHUCHIA DOSADIN *v.* MUSSAMUT ANOOP KOONWUR THAKOORANEE, 18 W. R. 23. [Kemp and Glover, JJ. June 26, 1872.]

PRISONER killed his mother by beating and kicking her. The Sessions Judge found that the death resulted from brutal beating and kicking, but acquitted of culpable homicide, because the violence was not such as the prisoner must have known to be likely to cause death. *Held* that this was no ground for acquitting of culpable homicide not amounting to murder; the question for the Judge was whether the act was done with the intention of causing bodily injury which was likely to cause death. The Sessions Judge convicted the prisoner on the charge of causing death by a rash act. *Held* that the section was wholly inapplicable. "Culpable rashness" and "culpable negligence" distinguished.—REG. *v.* NIDAMARTI NAGABHUSHANAM, 7 Mad. H. C. R. 119. [Holloway and Kindersley, JJ. Oct. 24, 1872.] Followed in *Empress* v. *Idu Beg*, I. L. R., 3 All. 776, *infra*.

To enable a person to plead the extenuating circumstances provided for in s. 300, Penal Code, excep. 1, the provocation and its effects must be sudden as well as grave; and the deprivation of the power of self-control must continue in order to benefit a man who kills another under circumstances of grave provocation.—QUEEN *v.* BECHOO SAOT, 19 W. R. 35. [Glover and Mitter, JJ. Feb. 17, 1873.]

THE High Court as a Court of Reference can only deal with cases in which a sentence of death has been passed. The prisoners, fearful of being punished if they allowed him to escape, and thinking that they were acting lawfully, in furtherance of a plan arranged for them by a police-constable and the lambardar of a village for the capture of an outlaw, for whose arrest a reward had been offered, and in pursuance thereof, killed him while endeavouring to escape. *Held* that the offence committed came under the third exception in s. 300 of the Penal Code, and was culpable homicide not amounting to murder.—QUEEN *v.* AMAN, 5 N.-W. P. 130. [Spankie and Jardine, JJ. May 2, 1873.]

THE prisoners assaulted a thief so severely that he died. One hundred and forty-one marks of separate blows were found on the body of the deceased; and several of his ribs were broken. *Held* that s. 304A of the Penal Code was not applicable to the circumstances of the case, and that taking the offence out of the category of murder, it must still come under s. 304.—QUEEN *v.* MAN, 5 N.-W. P. 235. [Pearson, J. Aug. 4, 1873.]

IN a case in which the accused caused the death of a woman by beating, the medical

officer who held the *post-mortem* examination considered that death resulted from rupture of the spleen, but the Civil Surgeon said that no opinion of the cause of death could be formed. The accused having been convicted of causing grievous hurt, and sentenced to six months' rigorous imprisonment by the Deputy Magistrate, the Magistrate considered that the accused ought to have been committed to the Sessions on a charge of culpable homicide, but recommended that the High Court should enhance the sentence which had been passed to one of sufficient severity to meet the offence. *Held* that the High Court could not deal with the case in the mode suggested; but, under s. 297, Code of Criminal Procedure (Act X. of 1872), the Court annulled the conviction by the Deputy Magistrate, and directed that the accused should be committed to the Sessions on charges of culpable homicide and of grievous hurt.—QUEEN *v.* HURISH PAL, 20 W. R. 63. [Jackson and Mitter, JJ. Sep. 19, 1873.]

IN a case in which the accused was tried on charges of murder, culpable homicide, and causing grievous hurt, the jury acquitted him of murder, but convicted him on the other counts. This verdict was recorded by the Sessions Judge, who then, in accordance with s. 263, Code of Criminal Procedure (Act X. of 1872), questioned the jury as to the grounds for their verdict, and the jury eventually intimated their willingness to convict of murder. The Sessions Judge differed from the first verdict of the jury; but as he had recorded the first verdict, he doubted whether he could accept the second verdict, and referred the case to the High Court under s. 263. *Held* that s. 263 did not apply to such a case as this. There could be no verdict delivered, and no verdict finally recorded until the last of the questions put by the Sessions Judge to the jury was answered; and as it appeared from the answers of the jury that their findings of facts disclosed that the verdict ought to have been one of guilty on the charge of murder, the Sessions Judge should have entered the verdict of the jury as the verdict of guilty of murder. The case was accordingly returned to the Sessions Judge to enable him to do that, and to pass such sentence as the law directed. It is only when it is necessary in order to ascertain what the verdict of a jury really is that a Judge is justified under s. 263 in putting questions to the jury.—QUEEN *v.* SUSTIRAM MANDAL, 21 W. R. 1. [Phear and Morris, JJ. Nov. 19. 1873.]

WHERE a prisoner was charged under ss. 304, 325, and 323, and the jury brought in a verdict of guilty under s. 335, *held* that he was not acquitted of grievous hurt, but found guilty of the offence described in s. 322 with the extenuating circumstances which would confine the punishment within the limits specified in s. 335.—QUEEN *v.* LUKHINARAIN AGOORI, 23 W. R. 61. [Jackson and McDonell, JJ. April 8, 1875.]

WHERE it appeared in the case of a person charged with murder that, while smarting from a severe blow from a stick in the midst of a sudden fight, and possibly apprehensive of further violence, finding a knife at hand, he took it up, and in the *mêlée* inflicted the wound which caused the death of the deceased, *held* that, under the circumstances, the accused was guilty, under the Penal Code, s. 304, of culpable homicide not amounting to murder.—QUEEN *v.* SOMIRUDDIN, 24 W. R. 48. [Jackson and McDonell, JJ. Aug. 20, 1875.]

WHERE the prisoner knocked his wife down, put one knee on her chest, and struck her two or three violent blows on the face with the closed fist, producing extravasation of blood on the brain, and she died in consequence, either on the spot, or very shortly afterwards, *held* that, there being no intention to cause death, and the bodily injury not being sufficient in the ordinary course of nature to cause death, the offence committed by the prisoner was not murder, but culpable homicide not amounting to murder.—REG *v.* GOVINDA, 1 L. R., 1 Bom. 342. [Kemball and Nanabhai Haridas, JJ. July 18, 1876.]

IN the course of a trivial dispute, the accused gave the deceased a severe push on the back, which caused him to fall to the road below, a distance of two-and-a-half cubits. In falling, the deceased sustained an injury from which tetanus resulted, which caused his death on the fifth day after. *Held* that, on these facts, the accused was not guilty of the offence described in s. 304A of the Penal Code, nor of culpable homicide not amounting to murder, because there was no likelihood of the result following, and, *à fortiori*, no designed causing of it.—REG. *v.* ACHARJYA, I. L. R., 1 Mad. 224 [Holloway and Innes, JJ. Jan. 19, 1877.]

UNDER s. 288 of the Code of Criminal Procedure (Act X. of 1872), the High Court, to which a reference is made by a Court of Session for confirmation of a sentence of death on conviction of murder, cannot, in the absence of an appeal, alter the conviction to one of culpable homicide not amounting to murder, if it be of opinion that the evidence does not establish the former but the latter offence. It must order a new trial for that purpose. Where the prisoners were tried on two charges of murder and culpable homicide not amounting to murder, and the opinion of the assessors was taken on both charges, but

the Sessions Judge, being of opinion that the evidence established the former charge, recorded a conviction and sentence for murder only, the High Court, being of opinion, on a reference under s. 287 of Act X. of 1872 that the offence proved was culpable homicide not amounting to murder, did not order a new trial, *ab initio*, but directed the Sessions Judge to complete the trial by recording a finding on the second charge of culpable homicide not amounting to murder.—REG v. BALAPA BIN DANDAPA, I. L. R., 1 Bom. 630. [Melvill and Kemball, JJ. April 26, 1877.]

* WHERE death has resulted from a violent attack, the Magistrate is bound to commit to the Court of Session on a charge of culpable homicide not amounting to murder. Conviction of grievous hurt is contrary to law.—IN THE MATTER OF GOPINATH SHAHA, 1 C. L. R. 141. [Markby and Prinsep, JJ. Sep. 6, 1877.]

A SNAKE-CHARMER exhibited in public a venomous snake, whose fangs he knew had not been extracted; and to show his own skill and dexterity, but without any intention to cause harm to any one, placed the snake on the head of one of the spectators. The spectator tried to push off the snake, was bitten, and died in consequence. *Held* that the snake-charmer was guilty, under s. 304 of the Penal Code, of culpable homicide not amounting to murder and not merely of causing death by negligence, an offence punishable under s. 304A.—EMPRESS v. GONESH DOOBEY, I. L. R., 5 Cal. 351, 4 C. L. R. 580. [McDonell and Broughton, JJ. July 28, 1879.]

WHERE a mother abandoned her child, with the intention of wholly abandoning it, and knowing that such abandonment was likely to cause its death, and the child died in consequence of the abandonment, *held* that she could not be convicted and punished under s. 304 and also under s. 317 of the Penal Code, but s 304 only.—EMPRESS v. BANNI, I L. R., 2 All. 349. [Straight, J. Aug 4, 1879.]

WHERE a person hurt another, who was suffering from spleen disease, intentionally, but without the intention of causing death, or causing such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, and by his act caused the death of such other person, *held* that he was properly convicted under s. 323 of the Penal Code of voluntarily causing hurt.—EMPRESS v. FOX, I. L. R., 2 All. 522. [Stuart, C.J. Dec. 16, 1879.] Followed in *Empress* v. *Idu Beg*, I. L. R., 3 All. 776, *infra*.

B VOLUNTARILY caused hurt to N, who was suffering from spleen-disease, knowing himself to be likely to cause grievous hurt, but without the intention of causing death, or causing such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, and caused grievous hurt to N, from which N died. *Held* that B ought not to be convicted under s. 304A of the Penal Code of causing death by negligence, but under s. 325 of that Code of voluntarily causing grievous hurt.—EMPRESS v. O'BRIEN, I. L. R., 2 All. 766. [Stuart, C.J., and Spankie, J. Mar. 6, 1880.] Followed in *Empress* v. *Idu Beg*, I. L. R., 3 All. 776, *infra*.

WHERE death results in a fight between two bodies of men deliberately fighting together, a greater proportion of the men composing both sides being armed with deadly weapons, and it being further apparent from the evidence that the man slain was an adult, and that no unfair advantage was taken by the one side or the other during the fight, the offence committed is culpable homicide, but does not amount to murder.—SAMSHERE KHAN v. EMPRESS, I. L. R., 6 Cal. 154; 7 C. L. R. 158. [White and Field, JJ. July 31, 1880. *Contra*, *Empress* v. *Rohimuddin*, 4 C. L. R. 285.

ON a certain evening, M, a common workman, saw N committing adultery with his (M's) wife, and on the following morning, while labouring under the excitement provoked by their misconduct, came upon them, eating food together, while his wife had neglected to provide food for M. M took up a billhook, and killed N on the spot. *Held* that, if M connected the subsequent conduct of N and his wife with their misconduct of the preceding evening, and regarding it as implying an open avowal of their criminal relations, which, under the circumstances, he might have done, the provocation was sufficiently grave and sudden to deprive him of self-control, and to reduce the offence from murder to culpable homicide not amounting to murder.—BOYA MUNIGADU v. REG, I. L. R., 3 Mad. 33. [Innes and Muttusami Ayyar, JJ. April 20, 1881.]

WHERE a person struck another a blow which caused death, without any intention of causing death, or of causing such bodily injury as was likely to cause death, or the knowledge that he was likely by such act to cause death but with the intention of causing grievous hurt, *held* that the offence of which such person was guilty was not the offence of causing death by a rash act, but the offence of voluntarily causing grievous hurt. *Nidamarti Nagabhushanam* (7 Mad H. C. R. 119), *Queen* v. *Pemhoer* (5 N.-W. P. 38), *Queen* v. *Man* (5 N.-W P. 235), *Empress* v *Ketabdi Mundul* (I. L. R., 4 Cal. 764), *Empress* v. *Fox*

(I. L. R., 2 All. 522), and *Empress* v. *O'Brien* (I. L. R., 2 All. 766), followed. The offences of murder, culpable homicide not amounting to murder, and causing death by a rash or negligent act, distinguished.—EMPRESS *v.* IDU BEG, I. L. R., 3 All. 776 [Straight, J. Aug. 12, 1881.]

AN accused person, in answer to a charge of murder, stated that he had killed his wife, but that he had done so in consequence of his having discovered her in an act of adultery on the previous day. *Held* that such a statement did *not* amount to a plea of guilty on the charge, and that it was the duty of the Court to try whether the provocation therein disclosed was sufficiently grave and sudden to reduce the offence.—NETAI LUSKAR *v.* QUEEN-EMPRESS, I. L. R., 11 Cal. 410. [Field and Beverley, JJ. Mar. 25, 1885.]

UPON the trial of a person charged with the murder of his wife, it was proved that the accused had entertained well-founded suspicions that his wife had formed a criminal intimacy with another person; that one night the deceased, thinking that her husband was asleep, stealthily left his side, that the accused took up an axe and followed her; found her in conversation with her paramour in a public place, and immediately killed her. *Held* that the act of the accused constituted the crime of murder, the facts not showing "grave and sudden provocation" within the meaning of s. 300, exception 1, of the Penal Code, so as to reduce the offence to culpable homicide not amounting to murder. *Queen-Empress* v. *Damarua* (Weekly Notes, 1885, p. 197) distinguished by Straight, Offg. C. J.—QUEEN-EMPRESS *v.* MOHAN, I. L. R., 8 All. 622. Straight, Offg. C. J., and Brodhurst, J. June 26, 1886. Referred to in *Queen-Empress* v. *Lochan*, I. L. R., 8 All. 635, *infra*.

AN accused person was convicted of culpable homicide not amounting to murder in respect of the widow of his cousin, who lived with him. The evidence showed that the accused was seen to follow the deceased for a considerable distance with a gandasa, or chopper, under circumstances which indicated a belief on his part that she was going to keep an assignation, and with the purpose of detecting her in doing so. He found her in the act of connection with her paramour, and killed her with the chopper. *Held* that the conviction must be altered to one of murder, as the accused went deliberately in search of the provocation sought to be made the mitigation of his offence, and, under the circumstances disclosed, it could not be said that he was deprived of self-control by grave and sudden provocation. *Queen Empress* v. *Damarua* (Weekly Notes, 1885, p. 197) and *Queen-Empress* v. *Mohan* (I. L. R., 8 All. 622) referred to.—QUEEN-EMPRESS *v.* LOCHAN, I. L. R., 8 All. 635. [Straight, C.J., and Mahmood, J. Aug. 2, 1886.]

SUBJECT to the other provisions of the Criminal Procedure Code, s. 28 gives power to the High Court and the Court of Session to try any offence under the Penal Code; and the provision it contains as to the other Courts does not cut down or limit the jurisdiction of the High Court or the Court of Session. Three persons were jointly committed for trial before the Court of Session, two of them being charged with culpable homicide not amounting to murder of J, and the third with abetment of the offence. At the trial, the Sessions Judge added a charge against all the accused of causing hurt to C, and convicted them upon both the original charges and the added charge. The assault upon C took place either at the same time as, or immediately after, the attack which resulted in the death of J. *Held* that the case did not come within the terms of s. 226 of the Criminal Procedure Code (Act X. of 1882), and the adding to the charge was an irregularity which was not covered by ss. 236 and 237, those sections having no application to such a state of things, but that, inasmuch as the Sessions Judge was addressed by the pleader who appeared for the accused, and heard all the objections raised, and witnesses might have been called for the defence upon the added charge, the provisions of s. 537 were applicable to the case. *Held* also that the Sessions Judge had power, under s. 28 of the Code, to try the charge, assuming that he had power to add it.—QUEEN-EMPRESS *v.* KHARGA, I. L. R., 8 All. 665. [Edge, C. J. Aug. 30, 1886.]

THE prisoner, a fully-developed adult man, was charged with causing the death of his wife, a girl aged about 11 years and 3 months, who had not attained puberty. The death was caused by hæmorrhage from a rupture of the vagina, caused by the prisoner having sexual intercourse with the girl. For the defence it was alleged that he had had sexual intercourse with the girl on several previous occasions without injury to her, and there were circumstances in the case which showed that this was possible, and even not improbable, though the medical evidence was to the effect that, if such intercourse had previously taken place, the penetration was probably not so complete or with so much sexual vigour as on the occasion when the injury was caused. The medical evidence was further to the effect that the girl had not attained

puberty, and was immature, and wholly unfit for sexual intercourse; that under such circumstances, sexual intercourse between the prisoner and the girl was likely to be dangerous to her, and to cause injuries more or less serious according to the degree of penetration effected. The prisoner was charged with (*a*) culpable homicide not amounting to murder under s. 304 of the Penal Code; (*b*) causing death by doing a rash and negligent act under s. 304A, (*c*) voluntarily causing grievous hurt under s. 325, and (*d*) causing grievous hurt by doing an act so rashly or negligently as to endanger human life or the personal safety of others under s. 338. *Held* that, in such a case, when the girl is a wife and above the age of 10 years and when, therefore, the law of rape does not apply, it by no means follows that the law regards the wife as a thing made over to be the absolute property of her husband, or as a person outside the protection of the criminal law, that no hard-and-fast rule can be laid down that sexual intercourse with a girl under a certain age must be regarded as dangerous and punishable, or over that age is safe and right, but that each case must be judged according to its own individual circumstances, that in such a case the jury have to consider and say whether, under the particular circumstances of the case, having regard to the physical condition of the girl, and to the intention the knowledge, the degree of rashness or negligence with which the accused is shown to have acted on the occasion in question he has brought himself within any of the provisions of the criminal law. *Held further* that, if the jury were of opinion (*a*) that the act of the prisoner caused the death of the girl that is to say, that the act of cohabitation on the part of the prisoner had the effect of rupturing the vagina, and so causing the haemorrhage which led to her death, (*b*) that the act of cohabitation between a fully-developed man like the prisoner and an immature girl like his wife was itself a thing likely to lead to dangerous consequences; (*c*) that that act was one of such a character as to indicate a reckless indifference to the welfare of the girl, or a want of reasonable consideration about what the prisoner was doing, one which the husband of the girl if he had had a reasonable regard to her welfare, and had exercised reasonable thought as to the act he contemplated doing, would have abstained from doing, they would be justified in finding that the prisoner caused the death of the girl by a rash and negligent act. Under no system of law with which Courts have to do in this country, whether Hindu or Mahomedan or that framed under British rule, has it ever been the law that a husband has the absolute right to enjoy the person of his wife without regard to the question of safety to her.—QUEEN-EMPRESS v. HURREE MYTHEE, I. L. R., 18 Cal. 49. [Wilson, J. July, 1890.]

BEFORE a conviction can properly be maintained for the offence of rioting, it is necessary that there should be a clear finding as to the common object of the unlawful assembly, and also that the common object so found should have been stated in the charge in order that the accused person might have an opportunity of meeting it. Where a Sessions Judge in his charge to the jury referred to two possible common objects of an unlawful assembly, one of which only had been set out in the charge-sheet, *held* that, inasmuch as it was impossible to say which of the two common objects had been accepted by the jury, and it might well have been that they had accepted the one which had not been charged and which consequently the accused had not an opportunity of meeting, the conviction must be set aside. If one member of an unlawful assembly is armed with a deadly weapon, the other members cannot on that account be charged under s. 148 of the Penal Code. It is only the actual person who can be charged under that section.—SABIR v. QUEEN EMPRESS, I. L. R., 22 Cal. 276. [Trevelyan and Banerjee, JJ. Sep. 19, 1894.]

WHERE the prisoner by gripping and squeezing the testicles of deceased reduced them to a pulpy condition, thereby causing an injury which resulted in death due to the shock so inflicted on the nervous system: *Held*, *per* Davies, J., that the death was an unforeseen result for which prisoner could not be held liable and that she ought to be convicted under s. 323, Penal Code: *Held*, *per* Subramania Ayyar and Benson, JJ., that death was a probable consequence of the prisoner's act, and that she was guilty under s. 304, Penal Code, of culpable homicide not amounting to murder.—QUEEN-EMPRESS v. KALIYANI, I. L. R., 19 Mad 356. [Subramania Ayyar, Davies, and Benson, JJ. June 4, July 6 20, 21, 1896.]

A PERSON accused of murder under s. 302 of the Indian Penal Code pleaded in defence that he had found his sister having illicit connection with a man named Thakuri, and had in a fit of passion killed them both on the spot. The statement being accepted was *held* to be a good plea of grave and sudden provocation so as to reduce the offence to one of culpable homicide not amounting to murder.—QUEEN-EMPRESS v. CHUNNI, I. L. R., 18 All 497. [Edge, C.J., and Blennerhassett, J. July 24, 1896.]

**304A.*** Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Causing death by negligence.

Cr. of Sec., Presy. Mag., or Mag. of the dist. Cognizable. Warrant. Bailable. Not comp.

WHERE an old woman of 70 so beat a lad of 18 as to cause his death, and the Assistant Commissioner was of opinion that the beating was in the shape of chastisement, such as a mother would inflict on a disobedient child, and convicted the accused under s. 304A of the Penal Code, it was held that the Assistant Commissioner had no jurisdiction in the case, and that he should have committed the accused for trial before the Sessions Court on a charge under s. 304.—MUSSAMUT AUHUCHIA DOSADIN *v.* MUSSAMUT ANOOP KOONWUR THAKOORANEE. 18 W. R. 23. [Kemp and Glover, ]]. June 26, 1872.

PRISONER killed his mother by beating and kicking her. The Sessions Judge found that the death resulted from brutal beating and kicking, but acquitted of culpable homicide, because the violence was *not* such as the prisoner must have known to be likely to cause death. *Held* that this was no ground for acquitting of culpable homicide not amounting to murder. The question for the Judge was, whether the act was done with the intention of causing bodily injury which was likely to cause death. The Sessions Judge convicted the prisoner on the charge of causing death by a rash act. *Held* that the section was wholly inapplicable. In distinguishing "culpable rashness" from "culpable negligence," the High Court made the following important observations: Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite the consciousness (*luxuria*). Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him, and that, if he had, he would have had the consciousness. The imputability arises from the neglect of the civic duty of circumspection. It is manifest that personal injury consciously and intentionally caused cannot fall within either of these categories, which are wholly inapplicable to the case of an act or series of acts themselves intended, which are the direct producers of death. To say that because, in the opinion of the operator, the sufferer could have borne a little more without death following, the act amounts merely to rashness, because he has carried the experiment too far, results from an obvious and dangerous misconception. We have had great hesitation whether we ought not to have remitted this case for a finding, whether the Sessions Judge and the assessors think that the act was done with such knowledge as to constitute culpable homicide. We are, however, averse to re-opening criminal cases unless absolutely compelled to do so, and as the evidence makes out, at least, a case of culpable homicide not amounting to murder, and a legal though inadequate sentence (rigorous imprisonment for two years) has been passed, we are able, under s. 426 of the Criminal Procedure Code 1861, simply to dismiss the appeal. As this is neither a case of rashness nor of negligence, it becomes unnecessary to consider whether in any case a conviction under this new section can properly follow, where the rashness or negligence amounts to culpable homicide. It is clear, however, that, if the words 'not amounting to culpable homicide' are a part of the definition, the offence defined by this section consists of the rash or negligent act not falling under that category, as much as of its fulfilling the positive requirement of being the cause of death." —REG. *v.* NIDAMARTI NAGABHUSHANAM. 7 Mad. Jl C. R. 119. Holloway and Kindersley, ]] Oct. 24, 1872.] Approved in *Empress v. Ketabdi Mundul*, I. L. R. 4 Cal. 764; 2 C. L. R. 507, *infra*; followed in *Empress v. Idu Beg*, I. L. R. 3 All. 776, *infra*.

WHERE there was medical evidence to show that milk had been administered to a child in such quantities as to kill it, but there was no evidence to show that the milk was administered by the orders of the mother, or that she knew the quantity that was being administered, *held* that there was not sufficient evidence to bring her within s. 304A of the Penal Code. The Sessions Judge found that the mother could not have been ignorant of the fact that her child was being over-fed, or of the probable consequences of such over-feeding. Such

* S. 304A has been inserted by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 12. Chaps. IV., V., and XXIII. of the Code apply to offences punishable under s. 304A.—See Act XXVII. of 1870, s. 13.

feeding was inconsistent with the terms of s. 304A, which provides for the causing of death by any rash or negligent act not amounting to murder. What a man does with the knowledge that the consequences will be likely to cause death cannot be reduced to a simple rash and negligent act—QUEEN *v.* MUSSEMAT PEMKOER. 5 N.-W. P. 38. [Spankie, J. Feb. 15, 1873.] Followed in *Empress* v. *Idu Beg*, I. L. R., 3 All. 776, *infra*.

THE prisoners assaulted a thief so severely that he died. One hundred and forty-one marks of separate blows were found on the body of the deceased; several of his ribs were broken. *Held* that s. 304A of the Penal Code was not applicable to the circumstances of the case, and that, taking the offence out of the category of murder, it must still come under s 304.—QUEEN *v.* MAN. 5 N.-W. P. 235. [Pearson, J. Aug. 4, 1873

THE accused struck his servant with a stick on his side for refusing to obey certain orders given him. The servant was at the time suffering from enlarged spleen, and its rupture caused his death. The Magistrate convicted the accused under s. 304A of the Penal Code, and, out of the fine imposed, awarded compensation to the relatives of the deceased under Act XIII. of 1855. The Chief Court held that the award of compensation was illegal. —CROWN *v.* GOPAL DAS, Panj. Rec., No. 7 of 1877.

WHERE an accused was charged with culpable homicide, and the evidence showed that the deceased had an enlarged spleen, and that his death was caused by rupture of the spleen occasioned by blows inflicted by the accused on the body of the deceased, *held* that it was not sufficient in order to find the accused guilty of a rash act under s. 304A of the Penal Code, that the jury should be satisfied only of the prevalence of the disease of enlargement of the spleen in the district and infer therefrom criminal rashness in beating the deceased; but that they should also be satisfied that the accused was aware of the prevalence of such disease in the district, and also aware of the risk to life involved in striking a person afflicted with that disease. —EMPRESS *v.* SAFATULLA, I. L. R., 4 Cal 815. [Morris and White, JJ. Mar. 31, 1879.]

WHERE the facts found showed that death resulted from violence intentionally directed against the deceased by the accused, the Chief Court, on the revision side, altered the conviction from one under s 304A to one under s. 323.—EMPRESS *v.* GANDA SINGH Panj Rec., No. 11 of 1880.

WHERE a person struck another a blow which caused death, without any intention of causing death, or of causing such bodily injury as was likely to cause death, or the knowledge that he was likely by such act to cause death, but with the intention of causing grievous hurt, *held* that the offence of which such person was guilty was not the offence of causing death by a rash act, but the offence of voluntarily causing grievous hurt. *Reg.* v. *Nidamarti Nagabhushanam* (7 Mad. H. C. R. 119), *Queen* v. *Pemkoer* (5 N.-W. P. 38), *Queen* v. *Man* (5 N.-W P. 235), *Empress* v. *Ketabdi Mundul* (I. L. R., 4 Cal. 764), *Empress* v. *Fox* (I. L. R., 2 All. 522), and *Empress* v. *O'Brien* (I. L. R., 2 All. 766) followed. The offences of murder, culpable homicide not amounting to murder, and causing death by a rash or negligent act, distinguished —EMPRESS v. IDU BEG., I. L. R., 3 All. 776. [Straight, J. Aug. 12, 1881.]

A SERVANT of a railway-company, charged with moving some trucks by coolies on an incline, discharged this duty negligently, and in consequence lost control of the trucks. Under his orders, one of the coolies attempted to stop the trucks, and was killed in such attempt. *Held* that A had caused the coolie's death by the negligence, within the meaning of s 304A of the Penal Code. *Reg* v. *Longbottom* (3 Cox. C. C. 439), *Reg.* v. *Swindall* (2 C. & K. 230), *Reg.* v. *Williamson* (1 Cox. C. C. 97), referred to.—EMPRESS *v.* NAND KISHORE, I. L. R., 6 All. 248. [Oldfield, J. Mar 8, 1884

IN the course of a trivial dispute the accused gave the deceased a severe push on the back, which caused him to fall to the road below a distance of two-and-a-half rubits. In falling the deceased sustained an injury from which tetanus resulted, which caused his death on the fifth day after. *Held* that, on these facts, the accused was not guilty of the offence described in s. 304A of the Penal Code, nor of culpable homicide not amounting to murder because there was no likelihood of the result following, and, *a fortiori*, no designed causing of it.—REG. *v.* ACHARJYA, I. L. R., 1 Mad. 224. [Holloway and Innes, JJ. Jan. 19, 1877.]

S. 304A of the Penal Code does not apply to a case in which there has been a voluntary commission of an offence against the person. If a man intentionally commits such an offence, and consequences beyond his immediate purpose result, it is for the Court to determine how far he can be held to have the knowledge that he was likely by such act to cause the actual result; and if such knowledge can be imputed, the result is not to be attributed to mere rashness; if it cannot be imputed still the wilful offence does not take the character of rashness, because its consequences have been unfortunate. Acts probably or possibly involving danger to others, but

which in themselves are not offences, may be offences under s. 336, 337, 338, or 304A, if done without due care to guard against the dangerous consequences. Acts which are offences in themselves must be judged with regard to the knowledge, or means of knowledge, of the offender, and placed in their appropriate place in the class of offences of the same character. *Reg.* v. *Nidamarti Nagabhushanam* (7 Mad. H. C R. 119) cited and approved.—EMPRESS *v.* KETABDI MUNDUL, I. L. R., 4 Cal. 764 ; 2 C. L. R. 507. [Ainslie and Broughton, JJ. Feb. 26, 1879.]

A SNAKE-CHARMER exhibited in public a venomous snake, whose fangs he knew had not been extracted : and to show his own skill and dexterity, but without any intention to cause harm to any one, placed the snake on the head of one of the spectators. The spectator tried to push off the snake, was bitten, and died in consequence The High Court held that the snake-charmer was guilty of culpable homicide not amounting to murder under s. 304, and not merely of causing death by negligence, an offence punishable under s. 304A.—EMPRESS *v* GONESH DOOBEY, I. L. R., 5 Cal 351 ; 4 C. L. R. 580. [McDonell and Broughton, JJ. July 28, 1879.

B VOLUNTARILY caused hurt to N. who was suffering from spleen-disease, knowing himself to be likely to cause grievous hurt, but without the intention of causing death or causing such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, and caused grievous hurt to N from which N died The High Court held that B ought not to be convicted, under s 304A of the Penal Code of causing death by negligence, but under s. 325 of that Code of voluntarily causing grievous hurt.—EMPRESS *v.* O'BRIEN, I. L. R., 2 All. 766. [Stuart, C.J., and Spankie, J. Mar. 6, 1880.]

A PERSON, without the intention to cause death, or to cause such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, or the intention to cause grievous hurt, or the knowledge that he was likely by his act to cause grievous hurt, but with the intention of causing hurt, caused the death of another person by throwing a piece of a brick at him, which struck him in the region of the spleen, and ruptured it, the spleen being diseased. *Held* that the offence committed was not the offence of causing death by a rash or negligent act, but the offence of voluntarily causing hurt.—EMPRESS *v.* RANDHIR SINGH, I. L. R., 3 All. 597. [Oldfield, J. Mar. 7, 1881.

A KOBIRAJ operated on a man for internal piles by cutting them out with an ordinary knife. The man died from hæmorrhage. The kobiraj was charged under s. 304A of the Penal Code, with causing death by doing a rash and negligent act. It was contended that, inasmuch as the prisoner had performed similar operations on previous occasions, it was not a rash act within the meaning of that section, and that, at all events, he was entitled to the benefit of s. 88 of the Penal Code, as he did the act in good faith, without any intention to cause death, and for the benefit of the patient, who had accepted the risk. *Held* that, as the prisoner, was admittedly uneducated in matters of surgery, and having regard to the meaning of "good faith" as defined in s. 52 of the Penal Code, he was not entitled to the benefit of s. 88. *Held* further, that s. 88 did not apply to the case as it was not shown by the accused, on whom the burden of proving that fact lay, that the deceased knew the risk he was running in consenting to the operation, and he could not therefore be said to have accepted the risk. *Held* also that, under the circumstances, the conviction under s. 304A was a proper one.—SUKAROO KOBIRAJ *v* THE EMPRESS, I. L. R., 14 Cal. 566 Tottenham and Ghose, JJ. April 30, 1887

WHERE death is caused by an act being in its nature criminal, s 304A of the Penal Code has no application.—QUEEN-EMPRESS *v* DAMODARAM, I. L. R., 12 Mad 56. [Muttusami Ayyar and Parker, JJ. July 18, 1888.]

AN order that the amount of a fine imposed on one convicted of causing death by a rash and negligent act be paid as compensation to the widow of the deceased is illegal.—*In re* LATCHMAKA, I. L. R 12 Mad 352. [Muttusami Ayyar and Parker JJ. Mar. 29, 1889.]

THE prisoner, a fully-developed adult man, was charged with causing the death of his wife, a girl aged about 11 years and 3 months, who had not attained puberty. The death was caused by hæmorrhage from a rupture of the vagina, caused by the prisoner having sexual intercourse with the girl For the defence it was alleged that he had had sexual intercourse with the girl on several previous occasions without injury to her, and there were circumstances in the case which showed that this was possible, and even not improbable, though the medical evidence was to the effect that, if such intercourse had previously taken place, the penetration was probably not so complete or with so much sexual vigour as on the occasion when the injury was caused. The medical evidence was further to the effect that the girl had not attained puberty, and was immature and wholly unfit for sexual intercourse ; that under such circumstances, sexual intercourse between the prisoner and the girl was likely to be

dangerous to her, and to cause injuries more or less serious according to the degree of penetration effected. The prisoner was charged with (*a*) culpable homicide not amounting to murder under s. 304 of the Penal Code; (*b*) causing death by doing a rash and negligent act under s. 304A; (*c*) voluntarily causing grievous hurt under s. 325; and (*d*) causing grievous hurt by doing an act so rashly or negligently as to endanger human life or the personal safety of others under s. 338. *Held* that, in such a case, when the girl is a wife and above the age of ten years, and when, therefore, the law of rape does not apply, it by no means follows that the law regards the wife as a thing made over to be the absolute property of her husband, or as a person outside the protection of the criminal law, that no hard-and-fast rule can be laid down that sexual intercourse with a girl under a certain age must be regarded as dangerous and punishable, or over that age as safe and right, but that each case must be judged according to its own individual circumstances, that, in such a case, the jury have to consider and say whether, under the particular circumstances of the case, having regard to the physical condition of the girl, and to the intention, the knowledge, the degree of rashness or negligence with which the accused is shown to have acted on the occasion in question, he has brought himself within any of the provisions of the criminal law. *Held* further that, if the jury were of opinion (*a*) that the act of the prisoner caused the death of the girl, that is to say, that the act of cohabitation on the part of the prisoner had the effect of rupturing the vagina, and so causing the hæmorrhage which led to her death; (*b*) that the act of cohabitation between a fully-developed man like the prisoner and an immature girl like his wife was itself a thing likely to lead to dangerous consequences; (*c*) that that act was one of such a character as to indicate a reckless indifference to the welfare of the girl or a want of reasonable consideration about what the prisoner was doing, one which the husband of the girl, if he had had a reasonable regard to her welfare, and had exercised reasonable thought as to the act he contemplated doing, would have abstained from doing, they would be justified in finding that the prisoner caused the death of the girl by a rash and negligent act. Under no system of law with which Courts have to do in this country, whether Hindu or Mahomedan, or that framed under British rule, has it ever been the law that a husband has the absolute right to enjoy the person of his wife without regard to the question of safety to her.—QUEEN-EMPRESS *v.* HURREE MOHUN MYTHEE, I. L. R. 18 Cal. 49. [Wilson, J. July, 1890.]

THE lessee of a Government ferry, having the exclusive right of conveying passengers across a certain river at a particular spot, allowed an unsound boat to be used at the ferry. In consequence of its unsoundness the boat sank while crossing the river, and some of the persons in it were drowned. *Held* that the lessee of the ferry was properly convicted of the offence provided for by s. 304A of Act XLV. of 1860.—QUEEN-EMPRESS *v.* BHUTAN, I. L. R., 16 All 472. [Edge, C.J., and Banerji, J. July 6, 1894.]

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

Abetment of suicide of child or insane person.

**305.** If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide shall be punished with death or transportation for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

THE prisoners, having abetted the suicide, were rightly convicted by the Judge for that offence. The sentence was mitigated under the circumstances.—GOVT *v.* GOPAUL SINGH, 1 Agra H. C. R. 21. [Pearson and Turner, JJ., and Spankie, Offg. J. Sep. 10, 1866.]

EVIDENCE that a woman prepared herself to commit suicide in the presence of the accused, that they followed her to the pyre, and stood by her, her step-sons crying, "Ram! Ram!" and one of the accused admitting that he told the woman to say, "Ram! Ram!" and she would become "suttee," proves active connivance and unequivocal countenance of the suicide by the accused, and justifies the inference that they had engaged with her in a conspiracy for the commission of the suttee. —QUEEN *v.* MOHIT PANDEY, 3 N.-W. P. 316. [Pearson, J. Sep. 6, 1871.]

Ditto.

Abetment of suicide.

**306.** If any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

CHARGE.—That you, on or about the day of , at , abetted the commission of suicide by *A B*, a person in a state of intoxication, and thereby committed an offence punishable under s. 306 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court]—Crim. Pro Code (Act V. of 1898), Sch. V., Form XXVIII. (l.)

IN a case of suttee three of the prisoners aided a little boy in setting fire to a pile, while another, who did not co-operate in causing the death of the widow, took an active part in causing her to return to the pile, when she had left it after being partially burnt. *Held* that the first three prisoners were guilty of culpable homicide, and the other prisoner of abetment of suicide only. The High Court made the following remarks: "It is found by the assessors and the Judge that the first three defendants abetted a little boy in setting fire to the pile. The boy was the son of one of the appellants, who ordered him to apply the fire; the others, being present, aided and abetted. It is contended for these appellants that the offence, if proved, is only abetment of suicide, not culpable homicide; but I think that abetment of suicide is confined to the case of persons who aid and abet the commission of suicide by the hand of the person himself who commits the suicide. When another person, at the request of, or with the consent of, the suicide, has killed that person, he is guilty of homicide by consent, which is one of the forms of culpable homicide. In this case, the person who set fire, which caused the death by fire, is just as much guilty of the homicide as if he had fired a gun or thrown the deceased into the river." As to the other prisoner, the High Court remarked as follows: "The Judge simply states as the result of his opinion on the evidence affecting No 10, that, though apparently he did not at first co-operate to cause the death of the widow, he took an active part in causing her to return to the pile. . . . . I am of opinion that, as Umrao Chowdhry did not abet the acts of Nos. 3, 4, and 5 in setting fire to the pile, his action, as found by the Judge, only amounted to an abetment of suicide."—QUEEN *v.* SAHEBLOLL, 1 R. J and P. J. 174. [Campbell, J. Nov. 27, 1863.]

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

**307.** Whoever does any act with such intention or knowledge, and under such circumstances, that, if he, by that act, caused death, he would be guilty of murder, shall be punished with imprisonmen. of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to transportation for life, or to such punishment as is hereinbefore mentioned.

Attempt to murder.

When any person offending under this section is under sentence of transportation for life, he may, if hurt is caused, be punished with death.*

Attempts by life-convicts.

*Illustrations.*

(*a.*) A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this section.

(*b.*) A with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(*c.*) A, intending to murder Z, buys a gun, and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section; and if, by such firing, he wounds Z, he is liable to the punishment provided by the latter part of *the first paragraph of* † this section.

(*d.*) A, intending to murder Z by poison, purchases poison, and mixes the same with food which remains in A's keeping. A has not yet committed the offence defined in this section. A places the food on Z's table, or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.

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* This clause has been added by the Indian Penal Code Amendment Act (XXVII. of 1870), s. 11.

† The words italicized have been inserted by the Repealing and Amending Act (XII. of 1891).

NEITHER under s. 307, nor under s. 394, of the Penal Code, can a prisoner be sentenced to 14 years' transportation, the punishment awardable under those sections being transportation for life, or rigorous imprisonment for 10 years, with fine.—QUEEN v. BHAMOUR DOOSADH, 7 W. R. 41. [Kemp and Glover, JJ. Mar. 11, 1867.]

IN order to constitute the offence of attempt to murder under s. 307 of the Penal Code, the act committed by the prisoner must be an act capable of causing death in the natural and ordinary course of events. *Alter* under s. 511 taken in connection with ss. 299 and 300. Therefore, where the prisoner presented an uncapped gun at F G (believing the gun to be capped) with the intention of murdering him, but was prevented from pulling the trigger, it was held that he could not be convicted of an attempt to murder upon a charge framed under s. 307, but that, under the same circumstances, he might be convicted upon a charge of simple attempt to murder framed under s. 511 in connection with ss. 299 and 300. Unnecessary allegations in a charge may be rejected as surplusage. Apparent inconsistency between the English law with reference to attempts as laid down, *Reg.* v. *Collins* (33 Law J., M. C., 177) and the provisions of the Indian Penal Code explained.—REG. v. FRANCIS CASSIDY, 4 Bom. H. C. R. 17. [Couch, C.J., and Westropp, J. Dec. 23, 1867.]

A YOUNG Brahman widow was confined of a child. The chief constable of police, acting, as he stated, on information that the accused was about to kill a baby, went to search her house with a number of men, and found her lying on the first floor, and discovered on the second floor a living new-born child wrapped up in a cloth with a cooking pot turned over it. The Sessions Judge convicted the accused of attempt to murder. The High Court, on appeal, reversed the conviction, on the ground that the evidence was insufficient to support it. It was also held in this case that the chief constable's statement that he "had information that the accused was about to kill the baby," was most improperly admitted as evidence against the accused. Action of the police censured. When a person abets the commission of an offence, and is present at the time when it is committed, he should be tried, under s. 114 of the Penal Code, for the same offence as the principal.—REG. v. CHIMA, 8 Bom. H. C. R. 164. [Gibbs and West, JJ. July 6, 1871.]

THE accused struck the deceased three blows on the head with a stick, with the intention of killing him. The deceased fell down senseless on the ground. The accused, believing that he was dead, set fire to the hut in which he was lying, with a view to remove all evidence of the crime. The medical evidence showed that the blows struck by the accused were not likely to cause death, and did not cause death, and that death was really caused by injuries from burning when the accused set fire to the hut. *Held* (Parsons, J., dissenting) that the accused was guilty of attempt to murder under s. 307 of the Penal Code. *Per* Parsons, J.—The accused was guilty of murder under s. 302 of the Penal Code.—QUEEN EMPRESS v. KHANDU, I. L. R., 15 Bom. 194. [Sargent, C.J., and Birdwood and Parsons, JJ. Sep. 23, 1890.]

IN a case in which it was found that all the accused were guilty of rioting armed with deadly weapons, that the fight was premeditated and pre-arranged, a regular pitched battle or trial of strength between the two parties concerned in the riot, and that one of the accused, in the course of the riot, and in prosecution of the common object of the assembly, killed or attempted to kill a man under such circumstances that his act amounted to an attempt to murder, the question arose whether that act could be said to bear a less grave character by reason of excep. 5 to s. 300 of the Penal Code. *Per Curiam.*—*Held* that, upon such finding, the case did not fall within the exception. *Per* Pigot, J. (Petheram, C.J., and Macpherson, J., concurring).—The 5th exception to s. 300 should receive a strict and not a liberal construction; and in applying the exception, it should be considered with reference to the act consented to or authorized, and next with reference to the person or persons authorized, and as to each of those some degree of particularity at least should appear upon the facts proved before the exception can be said to apply. *Shamshere Khan* v. *Empress* (I. L. R., 6 Cal. 154) and *Queen* v. *Kukier Mather* (unreported) dissented from, so far as they decide that from such a finding as the above consent to take the risk of death is inferred. *Per* O'Kinealy J.—Before excep 5 can be applied, it must be found that the person killed, with a full knowledge of the facts, determined to suffer death, or take the risk of death; and that this determination continued up to, and existed at, the moment of his death. *Queen* v. *Kukier Mather* (unreported) observed on. *Per* Ghose, J.—No general rule of law can be laid down in determining in cases of this description whether the person killed or wounded suffered death, or took the risk of death, with his own consent, it being a question of fact, and not of law, to be decided upon the circumstances of each case as it arises. *Shamshere Khan* v. *Empress* (I. L.

R., 6 Cal. 154) and *Queen* v. *Kubier Mather* (unreported) observed on, and the propositions of law laid down therein concurred with.—QUEEN-EMPRESS v. NAYAMUDDIN, I. L. R., 18 Cal. 484. [Petheram, C.J., and Pigot, O'Kinealy, Macpherson, and Ghose, JJ. May 19, 1891.]

S. 511 of the Indian Penal Code does not apply to attempts to commit murder, which are fully and exclusively provided for by s. 307 of the said Act. A person is criminally responsible for an attempt to commit murder when, with the intention or knowledge requisite to its commission, he has done the last proximate act necessary to constitute the completed offence, and when the completion of the offence is only prevented by some cause independent of his volition.—QUEEN-EMPRESS v. NIDDHA, I. L. R., 14 All. 38. [Straight, J. Aug. 5, 1891.]

**308.** Whoever does any act with such intention or knowledge, and under such circumstances, that, if he, by that act, caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Ct. of Ses. Cognizable. Warrant. Bailable. Not comp.

**Attempt to commit culpable homicide.**

*Illustration.*

A, on grave and sudden provocation, fires a pistol at Z under such circumstances that, if he thereby caused death, he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

**309.** Whoever attempts to commit suicide, and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year, "or with fine, or with both." *

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

**Attempt to commit suicide.**

EVIDENCE that a woman prepared herself to commit suicide in the presence of the accused, that they followed her to the pyre, and stood by her, her step-sons crying, "Ram! Ram!" and one of the accused admitting that he told the woman to say, "Ram! Ram!" and she would become "suttee" proves active connivance and unequivocal countenance of the suicide by the accused, and justified the inference that they had engaged with her in a conspiracy for the commission of the suttee. —QUEEN v. MOHIT PANDEY, 3 N.-W. P. 316. Pearson, J. Sep. 6, 1871.]

R. WITH the intention of committing suicide by throwing herself into a well, ran to the well, where she was arrested. She was convicted under s. 309 of the Penal Code of having attempted to commit suicide. *Held* that the conviction was illegal.—QUEEN-EMPRESS v. RAMAKKA, I. L. R., 8 Mad. 5. [Muttusami Ayyar, J. Oct. 11, 1884.]

**310.** Whoever, at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of, or accompanied with, murder, is a thug.

**Thug.**

**311.** Whoever is a thug shall be punished with transportation for life, and shall also be liable to fine.

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

**Punishment.**

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*Of the Causing of Miscarriage; of Injuries to Unborn Children; of the Exposure of Infants; and of the Concealment of Births.*

**312.** Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished

Ct. of Ses. Uncog. Warrant. Bailable. Not comp.

**Causing miscarriage.**

* In s. 309, the words quoted have been substituted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 7, for the words, "and shall also be liable to fine."

with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

*Explanation.*—A woman who causes herself to miscarry is within the meaning of this section.

THE offence defined in s. 312 can only be committed when a woman is, in fact, pregnant. To constitute the act of abetment, however, it is not necessary that the act abetted should be committed. A, a woman, may fail involuntarily in causing abortion, not being pregnant, but B, who instigated her, believing her to be pregnant, may be guilty of abetting an offence.—REG. v. KABUL BATTUR, 15 W. R. 4. [Kemp and Glover, JJ. Jan. 21, 1871.]

IN a case in which the child was full-grown, the Court declined to convict the accused of causing miscarriage under s. 312, Penal Code—that section supposing an expulsion of the child before the period of gestation is completed—but convicted them of an attempt to cause miscarriage under ss. 312 and 511 read together.—REG. v. ARUNJA BEWA, 19 W. R. 32. [Glover and Mitter, JJ. Feb. 4, 1873.]

A WOMAN is with child within the meaning of s. 312 of the Penal Code as soon as she is pregnant. *Held*, therefore, where a woman was acquitted on a charge of causing *herself to miscarry, on the ground that she* had only been pregnant for one month, and that there was nothing which could be called even a rudimentary fœtus or child, that the acquittal was bad in law.—QUEEN-EMPRESS v. ADEMMA, I. L. R., 9 Mad. 369. [Muttusami Ayyar and Brandit, JJ. Mar. 29, 1886.]

Ct. of Ses. Uncog. Warrant. Not bailable. Not comp.

**318.** Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Causing miscarriage without woman's consent.

Ditto.

**314.** Whoever, with intent to cause the miscarriage of a woman with child does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

Death caused by act done with intent to cause miscarriage.

and, if the act is done without the consent of the woman shall be punished either with transportation for life or with the punishment above mentioned.

If act done without woman's consent.

*Explanation.*—It is not essential to this offence that the offender should know that the act is likely to cause death.

WHEN a poisonous drug was administered to a woman to procure miscarriage, and death resulted, and it was not proved that the accused knew that the drug would be likely to cause death, &c., they were acquitted by the High Court of murder, and convicted of an offence under s. 314 of the Penal Code.—QUEEN v. KALACHAND GOPE, 10 W. R. 59. [Phear and Hobhouse, JJ. Dec 8, 1868.]

Ditto.

**315.** Whoever, before the birth of any child, does any act with the intention of thereby preventing that child from being born alive, or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

Act done with intent to prevent child being born alive, or to cause it to die after birth.

**316.** Whoever does any act under such circumstances that, if he thereby caused death, he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses. Uncog. Warrant. Not bailable. Not comp.

**Causing death of quick unborn child by act amounting to culpable homicide.**

*Illustration.*

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

**317.** Whoever, being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Ditto.

**Exposure and abandonment of child under twelve years by parent or person having care of it.**

*Explanation.*—This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

THE prisoner left her child, illegitimate and newly-born, near a road in a thorn-enclosure about 200 yards from the village. The child was found by a traveller, lived for about thirty hours, and then died. It was held that a conviction for murder could not be supported, as it might have been, had the child been left on a barren heath or in an unfrequented place, but that the mother was guilty of abandonment under s. 317.—MUSSAMMAT NANKI v. CROWN, Panj. Rec. No 23 of 1866.

HELD that, where, from the circumstances, it appeared that a child who had been exposed by the prisoner did not die in consequence of the exposure, except in a remote degree, the prisoner, though guilty under s. 317 of the Penal Code, could not be convicted of murder. That section contemplates cases in which death is caused from cold or some other result of exposure.—QUEEN v. KHODABUX FAKEER *alias* KHUDIRAM FAKEER, 10 W. R. 52. [Loch and Glover, JJ. Nov. 19, 1868.]

WHERE the prisoner caused the death of her infant child by purposely abstaining from giving the deceased any nourishment, but did not part with the custody of, or abandon, the child, it was held that the prisoner was wrongly convicted of an offence under s. 317, and that the Sessions Judge, in convicting her under s. 304, should have specified the exception under s. 300 which applied to the case.—MUSSAMMAT RAM DAI v. CROWN, Panj. Rec., No. 18 of 1870.

S. 317 of the Penal Code was intended to prevent the abandonment or desertion by a parent of his or her children of tender years, in such a manner that the children, not being able to take care of themselves, may run the risk of dying or being injured.—*In re* FEIANI HARIANI, 16 W. R. 12. Bayley and Paul, JJ. June 15, 1871.]

K WAS delivered of a child at the house of S, her mother, K's husband being then away in Kashmir. K's mother took the child to the house of K's husband's sister, and placed the child naked at her feet or in her lap, saying, "This is your brother's child." S went away, and the child died some hours afterwards. It was held that S had not committed an offence under s. 317, nor had K abetted any such offence.—CROWN v. MUSSAMMAT KHAIRO, Panj. Rec., No. 33 of 1872.

ACCUSED, a married woman, eloped, leaving her child, 1½ months old, being at the time supported by her milk, in the house of her husband, who was in charge of it jointly with her, who was under the same legal obligation to protect it, and who, the Magistrate found, was certain, as the mother knew, to take care of it. It was held that there was not a "leaving with the intention of wholly abandoning" the child within the meaning of s. 317, and that the conviction was therefore unsustainable.—CROWN v. MUSSAMMAT BHURAN, Panj. Rec., No. 5 of 1878. Referred to and approved in Panj. Rec., No. 4 of 1879, *infra*.

WHERE a mother abandoned her child with the intention of wholly abandoning it, and knowing that such abandonment was likely to cause its death, and the child died in consequence of the abandonment, *held* that she could not be convicted and punished under s. 304 and also under s. 317 of the Penal Code, but s. 304 only.—EMPRESS *v.* BANNI, I. L. R., 2 All. 349 [Straight, J. Aug. 4, 1879.]

ACCUSED, a married woman, quarrelled with her husband, and left his house for her parents' house in another village, leaving her child, aged six months, in her husband's house. Her husband was not in the house at the time, but on his return shortly after he found the door shut, his wife absent, and the child lying on the floor crying. He informed the lambardar, who arranged for supplying milk for the child, and himself went to the thana to report the matter. It was held that, on the facts found, accused had not left her child with the intention of wholly abandoning it within the meaning of s 317, and that her conviction under that section was, therefore, not maintainable. *Crown v. Mussammat Bhuran* (Panj. Rec., No. 5 of 1878) referred to and approved.—EMPRESS *v.* MUSSAMMAT BHAGAN, Panj. Rec., No. 4 of 1879.

THE English law on the subject is 24 and 25 Vict., c. 100, s. 27. In order to sustain an indictment under it, it is only necessary to prove that the defendant wilfully abandoned or exposed the child mentioned in the indictment, that the child was then under two years of age, and that its life was thereby endangered, or its health had been or then was likely to be permanently injured. The following facts were held to warrant a conviction on an indictment framed on this section charging the prisoners with abandoning and exposing a child under the age of two years, whereby its life was endangered. One of the prisoners was the mother of a weakly bastard child. When it was five weeks old, both the prisoners put the child in a hamper at S, wrapped up in a shawl, and packed with shavings and cotton-wool, and the mother took the hamper from S to the booking-office of the railway-station at M (a distance of about four miles), and there left it, having paid the carriage of the hamper to G. The hamper was addressed to the lodgings of the child's father at G, and he had told the mother, previous to the child's birth, that, if she sent it to him, he would keep it. The mother told the clerk at the station to be very careful of the hamper, and to send it by the next train, which was done in ten minutes from the time of its delivery at the station. Upon the address were the words: "With care; to be delivered immediately." The hamper was, as above mentioned, duly sent by train, and was delivered at its address in G in a little less than an hour from the time of its being despatched from M. On its being opened, the child was alive, and lived for three weeks afterwards, when it died from causes not attributable to the conduct of the prisoners or either of them.—R. *v.* FALKINGHAM, L. R., 1 C. C. R. 222; 39 L. J. (M. C.) 47.

A WOMAN, who was living apart from her husband, and who had the actual custody of their child, under two years of age, brought the child on the 19th October, and left it outside the father's door, telling him she had done so. He knowingly allowed it to remain lying outside his door from about 7 P. M. till 1 A. M., when it was removed by a constable, being then cold and stiff. Upon this state of facts, it was held that, although the father had not the actual custody and possession of the child, yet, as he was by law bound to provide for it, his allowing it to remain where he did was an abandonment and exposure of the child by him, whereby its life was endangered, within the meaning of 24 and 25 Vict., c. 100, s. 27.—R. *v.* WHITE, L. R., 1 C. C. R. 311, 40 L. J. (M.C.) 134.

A WOMAN who was the mother of an illegitimate child, aged at the time about six months, left the child in charge of a blind woman in whose company she was, saying that she was going to get food, and would return shortly. She went away to another village, and did not return. Apparently she never intended to return. Upon these facts it was *held* by Blair and Aikman, JJ. (*dissentiente* Knox, J.) that the mother of the child could not properly be convicted of the offence defined by s. 317 of the Penal Code.—QUEEN-EMPRESS *v.* MIRCHIA, I. L. R., 18 All. 364. Knox, Blair, and Aikman, JJ. May 5 1896.]

UPON a charge being preferred against a mother of exposure and abandonment of her child, under s. 317, Indian Penal Code, the Sessions Judge believed that the accused had left the child at a particular spot with the intention that it should be found and cared for by the owner of a neighbouring house. He acquitted her, holding that the offence charged had not been committed, inasmuch as the child had been deliberately placed where it would be (as in fact it was), found and looked after. *Held* that the acquittal was wrong. The gist of the offence under s. 317 is the exposure or leaving with inten-

tion to wholly abandon, and the manner of exposing or leaving, and the consequences likely to ensue are not essential ingredients, though they may be taken into consideration in passing sentence. — KING-EMPEROR v. ANTAKKE, I. L. R., 24 Mad. 662.

**318.** Whoever, by secretly burying, or otherwise disposing of, the dead body of a child, whether such child die before, or after, or during its birth, intentionally conceals, or endeavours to conceal, the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ct of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

**Concealment of birth by secret disposal of dead body.**

CHARGE.—That you, on or about the , at , by secretly burying the dead body of your infant child, intentionally concealed the birth of such child, and that you have thereby, &c —8 W. R. Cr. L. 4, No. 672 of 1867.

UPON a prosecution under s. 318 of the Penal Code, a person cannot be convicted of concealing the birth of a child in the case of a mere fœtus four months old.—PRO., Aug. 6, 1869, 4 Mad. H. C. R., Ap. 63.

## OF HURT.*

REPORT OF THE INDIAN LAW COMMISSIONERS ON HURT.

MANY of the offences which fall under the head of Hurt will also fall under the head of Assault. A stab, a blow which fractures a limb, the flinging of boiling water over a person, are assaults, and are also acts which cause bodily hurt. But bodily hurt may be caused by many acts which are not assaults. A person, for example, who mixes a deleterious portion, and places it on the table of another; a person who conceals a scythe in the grass on which another is in the habit of walking; a person who digs a pit in a public path, intending that another may fall into it, may cause serious hurt, and may be justly punished for causing such hurt. But they cannot without extreme violence to language, be said to have committed assaults.

We propose to designate all pain, disease, and infirmity, by the name of hurt.

We have found it very difficult to draw a line between those bodily hurts which are serious, and those which are slight. To draw such a line with perfect accuracy is, indeed absolutely impossible, but it is far better that such a line should be drawn, though rudely, than that offences, some of which approach in enormity to murder, while others are little more than frolics which a good-natured man would hardly resent, should be classed together.

We have, therefore designated certain kinds of hurt as *grievous*.

We have given this name to emasculation —to the loss of the sight of either eye—to the loss of the hearing of either ear—to the loss of any member or joint—to the permament loss of the perfect use of any member or joint—to the permanent disfiguration of the head or face—to the fracture and to the dislocation of bones. Thus far we proceed on sure ground. But a more difficult task remains. Some hurts which are not, like those kinds of hurt which we have just mentioned, distinguished by a broad and

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* As to the application of ss. 327-331 to offences under special or local laws, see s. 40, *supra*.

Offences punishable under ss. 323 and 334 are compoundable, and those punishable under ss. 324, 325, 335, 337, and 338, may be compounded with the permission of the Court.—See the new Code of Criminal Procedure (Act V. of 1898), s 345. As to stage of proceedings at which no composition is allowed without the leave of the Court, see sub-s. (5), s. 345, aforesaid.

As to whipping in Upper Burma for offences mentioned in ss. 225, 326, 327, 329, and 333, see the Burma Laws Act (XIII. of 1898), s. 4 (3) (*b*), and Sch. II.; in a Punjab Frontier District or in Baluchistan for offences punishable under ss. 325 and 326, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 8.

As to punishment for offences under ss. 325, 326, and 328, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

REPORT OF THE INDIAN LAW COMMISSIONERS ON HURT—*contd.*

obvious line from slight hurts, may nevertheless be most serious. A wound, for example, which neither emasculates the sufferer, nor blinds him, nor destroys his hearing, nor deprives him of a member or a joint, nor permanently deprives him of the use of a member or a joint, nor disfigures his countenance, nor breaks his bones, nor dislocates them, may yet cause intense pain, prolonged disease, lasting injury to the constitution. It is evidently desirable that the law should make a distinction between such a wound and a scratch which is healed with a little sticking plaster. A beating, again, which does not maim the sufferer, or break his bones, may be so cruel as to bring him to the point of death. Such a beating, it is clear, ought not to be confounded with a bruise which requires only to be bathed with vinegar, and of which the traces disappear in a day

After long consideration we have determined to give the name of grievous bodily hurt to all hurt which causes the sufferer to be in pain, diseased, or unable to pursue his ordinary avocations during the space of twenty days.

This provision was suggested to us by article 309 of the French Penal Code. That article runs thus "Sera puni de la reclusion, tout individu qui aura fait des blessures ou porte des coups, s'il est resulte de ces actes de violence une maladie ou incapacite de travail personnel pendant plus de vingt jours." *Reclusion*, it is to be observed, signifies imprisonment and hard labour for a term of not less than five, nor more than ten, years.

This law appears from the *procès verbal* of Napoleon's Council of State to have been adopted without calling forth a single* observation. But it has since been severely criticised by French jurists, and has been mitigated by the French Legislature. Indeed, it ought to have been completely recast. For it is undoubtedly one of the most exceptionable laws in the Code.

A man who means only to inflict a slight hurt may, without intending or expecting to do so, cause a hurt which is exceedingly serious. A push which to a man in health is a trifle may, if it happens to be directed against a diseased part of an infirm person, occasion consequences which the offender never contemplated as possible. A blow designed to inflict only the pain of a moment may cause the person struck to lose his footing, to fall from a considerable height, and to break a limb. In such cases to punish the assailant with five years of strict imprisonment would be in the highest degree unjust and cruel. It is said, and we can easily believe it,† that, in such cases, the French juries have frequently refused, in spite of the clearest evidence, to pronounce a decision which would have subjected the accused to a punishment so obviously disproportioned to his offence.

We have attempted to preserve and to extend what is good in this article of the French Code, and to avoid the evils which we have noticed. It appears to us that the length of time during which a sufferer is in pain, diseased, or incapacitated from pursuing his ordinary avocations, though a defective criterion of the severity of a hurt is still the best criterion that has ever been devised It is a criterion which may, we think, with propriety, be employed, not merely in cases where violence has been used, but in cases where hurt has been caused without any assault, as by the administration of drugs, the setting of traps, the digging of pit-falls, the placing of ropes across a road. But, though we have borrowed from the French Code this test of the severity of bodily injuries, we have framed our penal provisions on a principle quite different from that by which the authors of the French Code appear to have been guided. In apportioning the punishment, we take into consideration both the extent of the hurt and the intention of the offender.

What we propose is that the voluntary infliction of simple bodily hurt shall be punished with imprisonment of either description which may extend to one year, or fine, or both; the voluntary infliction of grievous bodily hurt with imprisonment of either description for a term which may extend to ten years, and must not be less than six months, to which fine may be added.

These are the ordinary punishments, but there are certain aggravating and mitigating circumstances which make a considerable difference.

Where bodily hurt is voluntarily inflicted in an attempt to murder the person hurt, we propose to punish the offender with transportation for life, or with imprisonment for a term which may extend to life, and cannot be less than seven years. It does not appear to us that, where the murderous intention is made out, the severity of the hurt inflicted is a circumstance which ought to be con-

* Locre: Legislation de France, Vol. 30, p. 362.
† Pailliet: Manuel de Droit Francais, Note on cl. 309 of the Penal Code.

REPORT OF THE INDIAN LAW COMMISSIONERS ON HURT—*concld.*

sidered in apportioning the punishment. It is undoubtedly a circumstance which will be important as evidence. A Court will generally be more easily satisfied of the murderous intention of an assailant who has fractured a man's skull, than of one who has only caused a slight contusion. But the proof might be complete. To take examples which are universally known: Harley was laid up more than twenty days by the wound which he received from Guiscard; the scratch which Damien gave Louis the Fifteenth was so slight that it was followed by no feverish symptoms. Yet it will be allowed that it would be absurd to make a distinction between the two assassins on this ground.

We propose that, when bodily hurt is inflicted by way of torture, the punishment shall be very severe. In England, happily, such a provision would be unnecessary. But the execrable cruelties which are committed by robbers in this country for the purpose of extorting property, or information relating to property, render it absolutely necessary here. We propose that in such cases, if the hurt inflicted be what we have designated as *grievous*, the offender shall be punished with transportation for life, or with imprisonment for a term which may extend to life, and which shall not be less than seven years. Where the hurt is not grievous, we propose that the imprisonment shall be for a term of not more than fourteen years, nor less than one year.

Bodily hurt may be inflicted by means the use of which generally indicates great malignity. A blow with the fist may cause as much pain, and produce as lasting injury, as laceration with a knife, or branding with a hot iron. But it will scarcely be disputed that, in the vast majority of cases, the offender who has used a knife or a hot iron for the purpose of wreaking his hatred is a far worse and more dangerous member of society than he who has only used his fist. It appears to us that many hurts which would not, according to our classification, be designated as grievous, ought yet, on account of the mode in which they are inflicted, to be punished more severely than many grievous hurts. We propose, therefore, that, where bodily hurt is voluntarily caused by means of any sharp instrument, of fire, of any heated substance, of any corrosive substance, of any explosive substance, of any poison, internal or external, or of any animal, the maximum of imprisonment may be increased, in cases of grievous bodily hurt, to fourteen years, in other cases, to three years.

In cases where bodily hurt is voluntarily caused on grave and sudden provocation, we propose to mitigate the punishment. This mitigation is common to cases of hurt and of grievous hurt. But voluntarily causing of grievous hurt on great and sudden provocation will still be punishable more severely than the voluntary causing of hurt not grievous on grave and sudden provocation. The provisions which we propose on this subject are framed on the same principles on which we have framed the law of manslaughter, and may be defended by the same arguments, by which the law of manslaughter is defended.

Hitherto we have been considering cases in which hurt has been caused voluntarily. But hurt may be caused involuntarily, yet culpably. There may have been no design to cause hurt, no expectation that hurt would be caused. Yet there may have been a want of due care not to cause hurt. For these cases of the involuntary yet culpable infliction of bodily hurt, we have provided rules which bear a close analogy to those which we have provided for cases of involuntary culpable homicide.

The provision contained in cl. 329 bears, it will be seen, a close analogy to those contained in cls. 308 and 309. We have provided under the head of Assault for cases in which an assault is committed in an attempt to cause grievous bodily hurt. But there may be most malignant and atrocious attempts to cause grievous bodily hurt without any assault. For example, Z is directed to use a lotion for his eyes. A substitutes for that lotion a corrosive substance intending that it may destroy Z's eyesight. Again: A makes up a letter addressed to Z, and sends it to the post-office, having placed a strongly explosive substance under the seal intending that the explosion may seriously injure Z. These are not assaults; yet they are evidently acts which deserve severe punishment, and that punishment is provided by cl. 329.

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Hurt.

**319.** Whoever causes bodily pain, disease, or infirmity to any person, is said to cause hurt.

WHERE a wife died from a chance-kick on the spleen, inflicted by her husband on provocation given by the wife, the husband not knowing that the spleen was diseased, and showing by the blow itself, and by his conduct immediately afterwards, that he had

no intention or knowledge that the act was likely to cause hurt endangering human life, *held* that the husband was guilty of an offence under ss. 319 and 321 of the Penal Code, and not of an offence under ss. 320 and 322. An admission by the husband in the presence of several witnesses that he had killed the wife, and that she died after receiving the kick, was held to be direct evidence against him.—QUEEN v. BYSAGOO NOSHYO, 8 W. R. 29. [Seton-Karr and Hobbouse, JJ. June 29, 1867.]

THE pain caused by a blow across the chest with an umbrella was held to be not of such a trivial character as to come within the meaning of the Penal Code, s. 95.—GOVT. OF BENGAL v. SHEO GHOLAM LALLA, 24 W. R. 67. [Glover and Mitter, JJ. Nov. 22, 1875.]

Grievous hurt.

**320.** The following kinds of hurt only are designated as "grievous":—

*First.*—Emasculation.

*Secondly.*—Permanent privation of the sight of either eye.

*Thirdly.*—Permanent privation of the hearing of either ear.

*Fourthly.*—Privation of any member or joint.

*Fifthly.*—Destruction or permanent impairing of the powers of any member or joint.

*Sixthly.*—Permanent disfiguration of the head or face.

*Seventhly.*—Fracture or dislocation of a bone or tooth.

*Eighthly.*—Any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

ATTEMPT at murder must not be confounded with causing grievous hurt with dangerous weapons.—GHOLAM RUSSOOL v. CROWN, Panj. Rec., No. 32 of 1865.

THERE must be evidence to prove that hurt, as described in s. 320 of the Penal Code as grievous hurt, has been caused before a conviction can be had under s. 320 of that Code.—QUEEN v. KAMINEE DASSEE, 12 W. R. 25. [Norman and Jackson, JJ. July 6, 1869.]

THE accused were charged with causing grievous hurt. The Joint Sessions Judge, relying apparently on evidence that the injured person remained in a hospital for the space of twenty days, drew from that circumstance alone the inference that he was during that period unable to follow his ordinary pursuits, and convicted the accused under s. 320 of the Penal Code. *Held*, reversing the conviction, that, in the absence of any evidence that the injured person was unable to follow his ordinary pursuits during the space of twenty days, such an inference could not legally be drawn. Before a conviction can be passed for the offence of grievous hurt, one of the injuries defined in s. 320 of the Penal Code must be strictly proved, and that the eighth clause is no exception to the general rule that a penal statute must be construed strictly. Proof of being in a hospital for the space of twenty days cannot be taken as equivalent to prove of grievous hurt.—QUEEN-EMPRESS v. VASTA CHELA, I. L. R., 19 Bom. 247. [Jardine and Ranade, JJ. Feb. 21, 1894.]

Voluntarily causing hurt.

**321.** Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt."

A DISABILITY for 20 days constitutes grievous hurt. A disability for a fortnight is punishable for voluntarily causing hurt.—QUEEN v. BISHNOORAM SURMA, 1 W. R. 9. [Kemp and Glover, JJ. Aug. 30, 1864.]

WHERE a wife died from a chance-kick on the spleen, inflicted by her husband on provocation given by the wife, the husband not knowing that the spleen was diseased, and showing by the blow itself, and by his con-

duct immediately afterwards, that he had no intention or knowledge that the act was likely to cause hurt endangering human life, it was held that the husband was guilty of an offence under ss. 319 and 321 of the Penal Code, and not of an offence under ss. 320 and 322.—QUEEN v. BYSAGOO NOSHYO, 8 W. R. 29. [Seton-Karr and Hobhouse, JJ. June 29, 1867.]

**322.** Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

Voluntarily causing grievous hurt.

*Explanation.*—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

*Illustration.*

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

THE prisoners having abetted an assault and murder having been committed, it was held, under the peculiar circumstances of the case, that they were guilty of grievous hurt, but not of abetment of murder.—QUEEN v. GOLUCK CHUNG, 5 W. R. 75. [Campbell and Macpherson, JJ. April 28, 1866.]

WHERE A ordered B and C to seize and forcibly take D in the contemplation of an assault upon D, and D was so beaten and tortured that he died, it was held that A was guilty at least of abetting the commission of voluntarily causing grievous hurt.—QUEEN v. DOORGESSUR SURMA, 7 W. R. 61. [Hobhouse, J. April 30, 1867.]

WHERE a wife died from a chance-kick on the spleen, inflicted by her husband on provocation given by the wife, the husband not knowing that the spleen was diseased, and showing by the blow itself, and by his conduct immediately afterwards, that he had no intention or knowledge that the act was likely to cause hurt endangering human life, *held* that the husband was guilty of an offence under ss. 391 and 321 of the Penal Code, and not of an offence under ss. 320 and 322.—QUEEN v. BYSAGOO NOSHYO, 8 W. R. 29. [Seton-Karr and Hobhouse, JJ. June 29, 1867.]

WHERE a prisoner was charged under ss. 304, 325, and 323, and the jury brought in a verdict of guilty under s. 335, it was held that he was not acquitted of grievous hurt, but found guilty of the offence described in s. 322, with the extenuating circumstances which would confine the punishment within the limits specified in s. 335.—QUEEN v. LUKHINARAIN AGOORI, 23 W. R. 61. [Jackson and McDonell, JJ. April 8, 1875.]

**323.** Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Any Mag. Uncog. Summons. Bailable. Comp.

Punishment for voluntarily causing hurt.

A DISABILITY for twenty days constitutes grievous hurt. A disability for a fortnight is punishable for voluntarily causing hurt.—QUEEN v. BISHNOORAM SURMA, 1 W. R. 9. [Kemp and Glover, JJ. Aug. 30, 1864.]

THE wounding of a thief by a chaukidar in order to effect his arrest *held*, under the circumstances, to be justifiable.—QUEEN v. PROTAB CHAUKIDAR, 2 W. R 9. [Campbell and Glover, JJ. Jan. 16, 1865.]

THE prisoner and another were squabbling with the husband and son of the witness, Mussammat Mootka, at the door of the house. This witness from inside remonstrated and abused the prisoner. The prisoner then went inside the house, pulled the witness out by the hair of her head, threw her down, and stamped upon her chest and abdomen. She was 17 days in hospital, during three days of which, according to the deposition of the medical officer, her life was in danger.

*Held* that the hurt came under the eighth head of the hurts which are described as grievous.—QUEEN *v.* BASSOO RANNAH, 2 W. R. 29. [Kemp and Glover, JJ. Jan. 30, 1865.]

IN cases of hurt or grievous hurt the question should be considered as to who was the aggressor, and whether the offence was committed in the exercise of the right of private defence.—QUEEN *v.* SOHUN, 2 W. R. 59. [Campbell and Jackson, JJ. April 10, 1865.]

THE prisoner, having received great provocation from his wife, pushed her with both arms so as to throw her with violence to the ground, and, after she was down, slapped her with his open hand. The woman died, and, on examination, it appeared that there were no external marks of violence on the body, but that there was a certain degree of disease of the spleen, and that death was caused by the rupture of the spleen. Under the above circumstances the prisoner was held guilty of causing hurt, and not of culpable homicide not amounting to murder.—*QUEEN v. PUNCHANUN TANTEE, 5 W. R. 97. [Norman and Campbell, JJ. May 28, 1866.]*

WHERE a person was tried and acquitted on a charge of using criminal force, he cannot afterwards be charged with committing hurt in respect of the same transaction.—KAPTAN *v.* G. M. SMITH, 16 W. R. 3; 7 B. L. R. Ap. 25. [Bayley and Paul, JJ. June 7, 1871.]

WHERE a person scourged another with nettles in order to extract property from the sufferer, and the Magistrate tried the case as one of hurt (under s. 323) and extortion (s. 384), although the accused ought to have been charged under s. 327, and tried by the Court of Session, the High Court declined to interfere under s. 404, Code of Criminal Procedure (Act XXV. of 1861), and directed a new trial, believing that substantial justice had been done in the case.—*IN THE MATTER OF TARINEE PROSAD BANERJEE, 18 W. R. 8. [Kemp and Glover, JJ. June 14, 1872.]*

WHERE, according to the prisoner's own confession (which was the only direct evidence against her), she, with a view to chastising the deceased, her daughter, 8 or 10 years of age, for impertinence, but without any intention of killing her, gave her a kick on the back and two slaps on the face, the result of which was death, *held* that the conviction should be under s. 323, Penal Code, of voluntarily causing hurt, and the punishment, one year's rigorous imprisonment.—QUEEN *v.* BESHOR BEWA, 18 W. R. 29. [Kemp and Glover, JJ. July 9, 1872.]

WHERE a prisoner was charged under ss. 304, 325, and 323, and the jury brought in a verdict of guilty under s. 335, it was held that he was not acquitted of grievous hurt, but found guilty of the offence described in s. 322, with the extenuating circumstances which would confine the punishment within the limits specified in s 335.—QUEEN *v.* LUKHINARAIN AGOORI, 23 W. R. 61. [Jackson and McDonell, JJ. April 8, 1875.]

RIOTING, and hurt in the course of such rioting, are distinct offences, and each offence is separately punishable.—EMPRESS *v.* RAM ADHIN, I. L. R., 2 All. 139. [Pearson, J. Feb. 13, 1879.]

WHERE a person hurt another, who was suffering from spleen-disease, intentionally, but without the intention of causing death, or causing such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, and by his act caused the death of such other person, it was held that he was properly convicted, under s. 323 of the Penal Code, of voluntarily causing hurt —EMPRESS *v.* FOX, I. L. R., 2 All. 522. [Stuart, C.J. Dec. 16, 1879.]

*WHERE the facts found showed that death resulted from violence intentionally directed against the deceased by the accused, the Chief Court, on the revision side, altered the conviction from one under s. 304A to one under s. 323 —EMPRESS v. GANDA SINGH, Panj. Rec., No. 11 of 1880.*

A PERSON, without the intention to cause death, or to cause such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, or the intention to cause grievous hurt, or the knowledge that he was likely by his act to cause grievous hurt, but with the intention of causing hurt, caused the death of another person by throwing a piece of brick at him, which struck him in the region of the spleen and ruptured it, the spleen being diseased. *Held* that the offence committed was not the offence of causing death by a rash or negligent act, but the offence of voluntarily causing hurt. — EMPRESS *v.* RANDHIR SINGH, I. L. R., 3 All. 597. [Oldfield, J. Mar. 7, 1881.]

SIX accused persons were charged with, and convicted of, rioting, the common object of which was causing hurt to two particular men. Four of the accused were also charged with, and convicted of, respectively, causing hurt during the riot to the two men and a woman, and were sentenced to separate terms of imprisonment under ss. 147 and 323 of the Penal Code. *Held* that the sentences were legal. During the course of a riot, in which X was attacked and beaten by several of the rioters, one of them, K, inflicted grievous hurt on X by breaking his rib with a blow

struck with a *lathi*. K and three others of the rioters were charged with offences under ss. 147 and 325 of the Penal Code, and K was convicted under those sections. The other three were convicted under s. 147, and also under s. 325 read with s. 109. Separate sentences were passed on K, and also on the other three for each of the offences. *Held* that the sentences on K were legal, but that, as there was nothing to show that the other three had abetted the particular blow which caused the grievous hurt, although they had, each of them, assaulted X, the conviction of them, under s. 325 read with s. 109, could not be supported.—IN THE MATTER OF MOHUR MIR *v.* THE QUEEN-EMPRESS AND IN MATTER OF KALI ROY *v.* THE QUEEN-EMPRESS, I. L. R., 16 Cal. 725. [Trevelyan and Beverley, JJ. June 12, 1889.]

A WARRANT was issued by a Magistrate for the arrest of one Dalip under s. 114 of the Code of Criminal Procedure. The warrant was sent to a certain thana to be executed. It was there, after being copied into a book kept for that purpose at the thana, made over to a particular constable for execution. When the constable to whom the warrant had been made over had left the thana, it was discovered that Dalip was in a village other than that in which he had been supposed to be. Thereupon the officer temporarily in charge of the thana made a copy from the book at the thana, endorsed on the back the names of one Nazir Husain and some other constables, and, having signed the endorsement, sent Nazir Husain and the others out with this paper to arrest Dalip. Nazir Husain and his companions arrested Dalip; but, as they were returning with him in custody, some of Dalip's friends, aided by Dalip himself, attacked them, rescued Dalip, and caused hurt to the police. *Held* that the police-officers concerned in arresting Dalip under the circumstances above described were not acting in the lawful discharge of their duty within the meaning of s. 332 of the Penal Code, so as to render the accused liable to conviction under that section: but inasmuch as they were acting in good faith under the colour of their office, s. 99 of the Penal Code applied, and Dalip and his associates might be properly convicted under ss. 147 and 323 of the Code. The words "in the discharge of his duty as such public servant" in the earlier portion of s. 332 of the Penal Code, mean in the discharge of a duty imposed by law on such public servant in the particular case, and do not cover an act done by him in good faith under colour of his office. *The Queen* v. *Roxburgh* (12 Cox. Cr. Ca. 8) referred to.—QUEEN-EMPRESS *v.* DALIP, I. L. R., 18 All. 246. [Edge, C.J., and Burkitt, J. Feb. 18, 1896.]

A FIRST-CLASS Magistrate took a case on his file, and commenced a regular enquiry therein under ss. 147 and 324 of the Penal Code; but, after hearing evidence, and being of opinion that only an offence under s. 323 of the Penal Code had been made out, he proceeded to deal with the case summarily. *Held* that, inasmuch as the evidence adduced was not sufficient to justify a committal, but clearly disclosed an offence over which he had summary jurisdiction, the Magistrate was right in acting as he did. Such a course is different to disregarding part of a charge for the purpose of dealing with a case summarily. The High Court will not interfere where a Magistrate has *bonâ fide* acted in the interests of justice. *Empress* v. *Abdool Karim* (I. L. R., 4 Cal. 18) distinguished.—QUEEN-EMPRESS *v.* RANGAMANI, I. L. R., 22 Mad. 459. [Boddam, J. Jan. 10, 1899.]

THE party of the accused accompanied by R went armed with *lathis* to fish in a tank in which R had a two-anna share. The complainant, who with some other co-sharers, represented an eleven-anna interest in the tank, went there with some of these co-sharers to protest on the ground that the accused had no share or interest in the tank. A fight ensued, in the course of which some of the complainant's party received slight injuries. *Held* that the accused were rightly convicted of rioting and voluntarily causing hurt under ss. 147 and 323 of the Penal Code. *Ganouri Lal Das* v. *Queen-Empress* (I. L. R., 16 Cal. 206) followed. *Pachkauri* v. *Queen-Empress* (I. L. R., 24 Cal. 686) referred to.—ANANT PANDIT *v.* MADHUSUDAN MANDAL, I. L. R., 26 Cal 574. [Prinsep and Stevens, JJ. Mar. 22, 1899.]

**324.** Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire, or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with impri-

Voluntarily causing hurt by dangerous weapons or means.

Ct. of Sess., Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Comp. when permission is given by Court before which prosecution pending.

sonment of either description for a term which may extend to three years, or with fine, or with both.

CAUSING hurt on grave and sudden provocation to the person giving the provocation is chargeable as an offence under s. 334, and not under s. 324.—REG. *v.* BHALA CHULA, 1 Bom. H. C. R. 17. [Sausse, C.J., and Forbes and Tucker, JJ. July 29, 1863.]

A PRISONER who, in the commission of lurking house-trespass by night, voluntarily attempts to cause grievous hurt to the owner of the house who tries to capture him, is punishable under s. 460, and not under ss. 457 and 324 of the Penal Code.—QUEEN *v.* LUKHUN DOSS, 2 W. R. 52. [Jackson and Glover, JJ. April 1, 1865.]

THE offence of rioting armed with deadly weapons, and stabbing a person on whose premises the riot takes place, are distinct offences, and punishable as separate offences under ss. 148, 149, and 324 of the Penal Code, s. 149 being read as a proviso to s. 148.—QUEEN *v.* CALLACHAND, 7 W. R. 60. [Norman and Seton-Karr, JJ. April 29, 1867.]

HELD that, where the prisoners were charged under s. 148 of the Penal Code of rioting armed with deadly weapons, and also under s. 324 of voluntarily causing hurt by dangerous weapons, they should have been sentenced only under *one* or *other* of these sections, the charges being, properly speaking, only alternative charges. The High Court refused to interfere with the reception by the Sessions Judge of the uncorroborated evidence of accomplices.—QUEEN *v.* DINA SHEIKH, 10 W. R. 63, 3 B. L. R. 15n. [Phear and Hobhouse, JJ. Dec. 15, 1868.]

UPON the construction of s. 324 of the Penal Code, *held* that it is not necessary that the manner of use (of the weapon) must be such as is likely to cause death.—PRO., Nov. 5, 1872, 7 Mad. H. C. R. Ap. 11.

*UNDER s. 454 of the Criminal Procedure* Code, 1872, the collective punishment awarded under ss. 147, 148, and 324 of the Penal Code, must not exceed that which may be awarded for the graver offence.—IN THE MATTER OF JUBDAR KAZI; EMPRESS *v.* JUBDAR KAZI, I. L. R., 6 Cal. 718. [Mitter and Maclean, JJ. Feb. 18, 1881.]

THE offences of rioting armed with a deadly weapon and voluntarily causing hurt with a dangerous weapon to two persons are distinct offences, and a person charged with such offences can be convicted and sentenced in respect of the rioting and of the hurt caused to each of the persons injured. A and B were charged with rioting armed with deadly weapons under s. 148 of the Penal Code, and they were also charged, under s. 324 coupled with s. 149, with causing hurt by a dangerous weapon to X, and B was further charged under s. 324 with causing a like hurt to Y, A being also charged, under s. 324, coupled with s. 149, in respect of the hurt caused by B to Y. A and B were convicted on all charges, and separate sentences, to take effect in succession, were awarded in respect of each offence charged. The offences under s. 324 were committed during the riot. *Held* that the several acts, with regard to which the prisoners were charged, did not fall within the provisions of s. 71 of the Penal Code, inasmuch as it was not found that the causing of the hurt was the force or violence which alone constituted the rioting, and that consequently, under s. 235 of the Criminal Procedure Code, the several sentences passed were strictly legal. —LOKE NATH SIRCAR *v.* QUEEN-EMPRESS, I. L. R., 11 Cal. 340. [Tottenham and Ghose, JJ. Mar. 6, 1885.] Overruled by *Nilmoney Poddar v. Queen-Empress*, I. L. R., 16 Cal. 442, *infra*.

FOUR persons were charged with being members of an unlawful assembly consisting of themselves and others, the common object of which assembly was resisting the execution of a legal process, namely, the arrest of a judgment-debtor by a Civil Court peon, who went with a warrant for his arrest, accompanied by other persons, A and B, for the purpose of identifying him, and with using force or violence in prosecution of the common object, such force or violence consisting of an assault on the Civil Court peon and another by means of a dangerous weapon on A. The Deputy Magistrate convicted all the accused of offences under ss. 147 and 353 of the Penal Code, and sentenced them to six months' rigorous imprisonment under the former section, and two months' rigorous imprisonment under the latter. He further convicted one of the accused of an offence under s. 324 in respect of the assault on A, and sentenced him to one month's rigorous imprisonment in respect of that offence, and directed that the sentences were to take effect one on expiry of the other. *Held* that the offence of rioting was completed by the assault on A, and that the assault on the peon was a further offence under the first sub-section of s. 235 of the Code of Criminal Procedure. *Held*, further, that, even if A had not been assaulted, the conviction and sentences passed for rioting and the assault on the peon

were legal, inasmuch as the acts of the accused, taken separately, constituted offences under ss. 143 and 353 of the Penal Code, and combined an offence under s. 147; and, under s. 235, sub-s. 3 of the Code of Criminal Procedure, the accused might be charged with, and tried at one trial for, the offence under s. 147, and those under ss. 143 and 353, and therefore also separately convicted and sentenced for each such offence, provided the punishment did not exceed the limit imposed by s. 71 of the Penal Code, as amended by s. 4 of Act VIII. of 1882, which limit had not been exceeded in the present case.—IN THE MATTER OF CHANDRA KANT BHATTACHARJEE v. QUEEN-EMPRESS, I. L. R., 12 Cal. 495. [Mitter and Beverley, JJ. Dec. 11, 1885.]

SEPARATE sentences passed upon persons for the offences of rioting and grievous hurt are not legal where it is found that such persons individually did not commit any act which amounted to voluntarily causing hurt, but were guilty of that offence under s. 149 of the Penal Code. *Empress* v. *Ram Partab* (I. L. R., 6 All. 121) approved. *Loke Nath Sirkar* v. *Queen-Empress* (I. L. R., 11 Cal. 349) overruled. — NILMONEY PODDAR v. QUEEN-EMPRESS, I. L. R., 16 Cal. 442. [Petheram, C.J., and Mitter, Prinsep, Wilson, and Tottenham, JJ. Mar. 21, 1889.]

**325.** Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Punishment for voluntarily causing grievous hurt.

Cr. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Not comp.

CHARGE.—That you, on or about the day of , at , voluntarily caused grievous hurt to , and thereby committed an offence punishable under s. 325 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court.]—*Crim. Pro. Code* (Act V. of 1898), Sch. V., Form XXVIII. (11.).

IN their 1st Report, the Indian Law Commissioners remark as follows: "An injury to the right hand may, in the case of a clerk, keep him from his work for 20 days, which, if it happened to the left hand, would be of no consequence. An injury to the foot may prevent one man from following his business in which walking is necessary, which, if it happened to another man in a sedentary employment, would not interrupt him at all. The proposed criterion is therefore unsatisfactory, but some criterion is necessary, and it is difficult to devise a better."

IN their 1st Report, the Indian Law Commissioners also remark as follows: "We agree with Mr. Bacon in what we conceive to be his meaning as to the duty of the Judge—that is to say, that he is not to trouble himself with seeking for direct proof of what the offender thought was likely to happen, but is to learn it from the nature of his act, taking him to have intended grievous hurt, or at least to have contemplated it as likely to occur, where he did what everybody knows is likely to cause grievous hurt, and the more certainly drawing his conclusion, when there is evidence of previous enmity against the party who has suffered. If the act was such that nothing more than simple hurt could reasonably be thought likely to ensue from it, then, although grievous hurt may unexpectedly have ensued, it would be his duty to convict the offender of simple hurt only under cl. 323, judging that grievous hurt was not in contemplation; for, according to cl. 322, a person can be convicted of grievous hurt only when the result and the intention correspond, or when grievous hurt has been suffered from an act which was intended to cause grievous hurt, though it may be of a different kind."

THE offence of voluntarily causing grievous hurt is punishable by imprisonment, to which fine may be added; and not imprisonment or fine.—QUEEN v. MENAZOODIN, 2 W. R. 33. [Kemp and Glover, JJ. Feb. 6, 1864.]

A DISABILITY for 20 days constitutes grievous hurt. A disability for a fortnight is punishable for voluntarily causing hurt.—QUEEN v. BISHNOORAM SURMA, 1 W. R. 9. [Kemp and Glover, JJ. Aug. 30, 1864.]

THE offence of voluntarily causing grievous hurt is punishable, not by fine alone, but by imprisonment, the offender being also liable to fine.—QUEEN v. SHARODA PERHAGUR, 2 W. R 32. [Kemp and Glover, JJ. Feb. 3, 1865.]

WHEN there is neither intention, knowledge, nor likelihood, that the injury inflicted in an assault will, nor can, cause death, the offence is not culpable homicide not amounting to murder, but grievous hurt.—QUEEN v. MEGHA MEEAH *alias* JUCKON MEEAH, 2 W. R. 39. [Kemp and Glover, JJ. Mar. 8, 1865.]

IN cases of hurt or grievous hurt, the question should be considered as to who was the aggressor, and whether the offence was committed in the exercise of the right

of private defence.—QUEEN *v.* SOHUN, 2 W. R. 59. [Campbell and Jackson, JJ. April 10, 1865.]

HELD, by the majority of the Court (Seton-Karr, J., dissenting), that the offence of administering deleterious drugs, when life was not endangered, is punishable under s. 328, Penal Code, and not as for grievous hurt under s. 326.—QUEEN *v.* JOYGOPAL *alias* JUNGLEE, 4 W. R. 4. [Loch, Kemp, and Seton-Karr, JJ. Sep. 8, 1865.]

THE amount of punishment for cutting off a wife's nose for intriguing with another man depends on the time of the commission of the grievous hurt, whether at the instant, or long after, the husband found himself dishonoured.—QUEEN *v.* SULAMUT RUSSOOA, 4 W. R. 17. [Glover, J. Oct. 24, 1865.]

A SESSIONS JUDGE has no authority to interfere and direct a commitment in the case of a conviction for assault under s 352 or of hurt under s. 323 of the Penal Code, both of them being offences triable by the subordinate Court. When the result of a joint attack by several persons on one party is fracture of the arm of the party assaulted, the offence committed is grievous hurt, and not assault; and, as the attack was made in furtherance of a common object, all are equally guilty of the same offence.—QUEEN *v.* RAMTOHUL SINGH, 5 W R. 12. [Kemp and Glover, JJ. Jan. 16, 1866.]

WHERE bone-fractures have been caused in addition to other injuries, the offence committed is grievous hurt triable by a Court of Session, and not hurt cognizable by a Magistrate.—QUEEN *v.* RAMTOHUL SINGH, 5 W. R. 65. [Jackson and Glover JJ. April 4, 1866.]

THE prisoners having abetted an assault, and murder having been committed, *held*, under the peculiar circumstances of the case, that they were guilty of abetment of grievous hurt, and not abetment of murder.—QUEEN *v.* GOLUCK CHUNG, 5 W. R. 75. [Campbell and Macpherson, JJ April 28, 1866.]

WHERE, in a case of robbery attended with death, there was no intention of causing death or such bodily injury as was likely to cause death, the conviction was altered from *voluntarily causing hurt in committing robbery* to voluntarily causing grievous hurt in committing robbery.—QUEEN *v.* CHAKOR HAREE, 6 W. R. 16. [Kemp and Seton-Karr, JJ. June 30, 1866.]

WHERE A ordered B and C to seize and forcibly take D in the contemplation of an assault upon D, and D was so beaten and tortured as to have died in consequence, *held* that A was guilty at least of abetting the commission of voluntarily causing grievous hurt.—QUEEN *v.* DOORGESSUR SURNAH, 7 W. R. 61. [Hobhouse, J. April 30, 1867.]

To establish a charge of grievous hurt, it is not necessary to prove that the accused struck the complainant so severely as to endanger the latter's life.—QUEEN *v.* PURMANUND DEHULIA *alias* PURMESHUR, 18 W. R. 22. [Glover, J. June 25, 1872.]

THE High Court, in exercise of the powers conferred on it by s. 280 of the Code of Criminal Procedure (Act X. of 1872), altered the conviction in this case by the Sessions Judge from grievous hurt into one for murder, and enhanced the punishment accordingly.—QUEEN *v.* SUFFIRUDDI PALWAN, 22 W. R. 5; 13 B. L. R. Ap. 23. [Kemp and Birch, JJ. April 22, 1874.]

WHERE a prisoner was charged under ss. 304, 325, and 323 of the Penal Code, and the jury brought in a verdict of guilty under s. 325, *held* that he was not acquitted of grievous hurt, but found guilty of the offence described in s. 322 with the extenuating circumstances which would confine the punishment within the limits specified in s. 335.—QUEEN *v.* LUKHINARAIN AGOORI, 23 W. R. 61. [Jackson and McDonell, JJ. April 8, 1875.]

To make out the offence of voluntarily causing grievous hurt under s. 325, Penal Code, there must be some specific hurt voluntarily inflicted, and coming within some of the eight kinds enumerated in s. 320.—QUEEN *v.* BUDRI ROY, 23 W. R. 65 [Jackson and McDonell, JJ. April 23, 1875.]

AN accused struck a woman, carrying an infant in her arms, violently over the head and shoulders One of the blows fell on the child's head, causing death. *Held* that the accused had committed hurt on the infant under circumstances of sufficient aggravation to bring the offence within the definition of grievous hurt.—*In re* EMPRESS *v.* SAHAE RAE, I. L. R., 3 Cal. 623; 2 C. L. R. 30. [Markby and Prinsep, JJ. April 18, 1878.]

B VOLUNTARILY caused hurt to N, who was suffering from spleen-disease, knowing himself to be likely to cause grievous hurt, but without the intention of causing death, or causing such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, and caused grievous hurt to N, from which N died. *Held* that B ought not to be convicted, under s. 304A of the Penal Code, of causing death by negligence, but, under s. 325 of that Code, of voluntarily causing grievous hurt.—EMPRESS *v.* O'BRIEN, I. L. R., 2 All. 766. [Stuart, C.J., and Spankie, J. *Mar. 6, 1880.*]

*Followed in Empress v. Idu Beg*, I. L. R., 3 All. 776, *infra*.

THE accused were charged, under s. 149 coupled with s. 325 of the Penal Code, with, while being members of an unlawful assembly, committing grievous hurt. The jury disbelieved the evidence as to the unlawful assembly, but unanimously found two of the accused guilty of grievous hurt under s. 325. *Held* that such verdict was, under s. 457 of the Code of Criminal Procedure, 1872, legally sustainable, although that offence did not form the subject of a separate charge. S. 457 enables a verdict to be given on some of the facts which are a component part of the original charge, provided that those facts constitute a minor offence. It is only in a case where the jury are not unanimous that a Court may require them to retire for further consideration. Where a verdict is unanimous, it must be received by the Judge, unless contrary to law. Where a Judge dissents from the unanimous finding of a jury given in accordance with the law, the only procedure open to him to follow is that laid down in the fifth clause of s. 263 of the Code of Criminal Procedure (Act X. of 1872).—GOVT. OF BENGAL v. MAHAMDI, I. L. R., 5 Cal. 871; 6 C. L. R. 349. [Morris and Prinsep, JJ. May 20, 1880.]

WHERE a person struck another a blow, which caused death without any intention of causing death, or of causing such bodily injury as was likely to cause death, or the knowledge that he was likely by such act to cause death, but with the intention of causing grievous hurt, *held* that the offence of which such person was guilty was not the offence of causing death by a rash act, but the offence of voluntarily causing grievous hurt. *Adamarti* v. *Nagabhushanam* (7 Mad. H. C. R. 119), *Queen* v. *Pemkoer* (5 N.-W. P. 38), *Queen* v. *Man* (5 N.-W. P. 235), *Empress* v. *Ketabdi Mundul* (I. L. R., 4 Cal. 764), *Empress* v. *Fox* (I. L. R., 2 All. 522), *Empress* v. *O'Brien* (I. L. R., 2 All. 760) followed. The offences of murder, culpable homicide not amounting to murder, and causing death by a rash or negligent act, distinguished.—EMPRESS v. IDU BEG, I. L. R., 3 All. 776. [Straight, J. Aug. 12, 1881.]

A MEMBER of an unlawful assembly, some members of which have caused grievous hurt, cannot lawfully be punished for the offence of rioting as well as for the offence of causing grievous hurt.—EMPRESS v. RAM PARTAB, I. L. R., 6 All. 121. [Straight, J. Dec. 5, 1883.] Distinguished in *Queen-Empress* v. *Ram Sarup*, I. L. R., 7 All. 757, *infra*; and dissented from in *Queen-Empress* v. *Bisheshar*, I. L. R., 9 All. 645, *infra*.

THREE persons, who were convicted (*i*) of riot under s. 147 of the Penal Code, (*ii*) of causing grievous hurt in the course of such riot, were respectively sentenced to six months' rigorous imprisonment under s. 147, and three months' rigorous imprisonment under s. 325. *Held* by Petheram, C.J., and Straight and Tyrrell, JJ., that, inasmuch as the evidence upon the record showed that the three prisoners had committed individual acts of violence with their own hands which constituted distinct offences of causing grievous hurt or hurt separate from, and independent of, the offence of riot, which was already completed, and the fact of the riot was not an essential portion of the evidence necessary to establish their legal responsibility under s. 325 of the Penal Code, the separate sentences passed under ss. 147 and 325 were not illegal. *Queen-Empress* v. *Ram Partab* (I. L. R., 6 All. 121) distinguished. *Per* Brodhurst, J., that the evidence showed that only one of the three prisoners had caused grievous hurt with his own hands, and that the others could only be properly convicted of that offence under the provisions of s. 149 of the Penal Code, but that the separate sentences passed under ss. 147 and 325 were not illegal. *Queen-Empress* v. *Dungar Singh* (I. L. R., 7 All. 29) followed. Also *per* Brodhurst, J.—Ill. *g* of s. 235 of the Criminal Procedure Code does not apply merely to the case of persons who in addition to the offence of rioting have, with their own hands, committed the further offences of voluntarily causing grievous hurt, and of assaulting a public servant when engaged in suppressing a riot, and the convictions referred to in the illustration relate specially to convictions obtained under the provisions of s. 149 of the Penal Code.—QUEEN-EMPRESS v. RAM SARUP, I. L. R., 7 All. 757. [Petheram, C.J., and Straight, Brodhurst, and Tyrrell, JJ. May 12, 1885.] Referred to in *Queen-Empress* v. *Bisheshar*, I. L. R., 9 All. 645, *infra*; and approved in *Queen-Empress* v. *Bana Punja*, I. L. R., 17 Bom. 260, *infra*, under s. 326.

S. 149 of the Penal Code creates no offence, but was intended to make it clear that an accused person whose case falls within its terms cannot put forward the defence that he did not with his own hand commit the offence committed in prosecution of the common object of the unlawful assembly, or such as the members of the assembly knew to be likely to be committed in prosecution of that object. In prosecution of the common object of an unlawful assembly, M, with his own hand, caused grievous hurt. M and other members of the assembly, as to whom it did not appear whether or not any of

them personally used force or violence, were convicted of rioting under s. 147 and grievous hurt under s. 325 of the Penal Code, and were each sentenced to separate terms of imprisonment for each offence. The highest aggregate punishment, which was M's, was six years' rigorous imprisonment, being one year for rioting and five years for causing grievous hurt. *Held* that, assuming s. 71 of the Penal Code to be applicable, the sentences were not illegal, as the combined periods of imprisonment did not, in the case of any prisoner, exceed the maximum punishment of seven years' rigorous imprisonment which could have been awarded for the offence punishable under s. 325. *Held* also that the riot could not in any of the cases be considered a part of the offence under s. 325, that s. 71 did not apply, and that the sentences were legal *Queen-Empress* v. *Ram Partab* (I. L. R., 6 All. 121) dissented from. *Queen-Empress* v. *Dungar Sing* (I. L. R., 7 All. 29), *Queen-Empress* v. *Ram Sarup* (I. L. R., 7 All. 757), *Queen* v. *Rubbee-oollah* (7 W. R. 13), *Luke Nath Sarkar* v. *Queen-Empress* (I. L. R., 11 Cal. 349), *Queen-Empress* v. *Pershad* (I. L. R., 7 All. 414), *Chandra Kant Bhattacharjee* v. *Queen-Empress* (I. L. R., 12 Cal. 498), and *Reg.* v. *Tukaya bin Tamana* (I. L. R., 1 Bom. 214), referred to.—QUEEN-EMPRESS v. BISHESHAR, I. L. R., 9 All. 645. [Edge, C.J., and Brodhurst, J. May 16, 1887.]

THE accused were charged before a Magistrate of the second class with causing grievous hurt as members of an unlawful assembly under ss. 149 and 325 of the Penal Code. The evidence showed that one of the accused had used an axe in causing the hurt. The Magistrate apparently ignored this fact, and he convicted the accused under s. 325 of the Code. The accused appealed The District Magistrate who heard one appeal, and the First-class Magistrate who heard the rest of the appeals, were both of opinion that the offence committed by the accused was one of causing grievous hurt with a dangerous weapon within the meaning of s. 326 of the Penal Code, and as such beyond the jurisdiction of the Second-class Magistrate. But they did not think it proper, under the circumstances of the case, to quash the convictions. The Sessions Judge, on examining the record of the case, was of opinion that, as the offence committed by the accused was not cognizable by the trying Magistrate, his proceedings were void *ab initio* under s 530 of the Criminal Procedure Code. He, therefore, referred the case to the High Court, and recommended that the convictions under s. 325 should be set aside. *Held* that the proceedings before the Second-class Magistrate were not void *ab initio*, as he had jurisdiction to try the accused for offences punishable under ss. 149 and 325 of the Penal Code, with which they were originally charged. *Held*, also, that, though it was the duty of the trying Magistrate, when the evidence disclosed a circumstance of aggravation, such as the use of a dangerous weapon, which made the offence cognizable by a higher Court, to adopt the proper procedure to send the case to the higher Court, still it was not necessary to quash the proceedings, as the accused were not in any way prejudiced, and the sentences were not inadequate.—QUEEN-EMPRESS *v.* GUNDYA, I. L. R., 13 Bom. 502. [Jardine and Candy, JJ. Jan. 28, 1889.]

SIX accused persons were charged with and convicted of rioting, the common object of which was causing hurt to two particular men. Four of the accused were also charged with, and convicted of, respectively, causing hurt during the riot to the two men and a woman, and were sentenced to separate terms of imprisonment under ss. 147 and 323 of the Penal Code. *Held* that the sentences were legal. During the course of a riot, in which X was attacked and beaten by several of the rioters, one of them, K, inflicted grievous hurt on X by breaking his rib with a blow struck with a *lathi*; K and three others of the rioters were charged with offences under ss. 147 and 325 of the Penal Code, and K was convicted under those sections. The other three were convicted under s. 147, and also under s. 325 read with s. 109. Separate sentences were passed on K and also on the other three for each of the offences. *Held* that the sentences on K were legal, but that, as there was nothing to show that the other three had abetted the particular blow which caused the grievous hurt, although they had each of them assaulted X, the conviction of them, under s. 325 read with s. 109, could not be supported.—IN THE MATTER OF MOHUR MIR v. THE QUEEN-EMPRESS AND IN THE MATTER OF KALI ROY v. THE QUEEN-EMPRESS, I. L. R., 16 Cal. 725. [Trevelyan and Beverley, JJ. June 12, 1889.]

THE prisoner, a fully-developed adult man, was charged with causing the death of his wife, a girl aged about 11 years and 3 months, who had not attained puberty. The death was caused by hæmorrhage from a rupture of the vagina caused by the prisoner having sexual intercourse with the girl For the defence, it was alleged that he had had sexual intercourse with the girl on several previous occasions without injury to her, and there were circumstances in the case which showed that this was possible, and even not improbable, though the medical evidence was to the effect that, if such intercourse had

previously taken place, the penetration was probably not so complete or with so much sexual vigour as on the occasion when the injury was caused. The medical evidence was further to the effect that the girl had not attained puberty, and was immature and wholly unfit for sexual intercourse: that, under such circumstances, sexual intercourse between the prisoner and the girl was likely to be dangerous to her, and to cause injuries more or less serious according to the degree of penetration effected. The prisoner was charged with (*a*) culpable homicide not amounting to murder under s. 304 of the Penal Code; (*b*) causing death by doing a rash and negligent act under s 304A; (*c*) voluntarily causing grievous hurt under s 325; and (*d*) causing grievous hurt by doing an act so rashly or negligently as to endanger human life or the personal safety of others under s 338. *Held* that, in such a case, when the girl is a wife and above the age of 10 years, and when therefore the law of rape does not apply, it by no means follows that the law regards the wife as a thing made over to be the absolute property of her husband or as a person outside the protection of the criminal law, that no hard-and-fast rule can be laid down that sexual intercourse with a girl under a certain age must be regarded as dangerous and punishable, or over that age as safe and right, but that each case must be judged according to its own individual circumstances; that in such a case the jury have to consider and say whether, under the particular circumstances of the case, having regard to the physical condition of the girl, and to the intention, the knowledge, the degree of rashness or negligence with which the accused is shown to have acted on the occasion in question, he has brought himself within any of the provisions of the criminal law. *Held*, further, that, if the jury were of opinion (*a*) that the act of the prisoner caused the death of the girl, that is to say, that the act of cohabitation on the part of the prisoner had the effect of rupturing the vagina, and so causing the hæmorrhage which led to her death; (*b*) that the act of cohabitation between a fully-developed man like the prisoner and an immature girl like his wife was itself a thing likely to lead to dangerous consequences; (*c*) that that act was one of such a character as to indicate a reckless indifference to the welfare of the girl or a want of reasonable consideration about what the prisoner was doing, one which the husband of the girl, if he had had a reasonable regard to her welfare, and had exercised reasonable thought as to the act he contemplated doing, would have abstained from doing, they would be justified in finding that the prisoner caused the death of the girl by a rash and negligent act. Under no system of law with which Courts have to do in this country, whether Hindu or Mahomedan, or that framed under British rule, has it ever been the law that a husband has the absolute right to enjoy the person of his wife without regard to the question of safety to her.—QUEEN-EMPRESS *v.* HURREE HOHUN MYTHEE, I. L. R., 18 Cal. 49. [Wilson, J. July 25, 26, 1890.]

AN accused in a trial by jury is entitled to the verdict of the jury on questions of fact, and where a verdict is vitiated owing to misdirection by the Judge, the Appeal Court has no option but to set aside the verdict and direct a re-trial. Were the Appeal Court to go into the facts in such a case, it would be substituting the decision of the Judges of that Court for the verdict of the jury, who have the opportunity of seeing the demeanour of the witnesses, and weighing the evidence with the assistance which this affords, whereas the Judges of the Appeal Court can only arrive at a decision on the perusal of the evidence. *Makin* v. *Attorney-General of New South Wales*, L. R. (1894), A. C. 57, referred to. S. 537 of the Code of Criminal Procedure does not warrant an Appeal Court, in a case where there has been misdirection in a charge to a jury, going into the evidence with a view to decide whether there is sufficient evidence to justify a conviction. Under s. 418 an appeal in a case tried by a jury lies on matters of law only, and the Appeal Court has no power to try the accused on matters of fact. The word "erroneous" in cl. (*d*) of s. 423 must not be read as "wrong on the facts," but must be read in connection with the words that follow as meaning that the verdict has been vitiated and rendered bad or defective by reason of a misdirection or a misunderstanding of the law. Fourteen accused were charged with rioting armed with deadly weapons, and with murder and causing grievous hurt during such riot. The common object alleged by the prosecution was to compel the payment of certain money by one of the persons of the opposite party. Some of the accused who admitted their presence at the scene of the occurrence, stated that they had been attacked on account of an allegation being made that one of the opposite party had enticed away another's wife, and that they had merely acted in self-defence. The case was tried before a jury, and on the close of the case for the prosecution, the Sessions Judge, considering that possibly the common object alleged by the prosecution might be considered not to have been proved, amended the charge, and added an alternative common object to it, *viz.*, that the object of the assembly was to punish one of the opposite party for enticing away another's wife. There was no evidence on the record to prove

ply.—In the Matter of Jothe Ghorahe, 1 W. R. 7. [Kemp and Glover, JJ. Aug. 18, 1864.]

The offence of administering deleterious drugs, when life was not endangered, is punishable under s. 328, Penal Code, and not as for grievous hurt under s. 326.—Queen v. Joygopal *alias* Junglee, 4 W. R. 4. [Kemp and Seton-Karr, JJ. Sep. 8, 1865.]

Held that a person who placed in his toddy-pots juice of the milk-bush, knowing that, if taken by a human being, it would cause injury, and with the intention of thereby detecting an unknown thief who was in the habit of stealing the toddy from such pots, and which toddy was drunk by, and caused injury to, certain soldiers who purchased it from an unknown vendor, was rightly convicted, under s. 328 of the Penal Code, of "causing to be taken an unwholesome thing with intent to cause injury," and that s. 81, which says that, "if an act be done without any criminal intention to cause harm, it is not an offence," did not apply to the case.—Reg. v. Dhania Daji, 5 Bom. H. C. R. 59. [Newton and Tucker, JJ. July 23, 1868.]

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.

**329.*** Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal, or which may facilitate the commission of an offence, shall be punished with transportation for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

In this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

Ct. of Ses. Cognizable. Warrant. Bailable. Not comp.

Voluntarily causing hurt to extort confession, or to compel restoration of property.

**330.*** Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore, or to cause the restoration of, any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

*Illustrations.*

(*a*.) A, a police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

(*b*.) A, a police-officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

(*c*.) A, a revenue-officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.

(*d*.) A, a zemindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section.

In this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

To bring a case under s. 330 of the Penal Code it must be proved that the hurt to the complainant was caused with intent to extort a confession of *some offence or misconduct*

* In ss. 329 and 330, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

*punishable under the Penal Code.* That section, therefore, does not apply to a case where the confession extorted had reference to a charge of witchcraft.—QUEEN *v.* BABOO MOONDU, 13 W. R. 23. [Kemp and Jackson, JJ. Feb. 12, 1870.]

A CHARGE may be made under s. 330 of causing hurt for the purpose of extorting information which might lead to the detection of an offence, even if the supposed offence has not been committed. The offence which that section intended to describe is that of inducing a person by hurt to make a statement or a confession, having reference to an offence or misconduct; and whether that offence or misconduct has been committed is wholly immaterial.—QUEEN *v.* NIM CHAND MOOKERJEE, 20 W. R. 41. [Markby and Birch, JJ. June 27, 1873.]

E B, in order to constrain his wife to satisfy his demand that she should return to his house, voluntarily caused hurt to her. He was convicted under s. 330 of the Penal Code. *Held*, on appeal, that the conviction under that section was bad.—QUEEN-EMPRESS *v.* ELLA BOYAN, I. L. R., 11 Mad., 257. [Kernan and Brandt JJ. Aug. 9, 1887.]

A POLICEMAN who stands by, acquiescing in an assault on a prisoner committed by another policeman for the purpose of extorting a confession, is guilty of abetment of an offence under s. 330 of the Indian Penal Code. Nothing but fear of instant death is a defence for a policeman who tortures any one by order of a superior. The maxim *respondeat superior* has no application in such a case. Under the Bombay Police Act (Bom. Act IV. of 1890) every police-officer is bound to shelter a person in custody, and to arrest persons committing assaults likely to cause grievous bodily injury. If he omits to perform this duty, he is guilty of abetment. When the law imposes a duty to act on a person, his illegal omission to act renders him liable to punishment.—QUEEN-EMPRESS *v.* LATIFKHAN, I. L. R., 20 Bom. 394. [Jardine and Ranade, JJ. Mar. 12, 1895.]

**331.*** Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore, or to cause the restoration of, any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

*Voluntarily causing grievous hurt to extort confession, or to compel restoration of property.*

IN this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

**332.** Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Bailable. Not comp.

*Voluntarily causing hurt to deter public servant from his duty.*

EIGHT persons, who were charged with a number of others, were tried on various charges consisting of rioting armed with deadly weapons (s. 148, Penal Code), assaulting or obstructing a public servant when suppressing a riot (s. 152), and voluntarily causing hurt and grievous hurt to deter a public servant from his duty (ss. 332 and 333). The common object set out in the charge was "to resist the execution of a decree obtained by Suresh Chunder Deb against Shaik Ali Yar in the Court of the Second Subordinate Judge of Alipore, dated 30th April 1891, and also by means of criminal force, or show of crimi-

* In s. 331 the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

nal force, to overawe the members of the police-force in the execution of their lawful powers as police-officers," and it was held that resistance to the police was one of the component parts of the offence of rioting charged. At the trial in the Court of Session all eight accused were convicted of the offence charged under s. 148, and each was sentenced to the maximum punishment allowed under that section, *viz.*, three years' rigorous imprisonment. Seven out of the eight were convicted of offences under s. 152, and sentenced each to an additional term of two years' rigorous imprisonment for those offences. Two out of the seven accused were further convicted of offences under s. 332 of the Penal Code, the hurt therein charged being caused to police-officers engaged in suppressing the riot, and each sentenced to a further additional term of two years' rigorous imprisonment for that offence. The eighth accused who was not convicted of an offence under s. 152 was convicted of an offence under s. 333, the grievous hurt being similarly caused to a police-officer, and for that offence was sentenced to five years' rigorous imprisonment in addition to the sentence of three years passed on him under s. 148. It was contended on appeal—(1) that the sentences passed under s. 152 in addition to those under s. 148 were illegal; (2) that separate sentences under s. 152 and ss. 332 and 333 were illegal; (3) that the cumulative sentences under s. 148 and ss. 332 and 333 were illegal in so far as they exceeded the maximum sentence provided for either of the offences. *Held, as regards* (1), that, as resistance to the police was one of the component parts of the offence of rioting of which the accused were convicted and sentenced to the maximum punishment provided by s. 148, and having regard to the provisions of s. 71, the additional sentences under s. 152 were illegal. *Held*, further, that s. 152 contemplates an assault or obstruction to some particular public servant; and that, as the charge against the accused as framed was merely to the effect that they assaulted and obstructed *members of the police force* in the discharge of their duties, &c., the conviction under that section could not be upheld. *Held, as regards* (2), that separate sentences under s. 152 and ss. 332 and 333 were illegal, as the hurt inflicted on the police-officers was the violence used towards them which constituted the essence of the offence under s. 152. *Held, as regards* (3), that the separate sentences passed under s. 148 and ss. 332 and 333 were not illegal, there being nothing in s. 71 of the Penal Code which limits the amount of punishment that may be imposed for these offences.—FERASAT *v.* QUEEN-EMPRESS, I. L. R., 19 Cal. 105. [Beverley and Ameer Ali, JJ. Nov. 9, 1891.]

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

**333.** Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing grievous hurt to deter public servant from his duty.

Any Mag. Uncog. Summons. Bailable. Comp.

**334.** Whoever voluntarily causes hurt on grave and sudden provocation,* if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Voluntarily causing hurt on provocation.

CAUSING hurt on grave and sudden provocation to the person giving the provocation is chargeable as an offence under s. 334, and not under s. 324, of the Penal Code.—REG. *v.* BHALA CHULA, 1 Bom. H. C. R. 17. [Sausse, C.J., and Forbes and Tucker, JJ. July 29, 1863.]

Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Comp. when permission is given by Court before which prosecution is pending.

**335.** Whoever "voluntarily"† causes grievous hurt on grave and sudden provocation,‡ if he neither intends nor knows himself to be likely to cause grievous hurt to any person

Voluntarily causing grievous hurt on provocation.

* As to provocation, see explanation to s. 335, *infra*.

† In s. 335, the word quoted has been inserted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 8.

‡ As to provocation in s. 335, see explanation to it next following.

other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

*Explanation.*—The last two sections are subject to the same provisos as exception 1, section 300.

A PERSON who, by a single blow with a deadly weapon, kills another entering at dead of night into a dark room, where he and his wife were sleeping separately for the purpose of having criminal intercourse with her, *held* guilty of causing grievous hurt on grave and sudden provocation.—QUEEN *v.* CHULLUNDER PORAMANICK, 3 W. R. 55. [Kemp and Seton-Karr, JJ. July 26, 1865.]

THE amount of punishment for cutting off a wife's nose for intriguing with another man depends on the time of the commission of the grievous hurt, whether, at the instant or long after, the husband found himself dishonoured.—QUEEN *v.* SULAMUT RUSSOOA, 4 W. R. 17. [Glover, J. Oct. 24, 1865.]

CAUSING grievous hurt on grave and sudden provocation is punishable under s. 335 of the Penal Code without any intention or knowledge of likelihood of causing such hurt. —QUEEN *v.* UMBICA TANTINEE, 4 W. R. 21. [Loch and Glover, JJ. Nov. 7, 1865.]

WHERE a prisoner was charged under the Penal Code, ss. 304, 325, and 323, and the jury brought in a verdict of guilty under s. 325, *held* that he was not acquitted of grievous hurt, but found guilty of the offence described in s 322, with the extenuating circumstances which would confine the punishment within the limits specified in s. 335.—QUEEN *v.* LUKHINARAIN AGOORI, 23 W. R 61. [Jackson and McDonell, JJ. April 8, 1875.]

**336.** Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

Act endangering life or personal safety of others.

Any Mag. Cognizable. Summons. Bailable. Not comp.

BOATMEN, who ply an unseaworthy vessel, whereby the lives of passengers for hire are endangered, should be charged under s. 282, and not under s. 336.—REG. *v* KHODA JAGTA, 1 Bom. H. C. R. 137. [Forbes and Couch, JJ. Jan. 8, 1864.]

**337.** Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life or the personal safety of others shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Causing hurt by act endangering life or personal safety of others.

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Comp. when permission is given by Court before which prosecution is pending.

S. 304A of the Penal Code does not apply to a case in which there has been the voluntary commission of an offence against the person. If a man intentionally commits such an offence, and consequences beyond his immediate purpose result, it is for the Court to determine how far he can be held to have the knowledge that he was likely by such act to cause the actual result; and, if such knowledge can be imputed, the result is not to be attributed to mere rashness. If it cannot be imputed, still the wilful offence does not take the character of rashness, because its consequences have been unfortunate. Acts, probably or possibly involving danger to others, but which in themselves are not offences may be offences under s. 336, 337, 338, or 304A if done without due care to guard against dangerous consequences. Acts, which are offences in themselves, must be judged with regard to the knowledge, or means of knowledge, of the offender, and placed in their appropriate place in the class of offences of the same character.—EMPRESS *v.* KETABDI MUNDUL, I L. R., 4 Cal. 764; 2 C L R. 507. [Ainslie and Broughton, JJ. Feb. 26, 1879.]

**338.** Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life or the personal safety of others shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Causing grievous hurt by act endangering life or personal safety of others.

Ditto.

DEFENDANT was convicted under s. 338 of the Penal Code of causing grievous hurt. The evidence showed that the defendant was being driven in a carriage to her house through the streets of the town between the hours of 7 and 8 P.M.; that the carriage was being driven at an ordinary pace and in the middle of the road; that the night was dark and the carriage without lamps, but that the horse-keeper and coachman were shouting out to warn foot-passengers; that the defendant's carriage came into contact with the complainant's father, an old deaf man; and that complainant's father was thereupon knocked down, run over, and killed. *Held*, upon a reference, that the question for the Court was, whether there was any evidence that the death of the deceased was induced by an act negligently and rashly directed by the accused, and that there was no such evidence. The conviction was accordingly quashed.—PRO, Aug. 17, 1871, 6 Mad. H. C. R. Ap. 31.

S. 304A of the Penal Code does not apply to a case in which there has been the voluntary commission of an offence against the person. If a man intentionally commits such an offence, and consequences beyond his immediate purpose result, it is for the Court to determine how far he can be held to have the knowledge that he was likely by such act to cause the actual result; and, if such knowledge can be imputed, the result is not to be attributed to mere rashness. If it cannot be imputed, still the wilful offence does not take the character of rashness, because the consequences have been unfortunate. Acts, probably or possibly involving danger to others, but which in themselves are not offences, may be offences under s. 336, 337, 338, or 304A if done without due care to guard against dangerous consequences. Acts, which are offences in themselves, must be judged with regard to the knowledge, or means of knowledge, of the offender, and placed in their appropriate place in the class of offences of the same character.—EMPRESS *v.* KETABDI MUNDUL, I. L. R., 4 Cal. 764; 2 C. L. R. 507. [Ainslie and Broughton, JJ. Feb. 26, 1879.] See the case of *Queen-Empress* v. *Hurree Mohun Mythee*, I. L. R., 18 Cal. 49.

## OF WRONGFUL RESTRAINT AND WRONGFUL CONFINEMENT.*

### REPORT OF THE INDIAN LAW COMMISSIONERS ON WRONGFUL RESTRAINT AND WRONGFUL CONFINEMENT.

BY wrongful restraint we mean the keeping a man out of a place where he wishes to be, and has a right to be. Wrongful confinement, which is a form of wrongful restraint, is the keeping a man within limits out of which he wishes to go, and has a right to go.

The offence of wrongful restraint, when it does not amount to wrongful confinement, and when it is not accompanied with violence, or with the causing of bodily hurt, is seldom a serious offence, and we propose, therefore, to visit it with a light punishment.

The offence of wrongful confinement may be also a slight offence. But, when attended by aggravating circumstances, it may be one of the most serious that can be committed.

One aggravating circumstance is the duration of the confinement. Confinement for a quarter of an hour may sometimes be a mere frolic, which would deserve only a nominal punishment, which, indeed, might be so harmless as not to amount to an offence. But wrongful confinement continued during many days will always be a most serious offence. We have attempted to frame the law on this subject in such a manner as to give the offender a strong motive for abridging the detention of his prisoner. Another aggravating circumstance is the circumstance that the offender persists in wrongfully confining a person notwithstanding an order issued by a competent authority for the liberation or production of that person. The mode in which these orders are to be issued will be set forth in the Code of Procedure. A third aggravating circumstance is the circumstance that the offender uses criminal confinement for purposes of extortion. For all these aggravated forms of wrongful confinement, we have provided severe punishment.

We have also provided a separate punishment for a person who, while detaining another in wrongful confinement, omits to supply his prisoner with every thing necessary to health, ease, and comfort. The effect of this provision is that a person who wrongfully confines another will be answerable for any bodily hurt which he may cause by wrongfully omitting so to supply his prisoner.

* As to the application of ss. 347 and 348 to offences under special or local laws, see s. 40, *supra*.

**339.** Whoever voluntarily obstructs any person, so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Wrongful restraint.

*Exception.*—The obstruction of a private way over land or water, which a person, in good faith, believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

*Illustration.*

**A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.**

WHERE a police-officer refused to let a person go home until he had given bail, he was held to have been guilty of wrongful restraint under s. 339 of the Penal Code.—SHEO SARUN SAHAI *v.* MAHOMED FAZIL KHAN, 10 W. R. 20. [Loch and Glover, JJ. July 17, 1868.]

MALICE is not an essential ingredient in the offence of "wrongful confinement" as defined by s. 340 of the Penal Code. The offence is complete when a person is wrongfully restrained in such a manner as to be prevented from proceeding beyond certain circumscribing limits. And a person is wrongfully restrained when he is voluntarily obstructed so as to be prevented from proceeding in any direction in which he has a right to proceed. The accused, as abkari-inspector, visited a toddy-shop where the complainant and one Dhanjibhai were employed as agents for the sale of toddy. Having reason to suspect that an offence under the Abkari Act (Bom. Act V. of 1878) had been committed, the accused made an inquiry, in the course of which the complainant made certain statements implicating his fellow-servant. The accused thereupon resolved to prosecute Dhanjibhai, and make the complainant a witness in the case. In order to prevent him being tutored, the accused ordered his sepoy to bring the complainant to his camp, and there detained him during the night, and, on the following morning, sent him in charge of a sepoy to a Magistrate's Court, where the complainant repeated the statements made by him before the accused. He was then allowed to go away. The accused prosecuted Dhanjibhai, and, in the course of his trial, admitted in his deposition that he had ordered his sepoy to bring the complainant to his camp, and had detained him there during the night. After the termination of Dhanjibhai's trial, the complainant charged the accused with wrongful confinement under s. 342 of the Penal Code. The accused pleaded that the complainant had voluntarily come to his tent to have his statements reduced to writing, and that he had, of his own accord, stopped in his camp during the night. The trying Magistrate held this plea proved, and discharged the accused under s. 253 of the Code of Criminal Procedure (Act X. of 1882). The Sessions Judge held that, though the accused had detained the complainant in his camp during the night, still he was not guilty of any offence under the Penal Code, as he had acted without malice, and to the best of his judgment. He, therefore, declined to interfere, or order any further enquiry. *Held*, by the High Court on revision, that the trying Magistrate had wrongly omitted to take into consideration the admissions made by the accused in his deposition in Dhanjibhai's case. Those admissions had an important bearing on the present case. They were admissible in evidence against the accused, and, as they were left out of consideration, the inquiry was necessarily incomplete and imperfect. Further inquiry was, therefore, ordered. The mere circumstance that the accused had acted without malice, and to the best of his judgment, did not protect him, if his act otherwise satisfied the definition of s. 340 of the Penal Code.—DHANIA *v.* F. L. CLIFFORD, I. L. R., 13 Bom. 576. [Birdwood and Jardine, JJ. Nov. 19, 1888.]

**340.** Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits is said "wrongfully to confine" that person.

Wrongful confinement.

*Illustrations.*

**(*a*.) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.**

**(b.) A places men with fire-arms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.**

BY English law, to constitute the injury of false imprisonment, two points are requisite: (1) the detention of the person, and (2) the unlawfulness of such detention. Every confinement of the person is an imprisonment, whether it be in a common prison, or in a private house, or in the stocks, or even by forcibly detaining one in the public streets. Unlawful or false imprisonment consists in such confinement or detention without sufficient authority; false imprisonment also may arise by executing a lawful warrant or process at an unlawful time, as on a Sunday.—BLACK. COM., vol. 3, p. 136.

THE plaintiff, accused of a certain offence for which he was not arrestable without warrant, received a letter from the District Superintendent of Police, directing him to proceed to Russulkonda to present himself before a Magistrate. Two constables were directed to accompany him to prevent him from speaking to any one. They, in fact, accompanied him to the place. The High Court held that this amounted to wrongful confinement, and awarded Rs. 200 damages with costs to be paid by the District Superintendent of Police.—PARANKUSAM NARASAYA PANTULU *v.* CAPTAIN R. A. C. STUART, 2 Mad. H. C. R. 396. [Holloway and Innes, JJ. May 27, 1865.]

MALICE is not an essential ingredient in the offence of "wrongful confinement" as defined by s. 340 of the Penal Code. The offence is complete when a person is wrongfully restrained in such a manner as to be prevented from proceeding beyond certain circumscribing limits. And a person is wrongfully restrained when he is voluntarily obstructed so as to be prevented from proceeding in any direction in which he has a right to proceed. The accused, as abkari-inspector, visited a toddy-shop where the complainant and one Dhanjibhai were employed as agents for the sale of toddy. Having reason to suspect that an offence under the Abkari Act (Bom. Act V. of 1878) had been committed, the accused made an inquiry, in the course of which the complainant made certain statements implicating his fellow-servant. The accused thereupon resolved to prosecute Dhanjibhai, and make the complainant a witness in the case. In order to prevent him being tutored, the accused ordered his sepoy to bring the complainant to his camp, and there detained him during the night, and, on the following morning, sent him in charge of a sepoy to a Magistrate's Court, where the complainant repeated the statements made by him before the accused. He was then allowed to go away. The accused prosecuted Dhanjibhai, and, in the course of his trial, admitted in his deposition that he had ordered his sepoy to bring the complainant to his camp, and had detained him there during the night. After the termination of Dhanjibhai's trial, the complainant charged the accused with wrongful confinement under s. 342 of the Penal Code. The accused pleaded that the complainant had voluntarily come to his tent to have his statements reduced to writing, and that he had, of his own accord, stopped in his camp during the night. The trying Magistrate held this plea proved, and discharged the accused under s. 253 of the Code of Criminal Procedure (Act X. of 1882). The Sessions Judge held that, though the accused had detained the complainant in his camp during the night, still he was not guilty of any offence under the Penal Code, as he had acted without malice and to the best of his judgment. He, therefore, declined to interfere, or order any further enquiry *Held* by the High Court on revision, that the trying Magistrate had wrongly omitted to take into consideration the admissions made by the accused in his deposition in Dhanjibhai's case. Those admissions had an important bearing on the present case. They were admissible in evidence against the accused, and, as they were left out of consideration, the inquiry was necessarily incomplete and imperfect. Further inquiry was, therefore, ordered. The mere circumstance that the accused had acted without malice, and to the best of his judgment, did not protect him, if his act otherwise satisfied the definition of s. 340 of the Penal Code.—DHANIA *v.* F. L. CLIFFORD, I. L. R., 13 Bom. 376. [Birdwood and Jardine, JJ. Nov. 19, 1888.]

Any Mag. Cognizable. Summons. Bailable. Comp.

Punishment for wrongful restraint.

**341.** Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

WHERE the accused prevented the complainants from proceeding in a certain direction with their carts, and exacted from them a sum of money on a false plea, *held* that the accused were guilty of wrongful restraint, and not of theft.—JOWAHIR SHAH *v.* GRI-

DHAREE CHOWDHRY, 10 W. R. 35. [Jackson and Hobhouse, JJ. Sep. 9, 1868.]

WHERE complainant had, for the purpose of removal, placed certain goods upon a cart, and accused came and unyoked the bullocks, and turned the goods off the cart on to the road, and complainant thereupon went away at once, leaving them there, *held* that, under these circumstances, a conviction under s. 341 of the Penal Code could not be sustained, but that there was such "mischief" as to bring the offence within s. 425. *Held*, also, that s. 425 does not necessarily contemplate damage of a destructive character. It requires merely that there should be an invasion of right, and diminution of the value of one's property, caused by that invasion of right, which must have been contemplated by the doer of it when he did it. —IN THE MATTER OF JUGGESWAR DASS; JUGGESWAR DASS *v.* KOYLASH CHUNDER CHATTERJEE, I. L. R., 12 Cal. 55. [Garth, C.J., and Prinsep, Wilson, Field, and O'Kinealy, JJ. Sep. 4, 1885.]

WHERE an accused person alleges that an offence with which he is charged has been compounded so as to take away the jurisdiction of the Criminal Courts to try it, the *onus* is on him to show that there was a composition valid in law. M, a European British subject, charged with the compoundable offences of wrongful restraint and wrongful confinement of coolies employed on a tea garden of which he was the manager, pleaded that the Magistrate had no jurisdiction to try the cases, as they had been compounded by the complainants. The alleged compromise consisted in a Bengali paper signed by the coolies, stating that they "made *rasinama*" (compromise) "of the case of their own accord," and a paper in English signed by M, these papers being given to the District Superintendent of Police, who had investigated the complaints, and who stated that he asked the coolies as to the contents of the Bengali paper, and they said that they had signed it voluntarily, and stated its purport; and that one of them said in the presence of the others that it was a *rasinama*. G, one of the coolies, also wrote on the paper the words in Uriya, "I will not carry on the case." The Bengali paper was written by the darogah of the police station in presence of M. The paper signed by M was as follows: "I hereby agree with these Ganjam people that there shall be no legal proceedings of any kind taken against them with the exception of those who have not completed their agreements. Those whose agreements have not been completed, proceedings will be taken against them on 22nd May, if they have not returned to the garden before then." Neither of the papers were explained to G, so as to make them intelligible to him; for, though the Bengali paper was read out, G did not understand that language. G was one of the coolies who had completed his agreement with M. *Held per* Prinsep, J.: The compounding of an offence signifies that the person against whom the offence has been committed has received some gratification to act as an inducement for his desiring to abstain from a prosecution; here there was no forbearance on the part of M to proceed against G, who had served out the term of his engagement, and, therefore, there was no consideration for the agreement to compound. Having regard, moreover, to the ignorance and inferior intelligence of G, it was of vital importance for M to show what led to the alleged agreement, and how it was that the darogah was instrumental to it, which he had not done. *Per* Trevelyan, J.: Compounding an offence supposes an arrangement by which the parties have settled their differences, and, in the more usual acceptation of the term, implies that the prosecutor has received some consideration or gratification for dropping the prosecution. Although the provisions of the Contract Act may not apply, the proof of the arrangement must be similar to that which the Court requires for the proof of any agreement which is in issue; and, unless it appears that the parties were free from influence of every kind, and were fully aware of their respective rights, it would be impossible to give effect to a so-called arrangement or composition. Having regard to the fact that the writer of the Bengali agreement had not been called, and that the contracting parties were, on the one side, ignorant coolies, strangers to the land, and to the language in which the document was written, and on the other a European of some education, assisted by his Bengali clerk, and having also the assistance of the police, it was not proved that G knew what he was about and was fairly contracting. *Held*, therefore, by the Court that there was, under the circumstances, no compounding of the offences with which M was charged valid in law such as to deprive the Magistrate of jurisdiction to try them.—MURRAY *v.* THE QUEEN-EMPRESS, I. L. R., 21 Cal. 103. [Prinsep and Trevelyan, JJ. June 28, 1893.]

**342.** Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

**Punishment for wrongful confinement.**

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Comp.

HELD by the majority of the Court (Kemp, J., dissenting) that the prisoners were rightly convicted of wrongful confinement of a woman, the facts of the case showing that she never went willingly to the house of the prisoners, and was not a willing inmate while she was there.—QUEEN *v.* AMEER DARAZ, 4 W. R. 3. [Kemp and Seton-Karr, JJ., Sep. 7, 1865.]

THE time during which a party is kept in wrongful confinement is immaterial, except with reference to the extent of punishment. In no case is a police-officer justified by s. 152, Code of Criminal Procedure (Act XXV. of 1861), in detaining a person for a single hour, except upon some reasonable ground justified by all the circumstances of the case. —QUEEN *v.* SUPROSUNNO GHOSAUI, 6 W. R. 88. [Kemp and Markby, JJ. Dec. 10, 1886.]

THE High Court declined to interfere with an order of a Deputy Magistrate discharging an accused without trial in a case under s. 342 of the Penal Code, because the complainant and his witnesses were not present.—SANTOO MUNDLE *v.* ABDOOL BISWAS, 13 W. R. 35; 7 B. L. R. 8n. [Loch and Hobhouse, JJ. Mar. 2, 1870.]

FOUR persons, two of them police-constables and two village-officers, were convicted of wrongful confinement and abetment thereof. The defendants, the village-officers, maliciously directed the arrest of certain persons for resisting the detention of certain pigs found trespassing. *Held* a good conviction. —PRO., June 13, 1873, 5 Mad H. C. R. Ap. 24.

IN a case of a police-officer charged under s. 342 of the Penal Code, where there was no malice, no intention of doing an act of the nature spoken of in s. 339 or 340, and no voluntary obstruction or restraint, though there was probably excessive and mistaken exercise of powers not civilly excusable in a police-officer, the facts were held not to amount to the criminal offence of wrongful restraint.—*IN THE MATTER OF* BUDROOL HOSSEIN, 24 W. R. 51. [Jackson and McDonell, JJ. Sep. 1, 1875.]

S. 54 of the Criminal Procedure Code (Act X. of 1882) authorizes the arrest by the police, not only of persons against whom a reasonable complaint has been made or a reasonable suspicion exists of their having been concerned in a "cognizable offence," but also of persons against whom "credible information" to that effect has been received. *Semble.*—Where the arrest is legal, there can be no guilty knowledge "superadded to an illegal act," such as it is necessary to establish against the accused to justify a conviction under s. 220 of the Penal Code. It is only where there has been an excess, by a police-officer, of his legal powers of arrest, that it becomes necessary to consider whether he has acted corruptly or maliciously, and with the knowledge that he was acting contrary to law.—QUEEN-EMPRESS *v.* AMARSANG JETHA, I. L. R., 10 Bom. 506. [Birdwood and Jardine, JJ. Dec. 7, 1885.]

ON the 29th December 1887 the accused, a police-constable, was on duty at a temporary post near the Arthur Crawford Market. His turn of duty lasted from 4 to 7 A.M. Between 6-30 and 7 A.M., he saw the complainant carrying under his arm three pieces of cloth. Suspecting that the cloth was stolen property, he went up to the complainant, and questioned him. In answer to one of the questions, the complainant stated that the cloth was made in England. The accused, noticing that each piece bore Gujarathi marks, and not knowing that such marks are placed on English-made goods, concluded that this statement was false, and that the cloth had been stolen. He took hold of one of the pieces of cloth in order to examine it more closely. The complainant objected to this, and there was a scuffle between them for the possession of the cloth. The accused then arrested the complainant, and took him to a European inspector, to whom he stated the facts, alleging that he had arrested the complainant, because he had assaulted him. The inspector, seeing that the complainant was an old man, and, on the accused saying he was not hurt, let the complainant go. The complainant then lodged a complaint before the Acting Chief Presidency Magistrate, charging the accused with wrongful restraint and wrongful confinement, offences punishable under ss. 341 and 342, respectively of the Penal Code (Act XLV. of 1860). The defence was that the complainant had assaulted the accused, and had been, on that account, arrested and kept in confinement until released by the inspector of police. The Magistrate found that there was no justification for the suspicion which the accused professed to entertain; that there were no reasonable grounds for questioning the complainant about the cloth in his possession; and that the scuffle was caused solely by the action of the accused in treating the complainant, without any valid reason, as a suspected thief. The Magistrate convicted the accused of wrongful confinement under s. 342 of the Penal Code (Act XLV. of 1860), and sentenced him to four months' rigorous imprisonment. *Held* by the High Court, that the conviction was wrong. The accused having, under the circumstances of the case, an honest suspicion that the cloth in the possession of the complainant was stolen property,

was justified in putting questions to the complainant, the answers to which might clear away his suspicions, and, having received answers which were not, in his opinion, satisfactory, he acted under a *bond-fide* belief that he was legally justified in detaining what he suspected to be stolen property. The putting of questions to the complainant, not for the purpose of causing annoyance or from idle curiosity, but in order to clear up his suspicions, was an indication of good faith, as defined in s. 52 of the Penal Code (Act XLV. of 1860). He was, therefore, protected by s. 79 of the Code. Even though the act of the accused in detaining the cloth might not have been strictly justifiable by law—that is, even though there might not have been a complete basis of fact to justify a reasonable suspicion that the cloth was stolen property—still the complainant had no right of private defence under s. 99 of the Code, as the accused was a public servant acting in good faith under colour of his office, and his act was not one which caused the apprehension of death or of grievous hurt. The complainant was not justified in refusing to allow the accused to inspect the cloth, in snatching it from his hands, and in scuffling with him. He was, therefore, legally arrested, under s. 54, cl. (5), of the Criminal Procedure Code (Act X. of 1882), for obstructing a police-officer while acting in the execution of his duty. *Held*, also, that the High Court will exercise its powers under ss 435 and 439 in the interests of justice in exceptional cases, as where the enquiry in the lower Court has been faulty. —BHAWOO JIVAJI *v.* MUTJI DAYAL, I. L. R., 12 Bom. 377. [Birdwood and Parsons, JJ. Mar. 22, 1888.]

S. 54 of the Criminal Procedure Code (Act X. of 1882) does not empower a police-officer to arrest, without a warrant, a British subject in British India on a charge of criminal breach of trust or other cognizable offence committed outside British India. Mukund was a native Indian subject of the Queen-Empress, residing at Belgaum. A complaint was filed against him in the Sangli State, charging him with committing breach of trust within the territories of that State. Thereupon he obtained an order from the District Magistrate of Belgaum, dated 15th November 1891, which exempted him from arrest for the offence of criminal breach of trust without a warrant issued by himself or by the Political Agent of the Southern Maratha Country. This order was communicated to Mukund through the accused, who was chief constable at Belgaum. On the 27th November 1891, a police-officer from the Sangli State came to Belgaum with a warrant issued by the Sangli Court for the arrest of Mukund on the charge of criminal breach of trust. The chief constable thereupon directed Mukund's arrest. Mukund brought to the notice of the chief constable the District Magistrate's order of the 15th November 1891, but he was detained in custody till the matter was reported to the First-class Magistrate, who ordered his discharge. In the meantime the complaint filed against Mukund in the Sangli State was dismissed without requiring his extradition. Mukund thereupon prosecuted the chief constable on a charge of wrongful arrest and wrongful confinement. *Held* that the chief constable had no power to arrest the complainant without a warrant, and that he was guilty of the offence of wrongful confinement under s 342 of the Penal Code.—*In re* MUKUND BABU VETHE, I. L. R., 19 Bom. 72. [Jardine and Ranade, JJ. Jan. 29, 1894.]

AFTER a charge has been drawn up the accused is entitled to have the witnesses for the prosecution recalled for the purposes of cross-examination; s. 256 of the Code of Criminal Procedure gives the Magistrate no discretion in the matter. After a charge has been drawn up, it is the duty of the Magistrate to require the accused to state whether he wishes to cross-examine, and, if so, which of the witnesses for the prosecution whose evidence has been taken. The fact that there has been already some cross-examination before the charge has been drawn up, does not affect this privilege. It is only after the accused has entered upon his defence that the Magistrate is given a discretion to refuse such an application, on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.—ZAMUNIA *v.* RAM TAHAL, I. L. R., 27 Cal. 370. [Prinsep and Stanley, JJ. Feb. 7, 1900.]

THE accused, a Sub-Inspector of Police, arrested one J, wrongfully confined him, and extorted from him Rs. 200 under a threat that he, the accused, would not release J, unless the money were paid. This money was paid on this account by P, a money-lender, who lent J the money for this purpose. Accused was convicted under ss. 342 and 384 of the Penal Code. In appeal the Sessions Judge held that P was not an accomplice, and, having considered his evidence, accordingly dismissed the appeal. *Held* that it was sufficiently shown that the money was not voluntarily given, that it was given by J to obtain his release from police custody, in which he was detained on no reasonable or sufficient ground, and it was extorted, because the Sub-Inspector refused to release J, as he was bound to do, unless he were paid that money. That P paying such money under such circumstances could not

be regarded as an accomplice of the Sub-Inspector in such misconduct. — AKHOY KUMAR CHUCKERBUTTY *v.* JAGAT CHUNDER CHUCKERBUTTY, I. L. R., 27 Cal. 925. [Prinsep and Handley, JJ. Mar. 29 and April 2, 1900.]

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Not comp.

**343.** Whoever wrongfully confines any person for three days or more shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Wrongful confinement for three or more days.

THE prisoners having been sentenced for abetment of abduction of a woman under ss. 109 and 498 of the Penal Code, and for wrongful confinement of her under s. 343, *held* that both sentences could not stand, and that, as the essence of the case was abduction, the prisoners, as abettors therein, should be punished for it alone.—QUEEN *v.* ISHWAR CHUNDER JOGI, W. R., Gap. 1864, 21. [Loch and Seton-Karr, JJ. April 12, 1864.]

Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Not comp.

**344.** Whoever wrongfully confines any person for ten days or more shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement for ten or more days.

FINE alone is not a legal sentence for a prisoner convicted under s 344 of the Penal Code.—REG. *v.* BAHIRJEE BIN KRISHNAJI, I Bom. H. C. R. 39. [Newton and Tucker, JJ. Aug. 12, 1863.]

THE accused induced the complainants, who, he alleged, were indebted to him in various sums of money, to consent to live on his premises, and to work off their debts. The complainants were to, and did in fact, receive no pay, but were fed by the accused as his servants. He insisted on their working for him, and punished them by beating them if they did not do so. The complainants in addition alleged that they were prevented leaving the accused's premises, and that they were locked up at night. On these allegations the accused was convicted by the first Court of offences under ss. 344, 370, and 374 of the Penal Code On appeal the convictions under the two former sections were quashed, the evidence as to detention being disbelieved: but that under s. 374 was upheld on the ground that, by magnifying the complainants' debts to him, and never settling their accounts, the accused had unlawfully compelled them to go on working for him against their will On a rule to show cause why the conviction should not be quashed, *held* (by Petheram, C.J., and Beverley, J.) that the conviction was erroneous, and must be set aside. Petheram, C.J.—A person who insists that another, who has consented to serve him, shall perform his work, does not unlawfully compel such person to labour against his will within the meaning of s. 374 of the Penal Code, because it is a thing which such person has agreed to do: but if he assaults such person for not working to his satisfaction, he commits an offence punishable under s 352. *Held* by Norris, J.—That upon the facts of the case the complainants never gave their full and free consent to work and labour for the accused, and that the accused therefore did unlawfully compel them to labour against their will, and that the conviction under s. 374 was right.—MADAN MOHAN BISWAS *v.* QUEEN-EMPRESS, I. L. R., 19 Cal. 572. [Petheram, C.J., and Norris and Beverley, JJ. April 20, 1892.]

Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

**345.** Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any term of imprisonment to which he may be liable under any other section of this chapter.

Wrongful confinement of person for whose liberation writ has been issued.

Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Not comp.

**346.** Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to, or discovered by, any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any other punishment to which he may be liable for such wrongful confinement.

Wrongful confinement in secret.

IN order to render a person liable under s. 346 of the Penal Code, it must be shown that the wrongful confinement was of such a nature as to indicate an intention that the person confined should not be discovered.—IN THE MATTER OF SREENATH BANERJEE, I. L. R., 9 Cal. 221. [McDonell and O'Kinealy, JJ. Aug. 7, 1882.]

**347.*** Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security, or of constraining the person confined, or any person interested in such person, to do anything illegal, or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement to extort property or constrain to illegal act.

Ct. of Ses., Presy. Mag., or Mag. of 1st or and class. Cognizable. Summons. Bailable. Not comp.

IN this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

**348.*** Whoever wrongfully confines any person for the purpose of extorting from the person confined, or any person interested in the person confined, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined, or any person interested in the person confined, to restore, or to cause the restoration of, any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement to extort confession or compel restoration of property.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Summons. Bailable. Not comp.

IN this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

WHERE a constable and others enter a house and apprehend certain persons as gamblers, and afterwards release them on payment of a sum of money by the latter, the offence committed is not house-trespass and extortion, but taking a bribe as regards the constable, and abetment of that offence as regards the others—GOVT v. MAHOMED HOSSEIN, 5 W. R. 49. [Norman and Campbell, JJ. Mar. 5, 1866.]

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*Of Criminal Force and Assault.*†

**349.** A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling:

Force.

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* In ss. 347 and 348 the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

† Offences punishable under ss. 352, 355, and 358, are compoundable.—See the new Code of Criminal Procedure (Act V. of 1898), s. 345. As to stage of proceedings at which no composition is allowable without the leave of the Court, see *ibid*, sub-s. 5.

As to punishment for an offence under s. 354, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion, in one of the three ways hereinafter described:

*First.*—By his own bodily power.

*Secondly.*—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part or on the part of any other person.

*Thirdly.*—By inducing any animal to move, to change its motion, or to cease to move.

Criminal force.

**350.** Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that, by the use of such force, he will cause, injury, fear, or annoyance to the person to whom the force is used, is said to use criminal force to that other.

*Illustrations.*

(*a.*) Z is sitting in a moored boat on a river. A unfastens the mooring, and thus intentionally causes the boat to drift down the stream. Here a intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear, or annoyance to Z, A has used criminal force to Z.

(*b.*) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, A has used criminal force to Z.

(*c.*) Z is riding in a palanquin. A intending to rob Z, seizes the pole, and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z, and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence, A has used criminal force to Z.

(*d.*) A intentionally pushes against Z in the street. Here A has, by his own bodily power, moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, he has used criminal force to Z.

(*e.*) A throws a stone intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water, and dash up the water against Z's clothes, or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z or Z's clothes, A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten, or annoy Z, he has used criminal force to Z.

(*f.*) A intentionally pulls up a woman's veil. Here A intentionally uses force to her; and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy her, he has used criminal force to her.

(*g.*) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally, by his own bodily power, causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling. A has therfore intentionally used force to Z; and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to Z, A has used criminal force.

(*h.*) A incites a dog to spring upon Z without Z's consent. Here, if A intends to cause injury, fear, or annoyance to Z, he uses criminal force to Z.

THE following cases of assault under the English law amount to the use of criminal force under the Penal Code: "A master taking indecent liberties with a female scholar, without her consent, though she does not resist (*Reg.* v. *Day*, 9 C. and P. 722); a medical man unnecessarily stripping a female patient naked, under the pretence that he cannot otherwise judge of her illness if he himself take off her clothes (*Reg.* v. *Rosinski*, 1 Mood. C. C. 12); parish-officers cutting off the hair of a pauper in the poor-house by force and against her will (*Forde* v. *Skinner*, 4 C. and P. 239), taking a new-born child from the mother, under pretence of taking it to an institution to be nursed, and instead putting it into a bag, and hanging it on some palings by the wayside (*Reg.* v. *March*, 1 C. and K. 496); spitting in a man's face (6 Mod 149); striking a horse upon which a man is riding, and thus causing him to be thrown (1 Mod. 24; W. Jones 444); and every touching or laying hold (however trifling) of another's person or clothes in an angry, revengeful, rude, insolent, or hostile manner (1 Hawk, c. 62, s. 2; see also *Rawlins* v. *Till*, 3 M. and W. 28; *Goward* v. *Buddeley*, 4 H. and N. 478). All cases of trifling assault will be met by s. 95, Penal Code.—STARLING'S INDIAN CRIMINAL LAW AND PROCEDURE, 3rd ed, p 298.

**351.** Whoever makes any gesture or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

**Assault.**

*Explanation.*—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault.

*Illustrations.*

(*a.*) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(*b.*) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z

(*c.*) A takes up a stick, saying to Z, "I will give you a beating." Here, though the words used by A could in no case amount to an assault, and though the mere gesture unaccompanied by any other circumstances might not amount to an assault, the gesture explained by the words may amount to an assault.

**352.** Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

**Punishment for assault or criminal force otherwise than on grave provocation.**

**Any Mag. Uncog. Summons. Bailable. Comp.**

*Explanation.*—Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence; or

if the provocation is given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant; or

if the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence is a question of fact.

ANY gestures calculated to excite in the party threatened a reasonable apprehension that the party threatening intends immediately to offer violence, or, in the language of the Penal Code, is "about to use criminal force" to the person threatened, constitute, if coupled with a present ability to carry such intent into execution an assault in law. Mere words do not amount to an assault, but the words which the party threatening uses at the time may either give his gestures such a meaning as may make them amount to an assault, or, on the other hand, may prevent them from being held to amount to an assault. In order to have this latter effect, the words must be such as clearly to show the party threatened that the party threatening has no present intention to use immediate criminal force.—CAMA (A. C.) *v.* MORGAN (H. F.), 1 Bom. H. C. R. 205 [Arnould, Acting C.J., and Newton and Tucker, JJ. Sep. 28, 1864.]

A CHARGE of assault and theft should not be dismissed for default of complainant's attendance. — QUEEN *v.* JODOO PAHAREL, 1 W. R. 25. [Kemp and Glover, JJ. Nov. 18, 1864.]

WHERE, of several persons constituting an unlawful assembly, some only are armed with sticks, and A, one of them, is not so armed, but picks up a stick, and uses it, B (the master of A), who gave a general order to beat, is guilty of abetting the assault made by A.—QUEEN *v.* RASOOKOOLLAH, 12 W. R. 51. [Glover and Mitter, JJ. Sep. 2, 1869.]

A PERSON tried and acquitted on a charge of using criminal force under s. 252 (which includes the offence of battery) cannot be tried in respect of the same criminal matter on a charge of hurt. — KAPTAN *v.* SMITH (G.M.), 16 W. R. 3; 7 B. L. R. Ap. 25. [Bayley and Paul, JJ. June 7, 1871.]

IN a case of assault, a sentence inflicting a fine of Rs. 50 and awarding imprisonment for one month in default of payment of the fine, is illegal, with reference to ss. 65 and 352 of the Penal Code. — IN THE MATTER OF JEHAN BUKSH, 16 W. R. 24. [Kemp and Ainslie, JJ. Sep. 2, 1871.]

THE rules or executive orders of Government printed at pages 26 and 27 of Mr. Nairne's Revenue Handbook have not the force of law, and a public servant, acting in obedience thereto, cannot be considered as acting in execution of his duty as a public servant, if his act is otherwise illegal. Accordingly, where, on a complaint by a sepoy in the Revenue Department deputed by a forest settlement officer to impress some carts for the use of the latter, that the accused assaulted and prevented him from seizing his cart, a Magistrate of the first class convicted the accused under s. 353 of the Penal Code for assaulting and obstructing a public servant in the execution of his duty, and sentenced the accused to undergo twenty-one days' rigorous imprisonment, *held* that the conviction under s. 353 of the Penal Code should be set aside. The only offence of which, upon the evidence, the accused was guilty, was that of simple assault under s. 352 of the Penal Code.—*In re* RAKHMAJI, I. L. R., 9 Bom. 558 [Nanabhai Haridas and Wedderburn, JJ. July 6, 1885.]

BLACKSTONE thus defines assault under the English law: "It is an attempt or offer to beat another without touching him, as if one lifts up his cane, or his fist, in a threatening manner at another, or strikes at him, but misses him: this is an assault *insultus*, which Finch describes to be an unlawful setting upon one's person, and though no actual suffering is proved, yet the party injured may have redress by *action for damages* as a compensation for the injury."—BLACK COM., vol. 3, p. 127.

AN accused person was convicted under s. 457 of the Penal Code of house-breaking by night in order to commit an offence (mischief and assault), and also under ss. 426 and 352 for the offences of mischief and assault, and punished separately for each offence. These offences formed parts of one transaction. *Held* that the sentences were legal.—QUEEN-EMPRESS *v.* NIRICHAN, I. L. R., 12 Mad. 36. [Kernan and Muttusami Ayyar, JJ. April 17, 1888.]

The accused was charged under s. 352 and s. 379 of the Penal Code, but convicted under s. 352, being discharged under s. 379. The Magistrate ordered the complainant to pay compensation for bringing a frivolous and vexatious charge under s. 560 of the Criminal Procedure Code. The order for paying compensation was set aside on the ground that s. 560 could only operate when there was a complete discharge or acquittal.—MUKTI BEWA *v.* JHOTI SANTRA, I. L. R., 24 Cal. 53. [Macpherson and Banerjee, JJ. Aug. 24, 1896.]

WHERE, in a suit for damages for malicious prosecution on a charge of assault which was dismissed, it appeared from the facts as found by the lower Courts that there was "Criminal Intimidation" on the part of the plaintiff, although he was not charged with that offence by the defendant. *Held* that the plaintiff would not be entitled to any damages, as no malice or dishonest motive could be imputed to the defendant in bringing the charge of "assault."—MADHU LAL AHIR GAYAWAL *v.* SAHI PANDE DHAMI, I. L. R., 27 Cal. 532. [Ghose and Harington, JJ. April 27, 1900.]

**353.** Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done, or attempted to be done, by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Prcsy. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

**Assault or criminal force to deter a public servant from discharge of his duty.**

WHERE substantially only one offence has been committed, the several acts which, taken together, constitute that offence, cannot legally be treated as separate offences, and the prisoner cannot legally be sentenced in respect of these as well as in respect of the principal offence.—QUEEN v. CHUNDER KANT LAHOREE, 12 W. R. 2; 3 B. L. R., A Cr., 14 * [Macpherson and Jackson, JJ. June 11 1869.]

A COLLECTORATE peada, who had been deputed to keep the peace during a distraint, was assaulted by the prisoners while on his road to execute the order with which he had been entrusted, the prisoners attempting to deprive him of his parwana. *Held* that they were rightly convicted under s. 353 of assaulting a public servant while in the execution of his duty.—QUEEN v. METHI MULLAH, 13 W. R 49. [Kemp and Jackson, JJ. Mar 26, 1870.]

THE rules or executive orders of Government printed at pages 26 and 27 of Mr. Nairne's Revenue Handbook have not the force of law, and a public servant, acting in obedience thereto, cannot be considered as acting in execution of his duty as a public servant, if his act is otherwise illegal. Accordingly, where, on a complaint by a sepoy in the Revenue Department, deputed by a forest settlement-officer to impress some carts for the use of the latter, that the accused assaulted and prevented him from seizing his cart, a Magistrate of the first class convicted the accused under s. 353 of the Penal Code for assaulting and obstructing a public servant in the execution of his duty, and sentenced the accused to undergo twenty-one days' rigorous imprisonment, *held* that the conviction under s. 353 of the Penal Code should be set aside. The only offence of which, upon the evidence, the accused was guilty, was that of simple assault under s. 352 of the Penal Code.—*In re* RAKHMAJI, I. L. R., 9 Bom. 558 [Nanabhai Haridas and Wedderburn, JJ. July 6, 1885.]

FOUR persons were charged with being members of an unlawful assembly consisting of themselves and others, the common object of which assembly was resisting the execution of a legal process, namely, the arrest of a judgment-debtor by a Civil Court peon who went with a warrant for his arrest accompanied by other persons, A and B, for the purpose of identifying him, and with using force or violence in prosecution of the common object, such force or violence consisting of an assault on the Civil Court peon and another by means of a dangerous weapon on A. The Deputy Magistrate convicted all the accused of offences under ss. 147 and 353 of the Penal Code, and sentenced them to six months' rigorous imprisonment under the former section, and two months' rigorous imprisonment under the latter. He further convicted one of the accused of an offence under s. 324 in respect of the assault on A, and sentenced him to one month's rigorous imprisonment in respect of that offence, and directed that the sentences were to take effect one on the expiry of the other. *Held* that the offence of rioting was completed by the assault on A and that the assault on the peon was a further offence under the first sub-section of s. 235 of the Code of Criminal Procedure. *Held*, further, that even if A had not been assaulted, the conviction and sentences passed for rioting and the assault on the peon were legal inasmuch as the acts of the accused, taken separately, constituted offences under ss. 143 and 353 of the Penal Code, and combined an offence under s. 147; and under s. 235, sub-s. 3, of the Code of Criminal Procedure, the accused might be charged with, and tried at, one trial for the offence under s. 147, and those under ss. 143 and 353 and, therefore, also separately convicted and sentenced for each such offence provided the punishment did not exceed the limit imposed by s. 71 of the Penal Code, as amended by s. 4 of Act VIII. of 1882, which limit had not been exceeded in the present case.—IN THE MATTER OF CHANDRA KANT BHATTACHARJEE: CHANDRA KANT BHATTACHARJEE v. QUEEN-EMPRESS, I. L. R., 12 Cal. 495. [Mitter and Beverley, JJ. Dec. 11, 1885.]

A WARRANT issued for the arrest of a debtor under the provisions of s. 251 of the

* In the B. L. R. the name of the case is "*Queen v. Kalisankar Sandyal and others.*"

Civil Procedure Code was initialled by the Munsarim of the Court, sealed with the seal of the Court, and delivered to the proper officer for execution. The debtor forcibly resisted the officer, and was tried and convicted, under s. 353 of the Penal Code, of assaulting a public servant in the execution of his duty as such. In revision, it was contended, with reference to the requirements of s. 251 of the Civil Procedure Code, that the warrant of arrest, having been initialled only, was bad, and the officer could not legally execute it, and consequently no offence under s. 353 of the Penal Code had been committed. *Held* that this contention could not be allowed, and, although it was proper that the person signing a warrant should write his name in full, it could not be said that, because the signature was confined to the initials of the name, it was not the duty of the officer to execute the warrant. *Held* also, with reference to s. 99 of the Penal Code, that the act of the accused did not cease to be an offence on the ground that it was done in the exercise of the right of private defence.—QUEEN-EMPRESS *v.* JANKI PRASAD, I. L. R., 8 All. 293. [Oldfield, J. May 4, 1886.]

RACES were held in a certain enclosed ground at Poona which belonged to the Military Authorities, and was lent for the purpose to the Western India Turf Club. The part of the ground to which the public were admitted was fenced in by ropes, and soldiers were stationed at intervals to prevent any persons entering or leaving the enclosure otherwise than through the passages provided for the purpose. The Inspector of Police, who was present on duty in that capacity, contrary to the regulations prescribed by the stewards of the races, crossed over the fencing ropes into the enclosure instead of going in by the regular entrance. This was reported to the Honorary Secretary of the Club, who had general charge of the arrangements. He sent for the Inspector, and after an interview with him, ordered two soldiers, who were in attendance to keep order, to put him out of the enclosure. They accordingly did so, laying hands on him in the first instance, but immediately at his request letting him go, and merely escorting him outside. He thereupon, under s. 353 of the Penal Code, charged the Secretary of the Club with using criminal force to a public servant in the exercise of his duty. *Held* that the offence had been committed. Under s. 47 of the Police Act (Bom. Act IV. of 1890), the police had a right of free access to the race-course.—QUEEN-EMPRESS *v.* ROSS, I. L. R., 22 Bom. 746. [Parsons and Ranade, JJ. Dec. 3, 1896.]

IN a case where an Excise Sub-Inspector attempted to search a house for *gurjat-ganja*, a "foreign exciseable article," under the Excise Act (Ben. Act VII. of 1878), and resistance was offered, *held* that *gurjat-ganja* being a "foreign exciseable article" under s. 4 of the Act as amended by Ben. Act IV. of 1881, the excise officer had no legal authority to enter and search the house under s. 40 of the Act; he had authority only to enter and search for any "exciseable article" as defined in s. 4 of the Act; and that no offence either under s. 141 or s. 353 of the Penal Code was committed. *Held* also that s. 75 of the Act does not apply to a "foreign exciseable article."—JAGARNATH MANDHATA *v.* QUEEN-EMPRESS, I. L. R., 24 Cal. 324. [Ghose and Gordon, JJ. Jan. 19, 1897.]

A NOTICE of demand of a house-tax under the Local Boards Act (Mad. Act V. of 1884) was affixed to the house. The owner, who was a potter and cultivator by occupation, was in the village at the time. He did not pay the tax. A warrant of distress was issued, the house-register not having been completely filled up, and a bucket and spade belonging to the defaulter were attached. The defaulter successfully resisted the distraint. *Held* that the provisions of the Act had been sufficiently complied with as regards the preliminary steps for making the demand and the service of notice, and the fact that the spade and the bucket were protected from attachment under s. 94, did not justify the resistance, and accordingly that the defaulter was guilty of offences under Penal Code, ss. 186 and 353.—QUEEN-EMPRESS *v.* POOMALAI CHAYAN, I. L. R., 21 Mad. 296. [Subramania Ayyar and Davies, JJ. Jan. 26, 1898.]

ONE of the accused was convicted under s. 353 of the Penal Code (assaulting or using criminal force to a public servant in the execution of his duty), and two others, of the abetment of an offence under that section. But the warrant of attachment under which the public servant was acting was not produced at the trial, nor was any secondary evidence given to show its contents. *Held*, in the absence of any evidence as to the terms of the warrant, either by the production of the *original*, or in the *form of secondary evidence*, it was impossible to hold that the conviction was good.—TAFAZZUL AHMED CHOWDHRY *v.* QUEEN-EMPRESS, I. L. R., 26 Cal. 630. [Prinsep and Hill, JJ. May 31, 1899.]

N, S, and G were appointed special constables under s. 17 of the Police Act. A Police Inspector accompanied by some police went to their village, and informed them

that they had been so appointed, and requested them to accompany him to the police-station of B, which they declined to do. The Inspector then had N arrested, whereupon N shook himself free, and N, S, and G with other persons, who had assembled, abused and threatened the police, and compelled them to withdraw from the village. N, S, and G were convicted under s. 19 of the Police Act, and they were also convicted with other persons under s. 353, read with s. 149, of the Penal Code. *Held* that the refusal of N, S, and G to accompany the Inspector constituted no offence under s. 19 of the Police Act, as the order was intended not for any purpose of the police duty, but simply that they might obtain the authority of their appointment and the necessary arms. *Held*, further, that the refusal of N to accompany the Inspector was not an offence, for which N could be arrested, and as the police when obstructed were not acting in lawful discharge of their duty, none of the persons concerned could be convicted of an offence under s. 353 of the Penal Code, but they were guilty of rioting under s. 147 of that Code.—RAMAN SINGH v. QUEEN-EMPRESS, I. L. R., 28 Cal. 411. [Prinsep and Handley, JJ. July 6, 1900.]

A WARRANT of arrest which contains a wrong description of the accused is not a valid warrant, and a conviction under ss. 225B and 353 of the Penal Code of such accused person, who resisted or used criminal force upon his being arrested under such warrant, is illegal. In order to have a conviction for an illegal disobedience of a warrant, the *onus* is on the prosecution to show that the accused is the person, against whom the warrant has issued. It is not for the accused to show that he is not the person against whom the warrant was issued.—DEBI SINGH v. QUEEN-EMPRESS, I. L. R., 28 Cal. 399. Ameer Ali and Pratt, JJ. Feb. 8. 1901.

**354.** Whoever assaults or uses criminal force to any woman, intending to outrage, or knowing it to be likely that he will thereby outrage, her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force to woman with intent to outrage her modesty.

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

AN indecent assault upon a woman does not amount to an attempt to commit rape, unless the Court is satisfied that there was a determination in the accused to gratify his passions at all events, and in spite of all resistance.—EMPRESS v. SHANKAR, I. L. R., 5 Bom 403. Melvill and Nanabhai Haridas, JJ. Mar. 2. 1881.

**355.** Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on *grave and sudden provocation given by that person*, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force with intent to dishonour person otherwise than on grave provocation.

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Comp.

**356.** Whoever assaults or uses criminal force to any person in attempting to commit theft on any property which that person is then wearing or carrying shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force in attempt to commit theft of property carried by a person.

Any Mag. Cognizable. Warrant. Not bailable. Not comp.

**357.** Whoever assaults or uses criminal force to any person in attempting wrongfully to confine that person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Assault or criminal force in attempt wrongfully to confine person.

Any Mag. Cognizable. Warrant. Bailable. Not comp.

**358.** Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Assault or criminal force on grave provocation.

Any Mag. Uncog. Summons. Bailable. Comp.

*Explanation.*—The last section is subject to the same explanation as section 352.

THE prisoner, a fully-developed adult man, was charged with causing the death of his wife, a girl aged about 11 years and 3 months, who had not attained puberty. The death was caused by hæmorrhage from a rupture of the vagina caused by the prisoner having sexual intercourse with the girl. For the defence it was alleged that he had had sexual intercourse with the girl on several previous occasions without injury to her, and there were circumstances in the case which showed that this was possible, and even not improbable, though the medical evidence was to the effect that, if such intercourse had previously taken place, the penetration was probably not so complete or with so much sexual vigour as on the occasion when the injury was caused. The medical evidence was further to the effect that the girl had not attained puberty, and was immature and wholly unfit for sexual intercourse, that, under such circumstances, sexual intercourse between the prisoner and the girl was likely to be dangerous to her, and to cause injuries more or less serious according to the degree of penetration effected. The prisoner was charged with (*a*) culpable homicide not amounting to murder under s 304 of the Penal Code; (*b*) causing death by doing a rash and negligent act under s. 304A, (*c*) voluntarily causing grievous hurt under s. 325; and (*d*) causing grievous hurt by doing an act so rashly or negligently as to endanger human life or the personal safety of others under s. 338. *Held* that, in such a case, when the girl is a wife and above the age of 10 years, and when therefore the law of rape does not apply, it by no means follows that the law regards the wife as a thing made over to be the absolute property of her husband, or as a person outside the protection of the criminal law; that no hard-and-fast rule can be laid down that sexual intercourse with a girl under a certain age must be regarded as dangerous and punishable, or over that age as safe and right, but that each case must be judged according to its own individual circumstances; that, in such a case, the jury have to consider and say whether, under the particular circumstances of the case, having regard to the physical condition of the girl, and to the intention, the knowledge, the degree of rashness or negligence with which the accused is shown to have acted on the occasion in question, he has brought himself within any of the provisions of the criminal law *Held* further that, if the jury were of opinion (*a*) that the act of the prisoner caused the death of the girl, that is to say, that the act of cohabitation on the part of the prisoner had the effect of rupturing the vagina, and so causing the hæmorrhage which led to her death, (*b*) that the act of cohabitation between a fully-developed man like the prisoner and an immature girl like his wife was itself a thing likely to lead to dangerous consequences; (*c*) that that act was one of such a character as to indicate a reckless indifference to the welfare of the girl or a want of a reasonable consideration about what the prisoner was doing, one which the husband of the girl, if he had had a reasonable regard to her welfare, and had exercised reasonable thought as to the act he contemplated doing, would have abstained from doing, they would be justified in finding that the prisoner caused the death of the girl by a rash and negligent act. Under no system of law with which Courts have to do in this country, whether Hindu or Mahomedan, or that framed under British rule, has it ever been the law that a husband has the absolute right to enjoy the person of his wife without regard to the question of safety to her—QUEEN-EMPRESS *v.* HURREE MOHUN MYTHEE, I. L. R., 18 Cal. 49. [Wilson, J. July 25, 26, 1890.]

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## OF KIDNAPPING, ABDUCTION, SLAVERY, AND FORCED LABOUR.*

Kidnapping.

**359.** Kidnapping is of two kinds: kidnapping from British India, and kidnapping from lawful guardianship.

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* As to punishment for offences under ss. 363 to 369, enquired into by a Council of Elders in the Punjab Frontier Districts or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

Offences punishable under s. 374 are compoundable.—See the new Code of Criminal Procedure (Act V. of 1898), s. 345. As to stage of proceedings at which no composition is allowable without the leave of the Court, see *ibid*, sub-s. (5).

THIS offence may be committed on a child by removing that child out of the keeping of its lawful guardian or guardians. On a grown man it can only be committed beyond the limits of the Queen's territories, or by receiving him on board a ship for that purpose. The enticing a grown-up person by false promises to go from one place in the Queen's territories to another place, also within those territories, may be a subject for civil action, and, under certain circumstances, for a criminal prosecution, but it does not come under the head of kidnapping.—INDIAN LAW COMMISSIONERS' REPORT.

**360.** Whoever conveys any person beyond the limits of British India without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from British India.

**Kidnapping from British India.**

**361.** Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

**Kidnapping from lawful guardianship.**

*Explanation.*—The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

*Exception.*—This section does not extend to the act of any person who, in good faith, believes himself to be the father of an illegimate child, or who, in good faith, believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

THE consent of a girl under 16 years, kidnapped or abducted to compel her marriage, does not affect the offence; nor is it necessary that the taking or enticing should be shown to be by means of force or fraud—QUEEN *v.* AMGAD BUGEAH, 2 W. R. 61. [Glover, J. April 18, 1865.]

THE abduction of a minor girl under 16 years of age out of the custody of her lawful guardian is punishable under s. 361 of the Penal Code. It is not necessary to such a conviction that the abduction was forcible—QUEEN *v.* MODHOO PAUL, 3 W. R. 9. [Glover, J. May 9, 1865.]

THE consent of a kidnapped person is immaterial; and it is not necessary for a conviction under s. 361, Penal Code, that the taking or enticing should be shown to have been by means of force or fraud.—QUEEN *v.* BHUNGEE AHUR, 2 W. R. 5. [Glover, J. June 5, 1865.]

A PERSON, in carrying off, without the consent of her lawful guardian, a girl to whom he was betrothed by his father, who, after permitting her to reside occasionally in his house, suddenly changed his mind, and broke off the marriage, is guilty of kidnapping from lawful gurdianship pnnishable under s. 363 of the Penal Code.—QUEEN *v.* GOOROODOSS RAJBUNSEE, 4 W. R. 7: 5 Rev., Jud., and Police Journal 149. [Kemp and Seton-Karr, JJ. Sep. 11, 1865.]

IN the case of a runaway, enticed after a voluntary abandonment of her home to emigrate, a charge of kidnapping from lawful guardianship cannot be sustained.—QUEEN *v.* GOUDHUR SINGH, 5 Rev., Jud., and Police Journal 151. [Kemp, Seton-Karr, and Glover, JJ. Sep. 12, 1865.]

TO bring a case under s. 361 of the Penal Code, there must be a taking or enticing of a child out of the keeping of the lawful guardian without his consent—QUEEN *v.* GUNDER SINGH, 4 W. R. 6. [Kemp and Glover, JJ. Sep. 12, 1865.]

A CHARGE of kidnapping from lawful guardianship should contain the name of the guardian.—EXTRACT (para. 6) of letter No. 149 from Registrar, High Court, dated Feb. 16, 1866, 1 Wyman's Rev., Cir., and Crim. Reporter 16.

UNDER s. 361 of the Penal Code (*kidnapping from lawful guardianship*), the consent of a minor is immaterial, nor do force and fraud form elements of the offence.—QUEEN *v.* SOOKEE, 7 W. R. 36. [Glover, J. Feb. 25, 1867.]

TO support a conviction for kidnapping under ss. 361 and 363 of the Penal Code, it

must be shown that the accused took or enticed away from lawful guardianship the person kidnapped.—Queen v. Neela Bebee, 10 W. R. 33. Loch and Glover, JJ. Sep. 3, 1868.]

If, knowing a girl has been kidnapped, a person wrongfully confines her, and subsequently detains her as a slave, he is guilty of two separate offences punishable under the Penal Code. Slavery is a condition which admits of degrees, and a person is treated as a slave if another asserts an absolute right to restrain his personal liberty, and to dispose of his labour against his will, unless that right is conferred by law, as in the case of a parent or guardian, or a jailor.—Queen v. Mirza Sikundur Bukhut, 3 N.-W. P. 146. [Turner and Turnbull, JJ. June 20, 1871.]

D S had two wives, N and J, by the latter of whom he had two daughters. In February 1876, he went with his wife, N, to a marriage in another village, leaving J and her two daughters at home. During the temporary absence of D S, J removed her two daughters to the house of her brother-in-law, M, and married the elder girl aged 8 years, to one G, with the assistance of three other persons. The Chief Court held (1) that the word "woman" in s 366 included a minor female; (2) that there was a kidnapping from the lawful guardianship of D S within the meaning of ss 361 and 366 notwithstanding the consent of the mother, J, to the girl's removal. *Per* Smyth, J.—Because the girl during the temporary absence of the father D S, continued in his possession and under his control as her lawful guardian and was not under the guardianship of her mother J. *Per* Plowden, J.—Because the consent of a mere custodian in breach of the trust reposed by the person from whom the right to custody is derived is not the consent of the guardian in whose keeping the minor still continues through the custodian.—Dheea Singh v. Mussammut Kahno Pam Rec. No. 8 of 1878.

A child under ten years of age is, *prima facie*, subject to guardianship, and any one removing such child without permission properly obtained takes the risk of such act upon himself; the fact of having omitted to inquire whether the child had a guardian or not is no defence to a charge of kidnapping a minor from lawful guardianship under s 361 of the Penal Code.—Empress v. Omsbaksh, I. L. R., 3 Bom. 178. West and Pinhey, JJ. Dec. 12, 1878.

The mother of an illegitimate child is its proper and natural guardian during the period of nurture. And where the mother, on her death-bed, entrusts the care of such child to a person who accepts the trust, and maintains the child, such a person is "lawfully entrusted" with the care and custody of the minor within the meaning of s. 361 of the Penal Code. The explanation of the words "lawful guardian" in s 361 is intended to obviate the difficulty the prosecution might be put to in being bound to prove strictly in cases of abduction, that the person from whose care the minor has been abducted was the guardian of such minor within the meaning of the legal acceptation of the word.—Empress v. Pemantle, I. L. R., 8 Cal. 971. [Garth, C J., and Cunningham and Maclean, JJ. July 9, 1882.]

The following extract from Starling's Criminal Law and Procedure is well worth perusal: 'The general principles as to the principal offence involved in these sections are admirably laid down by Bramwell, B., in the case of *Reg* v. *Olliver* (10 Cox's Crim Cases 402): 'If a young woman leaves her father's house without any persuasion, inducement, or blandishment held out to her by a man, so that she has fairly got away from home, and then goes to him, although it may be his moral duty to return her to her parents' custody, yet his not doing so is no infringement of this Act of Parliament, for the Act does not say he shall restore her, but only that he shall not take her away.' (See also 5 R. J. and P. J. 152.) 'It is, however, equally clear that, if the girl acting under his persuasion, leaves her father's house, although he is not present at the moment, yet, if he avails himself of that leaving which took place at his persuasion that would be a taking her out of the father's possession, because the persuasion would be the motive cause of her leaving. Again, although she may not leave at the appointed time and although he may not wish that she should have left at that particular time, yet if, finding she has left, he avails himself of that to induce her to continue away from her father's custody, in my judgment he is also guilty, if his persuasion operated on her mind so as to induce her to leave.' If a woman be forcibly taken away, and afterwards married, or defiled with her own consent, it is within the provisions of these sections, for the offender is not to escape by having prevailed over the weakness of a woman whom he originally got into his power by such base means (*Fulwood's Case*, Cro. Car 488; *Swenden's Case* 5 St. Tr. 450, 1 Hale 660). And so, too, if she be taken away and married with her own consent, if this be effected by means of fraud: for she cannot be considered, while under the influence of fraud, to be a free agent (*R* v. *Wakefield*, Lancaster Assizes 1827). Under s. 361, it is immaterial whether the girl consents or not, and the taking need

not be by force, actual or constructive (*Reg. v. Mankleton*, Dears C. C. 159). It is no legal excuse that the defendant made use of no other means than the common blandishment of a lover to induce her to elope with him (*R. v. Twistleton*, 1 Lev 257; 1 Hawk, c. 44, s. 10). Where a girl was persuaded by the defendant to leave her father's house, and go away with him, without the father's consent, and accordingly left her home alone by a preconcerted arrangement between them, and went to a place appointed, where she was met by the prisoner, and they then went away together without the intention of returning, this was held to be a taking of the girl out of the father's possession, and certainly it would amount to an enticing (*Reg. v. Mankleton, supra*). So where the defendant, by concert with the girl, met her and stayed with her away from her father's house for several nights sleeping with her, and the jury found that the father did not consent and that the defendant knew that he did not, and that he took the girl away with him in order to gratify his passions, and then let her return home, and not with the intention of keeping her away from her home permanently, the conviction was held right (*Reg. v. Timmins*, 1 Bell, C. C., 276). Where a girl under sixteen was found in the streets by herself and seduced away, it was held that she was not taken out of the possession of her father, although he was living in the same place and the girl was living with him (*Reg. v. Green*, 3 F. and F. 274). A was indicted for fraudulently alluring C out of the possession of her mother and stepfather, the latter having the lawful care of her, and B with being an accessory before the fact. C was sent by her mother to live with her grandmother. Instead of going there she went to B's house, and did not return home when desired by her mother. After remaining with B a month, she left with A, her paternal uncle, and was married to him without her mother's knowledge. It was held that there was no evidence that the alluring was fraudulent, or that the girl was taken out of her mother's possession, and that the facts did not support the indictment (*Reg. v. Burrell*, 1 L. R. 154). These illustrations are all of cases of abduction of women, but they will sufficiently illustrate the principles involved in the interpretation of the foregoing sections. If the offence be under s. 361, the child must be shown to be under fourteen if a male, and under sixteen if a female, and it will be no defence to say that the accused did not know the child was under the age, but thought he or she was over the specified age, unless he has substantial ground for supposing that such is the fact, so as to bring the case within s. 79 of the Penal Code, for it was ruled in the case of *Reg. v. Olliffe, supra*, that a man deals with an unmarried girl at his peril; and in that case the fact that she had told him she was seventeen was held not to excuse him. See also *Reg. v. Robins*, 1 F. and F. 50, where Cockburn, C. J., ruled to the same effect."

THE husband of a Hindu girl of fifteen is her lawful guardian; and if the father of the minor takes away the girl from her husband without the latter's consent, such taking away amounts to kidnapping from lawful guardianship, *even though the father may have had* no criminal intention in so doing.—IN THE MATTER OF DHURONIDHUR GHOSE, I. L. R., 17 Cal. 298. Tottenham and Banerjee, JJ. Sep. 28 1889.

IN a trial with a jury under s. 366 of the Indian Penal Code, the Judge on the question of intent charged the jury in the following words: "It remains only to consider the question of intent. The charge was that the girl was kidnapped in order that she might be forced or seduced to illicit intercourse. As to this, it is sufficient to say that no other *intercourse is possible under the circumstances.* When a man carries off a young girl at night from her father's house, the presumption is that he did so with the intent indicated above. It would be open to him, if he had admitted the kidnapping to prove that he had some other object, but no other object is apparent on the face of the facts. *Held* that this amounted to a misdirection of the jury. The question of intent was a pure question of fact; but the way in which it had been put to the jury left them no option, but to adopt the view taken by the Judge.—QUEEN-EMPRESS v. HOSAIN, I. L. R., 14 All 25. Straight, J. Aug. 1, 1891.

S, a girl of the age of eight years, lived ordinarily under the guardianship of her father. A sister of S was married to a nephew of one K and, with her husband, lived in the house of K. S, with her father's knowledge and consent, visited her sister in K's house and had remained there for about a month when four brothers (being cousins of S) came to K's house one night and took S to their own house, which was close by, and S was at once married to one of them. The father of S was not asked for his consent, and it was known by the nephews and by K that the father objected to such a marriage. K was present at the marriage and consented to it, hoping to reconcile the girl's father to it subsequently. The father, however, sought the aid of the police, to whom S was given up by her cousins after having been detained by them in their house for thirty-six hours. The four cousins were then charged, under section 366 of the Indian Penal Code, with

kidnapping S from lawful guardianship with intent that she might be compelled to marry one of them. The charge was framed in general terms, and did not state from whose guardianship the kidnapping was alleged to have taken place. The trial was, however, conducted on the footing that the kidnapping was from the guardianship of K. The accused were acquitted, on the ground that K was at the time the lawful guardian of the girl, and it had not been shown that she had been taken without K's consent. Upon an appeal being preferred by Government against that acquittal, *held* that the accused had been rightly acquitted of the charge of kidnapping S from the guardianship of K; but that the question whether they were guilty of kidnapping S from the guardianship of her father had not been and ought to be tried. The word "include" in the explanation to section 361 of the Indian Penal Code is not intended to limit the protection which the section gives to parents and minors, but rather to extend that protection by including in the term "lawful guardian" any person lawfully entrusted with the care or custody of the minor. The fact that a father allows his child to be in the custody of a servant or friend for a limited purpose and for a limited time does not determine the father's rights as guardian or his legal possession for the purposes of the Criminal Law. If the facts are not inconsistent with a continuance of the father's legal possession of the minor, the latter must be held to be in the father's possession or keeping even though the actual possession should be temporarily with a friend or other person.—JAGANNADHA RAO v. KAMARAJU, I. L. R. 24 Mad. 284. [Davies and Benson, JJ. Sep. 25, Nov. 8, 1900.]

**362.** Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

Abduction

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp.

**363.** Whoever kidnaps any person from British India or from lawful guardianship shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Punishment for kidnapping.

THE prisoners having been sentenced for abetment of abduction of a woman under ss. 109 and 498, and for wrongful confinement of her under s. 343, it was held that both sentences could not stand, and that, as the essence of the case was abduction, the prisoners, as abettors therein, should be punished for it alone.—QUEEN v. ISHWAR CHUNDER JOGEE, W. R. Gap. 1864, 21. [Loch and Seton-Karr, JJ. April 12, 1864.]

THE subject of an Independent State, though not amenable to the British Courts on a charge of culpable homicide committed out of British territories, may be so amenable on a charge of kidnapping from those territories.—QUEEN v. DHURMONARAIN MOITRO, 1 W. R. 29. [Kemp and Glover, JJ. Dec. 9, 1864.]

THE conviction of a procuress changed from abduction to enticing, the woman alleged to have been abducted having been of a mature age and a free agent. The conviction of the other prisoners also changed from abetting wrongful concealment under s. 368 of the Penal Code to abetment under s. 116.—QUEEN v. SRIMOTEE PODDEE, 1 W. R. 45. [Kemp and Glover, JJ. Dec. 16, 1864.] But according to the ruling in *Empress* v. *Kallu* (I. L. R., 5 All. 233), and s. 199 of the Code of Criminal Procedure (Act V of 1898), it is illegal to alter a charge of abduction to one of enticement.—ED.

A CONVICTION of abduction quashed, no force or deceit having been practised on the person abducted.—QUEEN v. KOMUT DASS, 2 W. R. 7. [Kemp and Glover, JJ. Jan. 10, 1865.]

THE abduction of a girl, under 16 years of age, with intent to marry, &c., without the consent of her lawful guardian, is punishable under ss. 363 and 366 of the Penal Code. The consent of the kidnapped person is immaterial nor is it necessary to show that the taking or enticing away was by force or fraud.—QUEEN v. KOORDAN SING, 3 W. R. 15. [Glover, J. May 15, 1865.]

A PERSON, in carrying off, without the consent of her lawful guardian, a girl to whom he was betrothed by his father, who, after permitting her to reside occasionally in his house, suddenly changed his mind, and broke off the marriage, is guilty of kidnapping from lawful guardianship punishable under s. 363 of the Penal Code. The fact of the betrothal, however, would considerably diminish the heinousness of the offence.—QUEEN v. GOOKOODOSS RAJBUNSSEE, 4 W. R. 7; 5 Rev., Jud., and Police Journal 149. [Kemp and Seton-Karr, JJ. Sep. 11, 1865.]

WHERE a girl of 11 years of age was taken out of the custody of her lawful guardian by the first prisoner, and offered for sale in marriage to another, and the second prisoner illegally concealed her, the conviction of the former was upheld under s. 363 of the Penal Code only; and the conviction of the latter under s. 368 only, while the separate conviction of both under s. 366 was quashed.—QUEEN *v.* ISREE PANDAY, 7 W. R. 56. [Norman, J. April 8, 1867.]

AN enticing-away of a child playing on a public road is kidnapping from lawful guardianship.—QUEEN *v.* MUSSAMUT OOZEERUN, 7 W. R. 62. [Glover, J. May 4, 1867.]

THE offence described in s. 363 of the Penal Code is included in that described in s. 369, the kidnapping and the intention of dishonestly taking property from the kidnapped child being included in the latter section.—QUEEN *v.* SHAMA SHEIKH, 8 W. R. 35. [Kemp and Glover, JJ. July 8, 1867.]

*To support a conviction for kidnapping* under ss. 361 and 363, it must be shown that the accused took or enticed away from lawful guardianship the person kidnapped.—QUEEN *v.* NEELA BIBEE, 10 W. R. 33. [Loch and Glover, JJ. Sep. 3, 1868.]

To constitute the offence of kidnapping under s. 363 of the Penal Code, it must be shown that the person was abducted from lawful guardianship, and lawful guardianship is the guardianship of a person who is lawfully entrusted with the care or custody of a minor.—QUEEN *v.* BUTUKO, 2 N.-W. P. 286. [Turner, Offg. C.J. July 8, 1870.]

A WARRANT for the arrest of a person on a charge of abduction should state the intent with which the offence was committed. BIDHOOMOOKHEE DABEE *v.* CREENATH HALDAR, 15 W. R. 4; 6 B. L. R. Ap. 129. [Jackson and Mookerjee, JJ. Jan. 21, 1871.]

ACCUSED was convicted by the Magistrate of abetting the kidnapping of a minor. Accused, knowing that the minor had left home without the consent of his parents and at the instigation of one Komaren, the actual kidnapper, undertook to convey the minor to Kandy in Ceylon, and was arrested on the way thither. The Sessions Judge reversed the conviction on the ground that there was no concert between the accused and Komaren previous to the completion of the kidnapping by the latter. *Held* by the High Court that, so long as the process of taking the minor out of the keeping of his lawful guardian continued, the offence of kidnapping might be abetted, and that, in the present case, the conviction should be of an offence punishable under ss. 363 and 116 of the Penal Code.—REG. *v.* SAMIA KAUNDAN, I. L. R., 1 Mad. 173. [Morgan, C.J., and Innes, J. Dec. 5, 1876.]

CERTAIN persons were charged under s. 417 of the Penal Code, and were discharged by the Magistrate inquiring into the offence under s. 215 of Act X of 1872. The Court of Session, considering that the accused persons had been improperly discharged, forwarded the record to the Magistrate of the District, suggesting to him to make the case over to a Subordinate Magistrate, with directions to inquire into any offence other than the offence in respect of which the accused persons had been discharged, which the evidence on the record showed to have been committed. The Subordinate Magistrate to whom the case was made over made an inquiry, and committed the accused persons for trial before the Court of Session on charges under ss. 363 and 420 of the Penal Code. It was contended that the Court of Session was not competent to "direct the accused persons to be committed" under s. 296 of Act X. of 1872, the case not being a "Sessions case" within the meaning of that section, and that the commitment was consequently illegal. *Held* that there was no "direction to commit" within the meaning of that section, that is to say, to send the accused persons at once to the Sessions Court without further inquiry, and whether or not the inquiry was made in consequence of the suggestions of the Court of Session was immaterial, and that the inquiry upon the charges under ss. 363 and 420 of the Penal Code was rightly held by the Subordinate Magistrate, and the commitment could not be impeached.—EMPRESS *v.* BHUP SINGH, I. L. R., 2 All. 570. Straight, J. Dec. 31, 1879.]

THE accused were convicted by the Magistrate of the District of Lahore, exercising enhanced powers under s. 36, Criminal Procedure Code, of kidnapping a married woman being a minor, from lawful guardianship, for the purposes of prostitution, and sentenced under ss. 363 and 372, Penal Code, to terms of imprisonment exceeding three years. The proceedings were forwarded to the Sessions Judge, Lahore Division, for confirmation of the sentences. The Sessions Judge, holding that ss. 363 and 372, Penal Code, were inapplicable to married female minors, annulled the convictions, and directed the re-trial of the accused on a charge under s. 498, Penal Code. The Chief Court held that the order of the Sessions Judge was illegal: 1st, because ss. 363 and 372 were applicable to married as well as to unmarried female minors; and, secondly, because the Sessions Judge was not competent, under s. 36, Criminal Procedure Code to direct a new trial upon a new charge; and, 3rdly, because

no complaint had been preferred of an offence falling under s. 498, Penal Code.—CROWN *v.* KANNU, Panj. Rec., No. 12 of 1879

A MOTHER cannot have a right to the custody of her legitimate children adversely to the father. Ordinarily the custody of the mother is the custody of the father, and any removal of the children from place to place by the mother ought to be taken to be consistent with the right of the father as guardian, and not as a taking out of his keeping. But where a Hindu woman left her husband's house, taking with her her infant daughter, and went to the house of A, and on the same day the daughter was married to B, the brother of A, without the father's consent, it was held that A was rightly convicted under ss. 109 and 363 of the Penal Code of abetting the offence of kidnapping.—IN THE MATTER OF PRAN KRISHNA SURMA: EMPRESS *v.* PRAN KRISHNA SURMA, I. L. R., 8 Cal. 969: 10 C. L. R. 6. Wilson and Macpherson, JJ. June 20, 1882.

THE absence of the certificate of the Political Agent required by s. 188 of the Code of Criminal Procedure is an absolute bar to the trial of a case to which the provisions of that section apply. *Semble* that the offence of kidnapping from lawful guardianship punishable under s. 363 of the Penal Code is not a continuing offence.—QUEEN-EMPRESS *v.* RAM SUNDAR, I. L. R., 19 All. 109. [Edge, C. J. and Blennerhassett, J. July 30, 1896.]

J, A MINOR girl, was taken away from her husband's house to the house of K and there kept for two days. Then one M came and took her away to his own house and kept her there for twenty days and subsequently clandestinely removed her to the house of the petitioner, and from that house the petitioner and M took her through different places to Calcutta. The petitioner was convicted under s. 363 of the Penal Code for kidnapping a girl under 16 years of age from the lawful guardianship of her husband. *Held* (*by the majority of the Full Bench*) that the taking away out of the guardianship of the husband was complete before the petitioner joined the principal offenders in taking the girl to Calcutta, and that the petitioner, therefore, could not be convicted under s. 363 of the Penal Code. *Held*, further, that the offence of kidnapping from lawful guardianship is complete when the minor is actually taken from lawful guardianship; it is not an offence continuing so long as she is kept out of such guardianship. *Per* Rampini, J.—The offence of kidnaping under s. 363 is not necessarily or in all cases complete as soon as the minor is removed from the house of the guardian; when the act of kidnapping is complete is a question of fact to be determined according to the circumstances of each case.—NEMAI CHAITORAJ *v.* QUEEN-EMPRESS, I. L. R., 27 Cal. 1041. [Maclean, C.J., and Prinsep, Ghose, Rampini and Handey, JJ. June 4, 9, 1900.]

S, A GIRL of the age of eight years, lived ordinarily under the guardianship of her father. A sister of S was married to a nephew of one K, and, with her husband, lived in the house of K. S, with her father's knowledge and consent, visited her sister in K's house, and had remained there for about a month when four brothers (being cousins of S) came to K's house one night and took S to their own house, which was close by, and S was at once married to one of them. The father of S was not asked for his consent, and it was known by the nephews and by K that the father objected to such a marriage. K was present at the marriage and consented to it, hoping to reconcile the girl's father to it subsequently. The father, however, sought the aid of the police, to whom S was given up by her cousins after having been detained by them in their house for thirty-six hours. The four cousins were then charged under s. 366 of the Indian Penal Code with kidnapping S from lawful guardianship with intent that she might be compelled to marry one of them. The charge was framed in general terms, and did not state from whose guardianship the kidnapping was alleged to have taken place. The trial was, however, conducted on the footing that the kidnapping was from the guardianship of K. The accused were acquitted, on the ground that K was at the time the lawful guardian of the girl, and it had not been shown that she had been taken without K's consent. Upon an appeal being preferred by Government against that acquittal, *held* that the accused had been rightly acquitted of the charge of kidnapping S from the guardianship of K, but that the question whether they were guilty of kidnapping S from the guardianship of her father had not been and ought to be tried. The word 'include' in the explanation to s. 361 of the Indian Penal Code is not intended to limit the protection which the section gives to parents and minors, but rather to extend that protection by including in the term 'lawful guardian' any person lawfully entrusted with the care or custody of the minor. The fact that a father allows his child to be in the custody of a servant or friend for a limited purpose and for a limited time does not determine the father's rights as guardian or his legal possession for the purposes of the Criminal Law. If the facts are not inconsistent with a continuance of the father's legal possession of the minor,

the latter must be held to be in the father's possession or keeping even though the actual possession should be temporarily with a friend or other person.—JAGANNADHA RAO v. KAMARAJU, I. L. R., 24 Mad. 284. [Davies and Benson, JJ. Sep. 25, Nov. 8, 1900.]

**364.** Whoever kidnaps or abducts any person in order that such person may be murdered, or may be so disposed of as to be put in danger of being murdered, shall be punished with transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. Cf. of Sec. Cognizable. Warrant. Not bailable. Not comp.

Kidnapping or abducting in order to murder.

*Illustrations.*

(*a.*) A kidnaps Z from British India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

(*b.*) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

**365.** Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Ditto.

Kidnapping or abducting with intent secretly and wrongfully to confine person.

**366.** Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Ditto.

Kidnapping or abducting woman to compel her marriage, &c.

A CHARGE of abduction will not lie under s. 366 when the woman, being of mature age, herself wishes to become a prostitute — QUEEN v. SRIMOTEE PODDEE, 1 W. R 45 [Kemp and Glover, JJ Dec. 16, 1864.]

WHERE a girl of 11 years of age was taken out of the custody of her lawful guardian by the first prisoner, and offered for sale in marriage to another, and the second prisoner illegally concealed her, the conviction of the former was upheld under s 363 of the Penal Code only, and of the latter under s. 368 only, while the separate conviction of both under s. 366 was quashed.—QUEEN v ISREE PANDAY, 7 W. R 56. [Norman, J. April 8, 1867.]

To sustain a charge under s. 366 of abducting a woman with intent that she be forced or seduced to illicit intercourse, there must be evidence to show the intent, or raise the presumption that illicit intercourse was likely to result from the abduction.—MEER ALUM KHAN v. CROWN. Panj. Rec., No. 23 of 1868

THE abduction of a girl under 16 years of age with intent to marry without the consent of her lawful guardian is punishable under ss. 363 and 366 of the Penal Code. The consent of the girl is immaterial, nor is it necessary to show that the enticing or taking away was by force or fraud.—QUEEN v. KOORBAN SING. 3 W. R. 15. [Glover, J. May 15, 1865.]

THERE can be no conviction of the offence of kidnapping under s 366 of the Penal Code, unless it is proved that the accused has taken the girl out of the keeping or custody of her lawful guardian without her consent —QUEEN v MOHIM CHUNDER SIL, 16 W. R 42. [Ainslie, J Sep 2, 1871.]

D S had two wives, N and J, by the latter of whom he had two daughters. In February 1876, he went with his wife, N, to a marriage in another village leaving J and her two daughters at home. During the temporary absence of D S, J removed her two daughters to the house of her brother-in-law, M, and married the elder girl (aged 8 years) to one G with the assistance of three other persons. The Chief Court held (1) that the word "woman" in s. 366 included a minor female; (2) that there was a kidnapping from the lawful guardianship of D S within the meaning of ss. 361 and 366, notwithstanding

the consent of the mother, J, to the girl's removal. *Per* Smyth, J.—Because the girl, during the temporary absence of the father D S, continued in his possession and under his control as her lawful guardian, and was not under the guardianship of her mother, J. *Per* Plowden, J.—Because the consent of a mere custodian in breach of the trust reposed by the person from whom the right to custody is derived is not the consent of the guardian in whose keeping the minor still continues through the custodian.—DHERA SINGH v. MUSSAMMAT KAHNO. Panj. Rec., No. 8 of 1878.

WHERE a girl, under 16 years of age, who was travelling with a chance-protector (not her lawful guardian), went off with the accused voluntarily, and without any false inducement or force on his part, and without any agreement between the accused and the girl or her protector that she should prostitute herself, and the accused subsequently hired out the girl on two occasions for the purpose of sexual intercourse the Chief Court, reversing the order of the lower Court, held that no offence was made out against accused under s 373 or s. 366. In order to constitute an offence under s. 373, there must be a taking possession of the minor under some agreement or understanding either with some third person or the minor, that the minor is to be employed for some purpose specified in the section.—HARDEO v. EMPRESS, Panj. Rec., No. 7 of 1880.

THE mother of an illegitimate child is its proper and natural guardian during the period of nurture. And where the mother, on her death-bed, entrusts the care of such child to a person who accepts the trust, and maintains the child, such a person is "lawfully entrusted with the care and custody of the minor within the meaning of s 361 of the Penal Code. The explanation of the words "lawful guardian" in s. 361 is intended to obviate the difficulty the prosecution might be put to in being bound to prove strictly in cases of abduction that the person from whose care the minor has been abducted was the guardian of such minor within the meaning of the legal acceptation of the word.—EMPRESS v. PEMANTLE, I. L. R., 8 Cal. 971. [Garth, C J., and Cunningham and Maclean, JJ July 9, 1882.]

IN a trial with a jury under s 366 of the Indian Penal Code, the Judge, on the question of intent, charged the jury in the following words: "It remains only to consider the question of intent. The charge was that the girl was kidnapped in order that she might be forced or seduced to illicit intercourse. As to this, it is sufficient to say that no other inference is possible under the circumstances. When a man carries off a young girl at night from her father's house, the presumption is that he did so with the intent indicated above. It would be open to him, if he had admitted the kidnapping, to prove that he had some other object; but no other object is apparent on the face of the facts." *Held* that this amounted to a misdirection of the jury. The question of intent was a pure question of fact; but the way in which it had been put to the jury left them no option but to adopt the view taken by the Judge.—QUEEN-EMPRESS v. HUGHES, I. L. R., 14 All. 25. [Straight, J. Aug. 1, 1891.]

THE complainant charged the accused with an offence under s 366 of the Penal Code in respect of his wife. The Deputy Magistrate convicted the accused of an offence under s. 498 of the Penal Code, and sentenced him to one month's rigorous imprisonment. The Sessions Judge, being of opinion that the Deputy Magistrate had no jurisdiction to convict the accused under s. 498, there being no complaint by the husband under s. 199 of the Criminal Procedure Code, and that the offence did not fall under s. 238 of the Criminal Procedure Code, referred the case to the High Court. *Held* that such a case is within the intention of s. 238. The intention of the law is to prevent Magistrates inquiring of their own motion into cases connected with marriage, unless the husband or other person authorized moves them to do so. But when the husband is complainant, and brings his complaint under s. 366, a conviction under s 498 may properly be had if the evidence be such as to justify a conviction for the minor offence, and yet insufficient for a conviction for the graver one.—JATRA SHEKH, v. REAZAT SHEKH, I. L. R., 20 Cal. 483. [Pigot and Hill, JJ. Sep. 19, 1892.] But see *contra Empress* v. *Kallu*, I. L. R., 5 All. 433.

AN offence under s. 365 of the Penal Code is, within the meaning of s. 238 of the Criminal Procedure Code a minor offence as compared with offences under s. 366 and s. 376 of the Penal Code, and the High Court, in dealing with a case under s. 307 of the Criminal Procedure Code, can convict an accused of the former offence without a formal charge having been framed. *Per* Banerjee, J.—The words "minor offence" have not been defined by law, they are to be taken, not in any technical sense, but in their ordinary sense.—QUEEN-EMPRESS v. SITANATH MANDAL, I. L. R., 22 Cal. 1006. [Macpherson and Banerjee, JJ. July 16, 1895.]

RAM DEI, Chajju, Piru, and Kamar, were committed by the Joint-Magistrate of Muzaffarnagar to the Court of the Sessions Judge

of Saharanpur. Upon the case which was before the Joint Magistrate it appeared that Ram Dei had committed the offence punishable under s. 366 of the Penal Code in the district of Bijnor, and possibly the other three persons had committed the offence punishable under s. 368 of the Penal Code in the district of Muzaffarnagar; Chajju and Piru also possibly having committed the offence punishable under that section in Bijnor. Under the above circumstances, the High Court, maintaining the order of commitment made by the Joint Magistrate, directed the case to be transferred for trial to the Court for the trial of Sessions cases arising in the Bijnor district, namely, that of the Sessions Judge of Moradabad. *Reg.* v. *Samia Kaundan* (I. L. R., 1 Mad. 173) and *Queen-Empress* v. *Surju* (Weekly Notes, 1883, p. 164) not followed. *Queen-Empress* v *James Ingle* (I. L. R., 16 Bom. 200) and *Queen-Empress* v. *Abbi Reddi* (I. L. R., 17 Mad 402) referred to. *Queen-Empress* v. *Thaku* (I. L. R., 8 Bom. 312) followed.—QUEEN-EMPRESS v. RAM DEI, I. L. R., 18 All 150. Edge, C.J., and Blennerhassett, J. April 29, 1896

S, a girl of the age of eight years, lived ordinarily under the guardianship of her father. A sister of S was married to a nephew of one K, and with her husband, lived in the house of K. S, with her father's knowledge and consent, visited her sister in K's house, and had remained there for about a month when four brothers (being cousins of S) came to K's house one night and took S to their own house which was close by and S was at once married to one of them. The father of S was not asked for his consent, and it was known by the nephews and by K that the father objected to such a marriage. K was present at the marriage and consented to it, hoping to reconcile the girl's father to it subsequently. The father, however, sought the aid of the police, to whom S was given up by her cousins after having been detained by them in their house for thirty-six hours. The four cousins were then charged, under s. 366 of the Indian Penal Code, with kidnapping S from lawful guardianship with intent that she might be compelled to marry one of them. The charge was framed in general terms and did not state from whose guardianship the kidnapping was alleged to have taken place. The trial was, however, conducted on the footing that the kidnapping was from the guardianship of K. The accused were acquitted, on the ground that K was at the time the lawful guardian of the girl, and it had not been shown that she had been taken without K's consent. Upon an appeal being preferred by Government against that acquittal, *held* that the accused had been rightly acquitted of the charge of kidnapping S from the guardianship of K, but that the question whether they were guilty of kidnapping S from the guardianship of her father had not been and ought to be tried. The word "include" in the explanation to s. 361 of the Indian Penal Code is not intended to limit the protection which the section gives to parents and minors, but rather to extend that protection by including in the term "lawful guardian" any person lawfully entrusted with the care or custody of the minor. The fact that a father allows his child to be in the custody of a servant or friend for a limited purpose and for a limited time does not determine the father's rights as guardian or his legal possession for the purposes of the Criminal Law. If the facts are not inconsistent with a continuance of the father's legal possession of the minor, the latter must be held to be in the father's possession or keeping even though the actual possession should be temporarily with a friend or other person.—JAGANNADHA RAO v. KAMARAJU, I. L. R., 24 Mad. 284. Davies and Benson, JJ. Sep. 25 Nov. 8 1900.

**367.** Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to grievous hurt or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

**Kidnapping or abducting in order to subject person to grievous hurt, slavery, &c.**

**368.** Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

Ditto.

**Wrongfully concealing or keeping in confinement a kidnapped or abducted person.**

THE conviction of a procuress changed from abduction to enticing, the woman alleged to have been abducted having been of mature age and a free agent The conviction of the other prisoners also changed from abetting wrongful concealment under s. 368 of the Penal Code to abetment under s. 116.—QUEEN v. SRIMOTEE PODDER, 1 W. R 45. [Kemp and Glover, JJ. Dec, 16, 1864.] It is illegal, however, to alter a charge from abduction to enticement. See *Empress* v. *Kallu*, I. L. R., 5 All. 233, and s. 199 of the new Code of Criminal Procedure (Act V of 1898).—ED.

WHERE a girl of 11 years of age was taken out of the custody of her lawful guardian by the first prisoner, and offered for sale in marriage to another, and the second prisoner illegally concealed her, the conviction of the former was upheld under s. 363 of the Penal Code only, and of the latter under s. 368 only, while the separate conviction of both under s 366 was quashed.—QUEEN v. ISHEF PANDAY, 7 W. R. 56. Norman, J. April 8, 1867.]

S. 368 of the Penal Code refers to some other party who assists in concealing any person who has been kidnapped and not to the kidnappers.—QUEEN v. SHEIKH OOZEER 6 W. R 17. Loch, J. July 2, 1868.

IF knowing that a girl has been kidnapped, a person wrongfully confines her, and subsequently detains her as a slave, he is guilty of two separate offences punishable under the Penal Code. Slavery is a condition which admits of degrees and a person is treated as a slave if another asserts an absolute right to restrain his personal liberty and to dispose of his labour against his will, unless that right is conferred by law, as in the case of a parent, or a guardian or a gator.—QUEEN v. MIRZA SIKUNDAR BUKHT, 3 N.-W. P. 146. Turner and Turnbull JJ. June 20, 1871.

THE mere fact of a girl being received into a house, and retained there by the owner, even after he may have become aware, or found reason to believe that she had been kidnapped, does not amount to concealment of her, unless an intention of keeping her out of view be apparent.—QUEEN v. JHUKRUE, 5 N.-W. P. 133. [Pearson and Jardine, JJ May 3, 1873.]

THE mere circumstance of a girl, who had been kidnapped, staying in the house of a person for a day or two, does not warrant the conclusion that she was wrongfully concealed by that person with the object of baffling any search that might be made for her.—QUEEN v. MUSSUMUT CHUBBOOA, 5 N.-W. P. 189 Pearson and Jardine, JJ. June 11, 1873.

TO constitute the offence of "wrongfully concealing" a person who has been kidnapped or abducted, there must be a withdrawal of that person from the actual observation of others, by removal or otherwise; and merely giving false information about such person is not sufficient.—PHUTA SINGH v CROWN, Panj Rec., No. 10 of 1874.

RAM DEI, Chajju Piru, and Kamar, were committed by the Joint Magistrate of Muzaffarnagar to the Court of the Sessions Judge of Saharanpur. Upon the case which was before the Joint Magistrate it appeared that Ram Dei had committed the offence punishable under s. 360 of the Penal Code in the district of Bijnor, and possibly the other three persons had committed the offence punishable under s. 368 of the Penal Code in the district of Muzaffarnagar. Chajju and Piru also possibly having committed the offence punishable under that section in Bijnor. Under the above circumstances, the High Court, maintaining the order of commitment made by the Joint Magistrate, directed the case to be transferred for trial to the Court for the trial of Sessions cases arising in the Bijnor district, namely, that of the Sessions Judge of Moradabad *Reg.* v. *Samia Kaundan* (I. L. R. 1 Mad. 173) and *Queen-Empress* v. *Surja* (Weekly Notes, 1883, p. 164) not followed. *Queen-Empress* v. *James Ingle* (I. L. R. 16 Bom 200) and *Queen-Empress* v *Abbi Reddi* (I. L. R., 17 Mad. 402) referred to. *Queen-Empress* v. *Thaku*, I. L. R., 8 Bom 312) followed.—QUEEN-EMPRESS v. RAM DEI, I. L. R., 18 All 350. [Edge, C J and Blennerhassett, J. April 29, 1896.]

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

Kidnapping or abducting child under ten years with intent to steal from its person.

**369.** Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any moveable property from the person of such child shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

THE offence described in s 363 of the Penal Code is included in that described in s. 369, the kidnapping and the intention of dishonestly taking property from the kidnapped child being included in the latter section. —QUEEN v. SHAMA SHEIKH 8 W. R. 35. [Kemp and Glover, JJ July 8, 1867.]

SEPARATE sentences cannot be awarded in one case for abducting a child in order to take property from its person (s. 369), and theft after preparation to cause death, &c., (s 382). Where the evidence shows that the act was one and the same, the sentence under the latter section was cancelled, there being no evidence of any preparation having been made to cause death, &c., within the meaning of that section.—QUEEN v. KASHEE NATH CHUNGO, 8 W. R. 84. [Seton-Karr and Macpherson, JJ. Nov. 30, 1867.]

**370.** Whoever imports, exports, removes, buys, sells, or disposes of any person as a slave, or accepts, receives, or detains against his will, any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Cl. of Ses. Uncog. Warrant. Bailable. Not comp.

Buying or disposing of any person as a slave.

A BOUGHT a girl, aged 9, and gave her in marriage to his brother. A was convicted by the Magistrate of the district of disposing of the girl as a slave. *Held* that the conviction was not sustainable.—CROWN v. RODA, Panj. Rec., No. 19 of 1867.

R, HAVING obtained possession of D, a girl about 11 years of age, disposed of her to a third person, for value, with intent that such person should marry her, and such person received her with that intent. *Held* that R could not be convicted of disposing of D as a slave under s. 370 of the Penal Code. *Queen* v. *Mirza Sikundar Bukhut* (3 N.-W. P. 146) remarked upon.—EMPRESS v. RAM KUAR, I. L. R., 2 All. 723. [Stuart, C.J., and Pearson, Spankie, Oldfield, and Straight, JJ. Mar. 8, 1880.]

S TRANSFERRED to A for Rs. 25 his rights in the person of B, a girl of 13 years. In a document in which the transaction was recorded B was described as a vellati or slave-girl purchased by S from P. *Held* that A was guilty of buying B as a slave within the meaning of s. 370 of the Penal Code.—AMINA v. QUEEN-EMPRESS, I. L. R., 7 Mad. 277. [Hutchins and Brandt, JJ. Feb. 13, 1884.]

**371.** Whoever habitually imports, exports, removes, buys, sells, traffics, or deals in slaves, shall be punished with transportation for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

Habitual dealing in slaves.

**372.** Whoever sells, lets to hire, or otherwise disposes of any minor under the age of sixteen years, with intent that such minor shall be employed or used for the purpose of prostitution, or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp.

Selling minor for purposes of prostitution, &c.

THE dedication of a minor girl under the age of 16 years to the service of a Hindu temple, by the performance of the *shej* ceremony, where it was shown that it was almost invariably the case that girls so dedicated led a life of prostitution, was a disposing of such minor, knowing it to be likely that she would be used for the purpose of prostitution, within the meaning of s. 372 of the Penal Code.—REG. v. JAILI BHABIN, 6 Bom. H. C. R. 60. [Warden and Lloyd, JJ. Sep 27, 1869.]

S, a married Mahomedan girl under 16, while living with N, her grandmother, and, in the absence of her husband, formed an adulterous intrigue with two Hindus, with the knowledge of N. S and N were then induced by the Hindus to remove to another village, that S might take up the trade of a prostitute. They there met J, a public woman, with whom they went to reside, and who introduced visitors to S, and received the money paid by them, in exchange for the board and food supplied to S and N. N was convicted, under s. 372, of disposing of a minor for the purpose of prostitution, and J was convicted, under s. 373, of obtaining possession of a minor for the purpose of prostitution. *Held per* Jackson, J.—That, on the facts proved, no offence was committed under the Penal Code. *Per* Glover, J.—N and J were both guilty under ss. 372 and 373 respectively, and their appeals should be dismissed.—QUEEN v. NOOR JAN, 6 B. L. R. Ap. 34; 14 W. R. 39. [Jackson and Glover, JJ. July 30, 1870.]

THE prisoners were convicted, the one of disposing of, and the other of receiving, two children, females, under the age of 16 years, with intent that such females should be used for the purpose of prostitution. The evidence showed that the children were disposed of and registered as dancing-girls of a pagoda for the purpose of being brought up as dancing-girls. *Held* that offences under ss. 372 and 373 of the Penal Code had been committed, and that the prisoners were properly convicted.—*Ex-parte* PADMAVATI, 5 Mad. H. C. R. 415. [Holloway and Innes, JJ. Aug. 4, 1870.]

To constitute an offence under s. 372 of the Penal Code it is not necessary that there should have been a disposal tantamount to a transfer of possession or control over the minor's person — REG. *v.* ARNACHELLAM, I. L. R., 1 Mad. 164. [Morgan, C.J., and Innes, J. July 18, 1876.]

THE accused were convicted by the Magistrate of the district of Lahore, exercising enhanced powers under s. 36, Criminal Procedure Code, of kidnapping a married woman, being a minor, from lawful guardianship, for the purpose of prostitution, and sentenced under ss. 363 and 372, Penal Code to terms of imprisonment exceeding three years. The proceedings were forwarded to the Sessions Judge, Lahore Division, for confirmation of the sentences. The Sessions Judge, holding that ss. 363 and 372, Penal Code, were inapplicable to married female minors, annulled the convictions, and directed the re-trial of the accused on a charge under s. 498, Penal Code. *Held* that the order of the Sessions Judge was illegal. 1st, because ss. 363 and 372 were applicable to married as well as to unmarried female minors; 2nd, because the Sessions Judge was not competent, under s. 36, Criminal Procedure Code, to direct a new trial upon a new charge; and, 3rd, because no complaint had been preferred of an offence falling under s. 498, Penal Code. —CROWN *v.* KAMMU, Panj. Rec. No. 12 of 1879.

THE facts which must be proved in order to support a conviction under ss. 372 and 373 discussed and explained. The gist of the offence under either section consists in the *intention* that the minor shall be employed or used for the purpose of prostitution, or for any unlawful and immoral purpose, or with the *knowledge* that it is likely that such minor will be employed or used for any such purpose. In the absence of any intention or knowledge of the kind referred to, the mere buying, selling, letting, or obtaining possession of, a minor is not *per se* a criminal act, as the law of India now stands. *Per* Rattigan, J.—An "unlawful" act may either be defined in connection with the definition of the term "illegal," as contained in s. 43 of the Penal Code, or it may be said that every act is unlawful which the law has prohibited; but, if the purpose be not "unlawful" within either of these definitions, although it may be immoral in a purely ethical sense, the offence will not be made out. The principle laid down by the Chief Justice of the Madras High Court (5 Mad. H. C. R. 472), that to bring a case within the section "it is essential to show that possession of the minor has been obtained under a distinct arrangement come to between the parties that the minor's person should be for some time completely in the keeping and under the control and direction of the party having possession, whether ostensibly for a proper purpose or not; thus, excluding the supposition that an obtaining of possession, in the sense of merely having sexual intercourse with a woman, could have been, in the contemplation of the framers of the section," approved. *Held per* Rattigan, J., in the present case, that, as the facts failed to prove with reference to certain of the accused, and did not necessarily raise the presumption that they, in either obtaining possession of the girl (the subject of the charge), or in subsequently attempting to dispose of her, intended that she should be employed or used for some unlawful and immoral purpose, nor was there anything to shew that the said accused knew or had reason to believe that the girl was otherwise than unmarried, there was therefore not sufficient evidence to establish a charge under s 372 or s 373 of the Penal Code, and that the said accused should be acquitted. If the intention of the accused was to dispose of the minor for the purposes of sexual intercourse, which was intended to be illicit, the purpose would be clearly *immoral*; but, to prove this kind of intercourse *unlawful*, within the meaning of s 43 of the Penal Code, it would be necessary to produce such evidence as would support a civil action for seduction, because, in the absence of such evidence, the seduction would not furnish ground for a civil action, and consequently would not be pronounced "unlawful" within the terms of the above section. If the intention of the accused was to dispose of the girl upon the condition of marriage, the purpose would not be "unlawful," as, although by Hindu and Mahomedan law, a marriage contracted for a minor by any other than his or her lawful guardian would, no doubt, be irregular, and, under certain circumstances, capable of being set aside, it could hardly be said to be "unlawful and immoral" within the meaning of ss 372 and 373 of the Penal Code, construing the first of these expressions as above. *Held per* Brandreth, J. (dissenting from

Rattigan, J., as to the acquittal of two of the above-mentioned accused), that the Magistrate of the District (Sialkot), in the present condition of the district, with regard to the public notoriety of the traffic and the vigorous efforts of the police to suppress it, was justified in presuming that all parties who sheltered or passed on the girl in the present case were acting in concert, and knew well that she was a married woman who had been seduced from her husband to be sold for the advantage of the gang to some new husband; and that, therefore, they were guilty of an offence under s. 372, as they had combined to dispose of a minor under the age of 16 years, with the intent that such minor should be used for an unlawful and immoral purpose, *viz.*, a second illegal marriage. *Held per* Barkley, J. (differing from Brandreth, J., as to this), that it would not be safe to presume that the accused knew, or had reason to believe, that the girl in question was married; but (dissenting from Rattigan, J., as to this) that, even on this assumption, the facts established amounted to an offence. The purpose for which the prisoners obtained possession of the girl was to dispose of her in marriage for a pecuniary consideration, such purpose was clearly "immoral," and the purpose of bringing about an unlawful marriage would be an "unlawful" purpose, whether, under the circumstances of the case, it would be an offence or not, as it would be a purpose to do a thing which the person intending it had no lawful power or right to do. For, to give validity to the marriage of a Hindu minor, the consent, either of one of the guardians prescribed for the purpose by Hindu law, or of some one to whom such guardian had presumably delegated his authority, is essential, and, in the absence of such consent, there is no marriage, though, in considering whether consent has been given, the subsequent conduct of the guardian may be taken into account. *Held*, therefore, that one of the accused was guilty of an offence under s. 373 of the Penal Code, though not under s. 372, as he had not effected his purpose of disposing of the girl when arrested.—KHUSHALA v EMPRESS, Panj Rec., No. 27 of 1880.

A DANCING-WOMAN of a temple applied to the manager of the temple for the appointment of a minor girl, whom she falsely described as her daughter, to her "kothu" miras; the Manager ordered that the girl be placed on the pay-abstract like other dancing-girls, and she was employed about the temple, though the ceremony of tying the bottu (after which the girl could not be married) did not take place. *Held* that the above facts constituted *primâ-facie* evidence that an offence under the Penal Code, s. 372, had been committed by the dancing-woman, the manager above named, and the parents of the girl.—SRINIVASA *v.* ANNASAMI, I. L. R., 15 Mad. 41. [Collins, C.J., and Wilkinson, J. Oct. 10, 1891.]

THE accused dedicated his minor daughter as a Basivi by a form of marriage with an idol. It appeared that a Basivi is incapable of contracting a lawful marriage, and ordinarily practises promiscuous intercourse with men, and that her sons succeed to her father's property. *Held* the accused had committed an offence under the Penal Code, s. 372.—QUEEN-EMPRESS *v* BASAVA, I. L. R., 15 Mad. 75. [Parker and Shephard, JJ. Nov. 5, 17, 1891.]

A DANCING-WOMAN (fourth accused) of a temple applied to the manager (first accused) of the temple for the appointment of a girl under the age of sixteen, whom she had adopted as her daughter, to her "kothu" mirasi office, to which duties more or less connected with the preparation of provisions of the temple were attached. The manager, before whom the girl had sung and danced, ordered that she be placed on the pay-abstract like other dancing-girls, and she was employed in the above-mentioned duties about the temple for about five months. It appeared that the dancing-women of the temple lived, partly at least, by prostitution, and there was evidence that the girl sang and danced in the temple, received wages, and wore a bottu (an emblem of marriage). The Magistrate upon the facts refused to frame a charge against the manager of the temple and the adoptive mother of the minor under the Penal Code, s. 372. *Held per* Collins, C.J. (Parker, J., *diss.*), that the Magistrate should have framed a charge. On a petition under the Criminal Procedure Code, ss. 435, 439, preferred by the complainant, who was a dismissed servant of the temple, after the prosecution had been pending for two years, it appeared that the girl had suffered no harm. *Held* that, whether or not the Magistrate should have framed a charge, the High Court was not bound to send the case for re trial.—SRINIVASA *v.* ANNASAMI, I. L. R., 15 Mad. 323. [Collins, C.J., and Parker, J. Mar. 8, 9, 22, 1892.]

THE accused dedicated his minor daughter, five or six years of age, to the service of a temple as a dancing-girl. The evidence showed that dancing-girls attached to a temple, as a rule, led immoral lives. *Held* that these facts were sufficient to constitute an offence under s. 372 of the Penal Code.—QUEEN-EMPRESS *v.* TIPPA, I. L. R., 16 Bom. 737. [Jardine and Telang, JJ. Mar. 10, 1892.]

A young prostitute under 16 years of age was brought to a house of assignation by the accused at the request of the complainant, and for his supposed use on that one occasion, it not being contemplated that the girl should be sold or let out for a period of employment, or for the purpose of being employed by the complainant as a prostitute, or for the purpose of being disposed of by him for that course of life. *Held* that such a letting out by the accused was not within the meaning of s. 372 of the Penal Code which, on the authorities, contemplates a case of letting or hiring or other similar transaction, by which the possession of a girl is obtained with the intention of employing her habitually for the purpose of indiscriminate sexual intercourse. *Dowlath Bee* v. *Shaik Ali* (5 Mad. H. C. R. 473) followed.—QUEEN-EMPRESS *v* SUKEE RAUR, I. L. R., 21 Cal. 97. [Pigot J. Aug. 26, 1893.]

IN order to constitute an offence under s. 373 of the Penal Code, it is not necessary that the intention or knowledge of likelihood as to the employment of the minor for purposes of prostitution should be, with reference to employment, either immediate or at some definite, and not very remote, future period, but an offence under the section is complete as soon as a girl is purchased with the guilty intention or knowledge of likelihood that she will, while still a minor under the age of 16 years, be employed for that purpose, although the point of time for such employment may be remote by reason of her physical incapacity for the purpose. H, the father of two girls, twins about a year old, sold one of them to K, a prostitute, for Rs. 9, and within ten days of such sale also sold her the other for Rs. 14. K was shown to have previously purchased another child whom she had brought up from her infancy, and who was then living with her, and leading the life of a prostitute. Both H and K made confessions as to the guilty knowledge and intention with which the sale of the two children was made. K's confession was made within two hours after her arrest, and immediately thereafter she was committed to *hajat* for seven days. On the seventh day, on being brought up for trial before the Deputy Magistrate, she retracted her confession, and assigned an innocent reason for her purchase of the girl. H and K were tried jointly—H being charged with an offence under s. 372, *viz.*, selling the girls for the purpose of prostitution, and K with an offence under s. 373, *viz.*, buying for the same purpose. Neither was charged with abetting the other. The two confessions were used as evidence, and there was other evidence tending to prove the intention and guilty knowledge. The Deputy Magistrate convicted each of the offence with which they were charged. On appeal the Sessions Judge acquitted K on the ground that the offence under s. 373 could not be committed unless the intention was that the minor was to be used for the purpose of prostitution at some definite future time, and that it would be carrying the law too far to hold that the intention had reference to a period some 12 or 14 years after the purchase when the minor became capable of being used for that purpose. *Held*, for the reasons above stated, that the acquittal on that ground was erroneous. *Held*, further, that, having regard to the circumstances under which the confession of K was given and retracted, it was open to suspicion, and could not safely be acted upon, and that the confession made by H was not legally admissible against her, as they were not being tried jointly for the same offence. *Held*, also, that having regard to the provisions of s. 106, ill. *(a)* of the Evidence Act, and to the fact that there was evidence, apart from the confessions, which tended to show the knowledge and intention which the character and circumstances of the act suggested, the onus lay on K to show that the intention was other then that which the act suggested, or that the employment of the girls as prostitutes was not intended till after they had attained the age of 16 years, and that, as she had failed to show this, and the evidence all tended the other way, the acquittal was erroneous, and must be reversed. —THE DEPUTY LEGAL REMEMBRANCER *v.* KARUNY BAISTORI, I. L. R., 22 Cal. 164. [Banerjee and Sale, JJ. Oct. 19, 1864.]

A MINOR girl under the age of sixteen years was taken by accused No. 1, under the direction of accused No. 2, from Sholapur to Tuljapur (in the Nizam's territory), and there dedicated to the goddess Amba, with intent or knowing it to be likely that the minor would be used for purposes of prostitution. The District Magistrate of Sholapur convicted accused No. 1 of an offence under section 372 and accused No. 2 of abetment of the offence under s. 372 and 108A of the Indian Penal Code, and sentenced them each to six months' rigorous imprisonment. *Held* that as the offence of the disposal of the minor took place out of British India, the Magistrate had no jurisdiction to try the offence, in the absence of a certificate of the Political Agent or the sanction of the Local Government as required by s. 188 of the Code of Criminal Procedure (Act V. of 1898.) *Held*, also, that accused No. 2 was not guilty of abetment, and s. 108A of the Indian Penal Code had no application to the present case. Mere intention not followed by any act cannot constitute any offence, and

an indirect preparation which does not amount to an act which amounts to a commencement of the offence does not constitute either a principal offence or an attempt or abetment of the same. The intention of either of the accused while they were staying at Sholapur did not constitute any offence, and their removal with the girl to Tuljapur did not by itself constitute an abetment.—QUEEN-EMPRESS v. BAKU, I. L. R., 24 Bom. 287. [Ranade and Crowe, JJ. Oct. 9, 1899.]

**373.** Whoever buys, hires, or otherwise obtains possession of, any minor under the age of sixteen years, with intent that such minor shall be employed or used for the purpose of prostitution, or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Buying minor for purposes of prostitution, &c.**

Ct. of Sess., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp.

WITH reference to the clause—obtains possession of any minor, &c.—it has been held that, where the charge is the purchase or acquisition of the minor for an immoral purpose, the proper Court to try the offence under s. 373 is the Court having jurisdiction in the place in which the purchase or acquisition was made, and not the Court having jurisdiction in the place of subsequent retention in another district.—C. N. A., N.-W. P., Pt. II., 131.

THE prisoner was tried upon a charge of having obtained possession of Dowlath Bee, a minor, aged ten years, with intent that she should be used for an unlawful and immoral purpose, that is to say, for the purpose of illicit intercourse, and having thereby committed an offence under s. 373 of the Penal Code. The evidence showed that the prisoner met Dowlath Bee, a girl eleven years old, in a street at Triplicane, and promised to give her a pice if she would accompany him into an uninhabited house close by, and allow him to have sexual intercourse with her. The girl went willingly with the prisoner; and both were detected in the act of having sexual intercourse. The girl had gone out without permission, had not attained the age of puberty, and the evidence tended to show that the girl had not before had sexual connection. The jury convicted the prisoner. *Held* by the High Court that the case proved against the prisoner did not make out the offence charged.—DOWLATH BEE v. SHAIK ALI, 5. Mad. H. C. R. 473. [Scotland, C.J., and Holloway and Innes, JJ. May 27, 1870.] Followed in *Queen-Empress v. Sukee Kaur*, I. L. R., 21 Cal. 97, see under s. 372, *supra*.

THE prisoners were convicted, the one of disposing of, and the other of receiving, two children, females under the age of 16 years, with intent that such females should be used for the purpose of prostitution. The evidence showed that the children were disposed of and registered as dancing-girls of a pagoda for the purpose of being brought up as dancing-girls. *Held* that offences under ss. 372 and 373 of the Penal Code had been committed, and that the prisoners were properly convicted.—*Ex-parte* PADMAVATI, 5 Mad H. C. R. 415. [Holloway and Innes, JJ. Aug. 4, 1870.]

WHERE a girl, under 16 years of age, who was travelling with a chance-protector (not her lawful guardian), went off with the accused voluntarily and without any false inducement or force on his part, and without any agreement between the accused and the girl or her protector that she should prostitute herself, and the accused subsequently hired out the girl on two occasions for the purpose of sexual intercourse *held*, reversing the order of the lower Court, that no offence was made out against accused under s. 373 or s. 366. In order to constitute an offence under s. 373, there must be a taking possession of the minor under some agreement or understanding, either with some third person or the minor, that the minor is to be employed for some purpose specified in the section.—HARDEO v. EMPRESS, Panj. Rec., No. 7 of 1880.

CERTAIN persons falsely representing that a minor girl of a low caste was a member of a higher caste, induced a member of such higher caste to take her in marriage, and to pay money for her, in the full belief that such representation was true. *Held per* Stuart, C.J., that such persons could not be convicted, on these facts, of offences under ss. 372 and 373 of the Penal Code. *Per* Oldfield, J., and Straight, J., that, if such girl was disposed of for the purpose of marriage, it could not be said, because the marriage might be invalid under Hindu law, that such persons acted with the intention that she should be employed or used for the purpose of prostitution, or for any unlawful and immoral purpose, or that they knew it to be likely that she would

be employed or used for such purpose, and consequently they could not be convicted of an offence under those sections. *Per* Pearson, J., and Spankie, J., that such girl having been disposed of for the purpose of marriage, although the marriage might be objectionable under Hindu law, it did not appear that it was wholly invalid, and, therefore, such intent or knowledge could not certainly be presumed, and such persons could not be convicted of offences under those sections.—EMPRESS *v.* SRI LALL, I. L. R., 2 All. 694. [Stuart, C. J., and Pearson, Spankie, Oldfield, and Straight, JJ. Feb. 9, 1880.]

IN order to constitute an offence under s. 373 of the Penal Code, it is not necessary that the intention or knowledge of likelihood as to the employment of the minor for purposes of prostitution should be, with reference to employment, either immediate or at some definite, and not very remote, future period, but an offence under the section is complete as soon as a girl is purchased with the guilty intention or knowledge of likelihood that she will, while still a minor under the age of 16 years, be employed for that purpose, although the point of time for such employment may be remote by reason of her physical incapacity for the purpose. H, the father of two girls, twins about a year old, sold one of them to K, a prostitute, for Rs 9, and within ten days of such sale also sold her the other for Rs. 14. K was shown to have previously purchased another child whom she had brought up from her infancy, and who was then living with her, and leading the life of a prostitute. Both H and K made confessions as to the guilty knowledge and intention with which the sale of the two children was made. K's confession was made within two hours after her arrest, and immediately thereafter she was committed to *hazat* for seven days. On the seventh day, on being brought up for trial before the Deputy Magistrate, she retracted her confession, and assigned an innocent reason for her purchase of the girl. H and K were tried jointly—H being charged with an offence under s. 372, *viz.*, selling the girls for the purpose of prostitution, and K with an offence under s. 373, *viz.*, buying for the same purpose. Neither was charged with abetting the other. The two confessions were used as evidence, and there was other evidence tending to prove the intention and guilty knowledge. The Deputy Magistrate convicted each of the offence with which they were charged. On appeal the Sessions Judge acquitted K on the ground that the offence under s. 373 could not be committed unless the intention was that the minor was to be used for the purpose of prostitution at some definite future time, and that it would be carrying the law too far to hold that the intention had reference to a period some 12 or 14 years after the purchase when the minor became capable of being used for that purpose. *Held*, for the reasons above stated, that the acquittal on that ground was erroneous. *Held*, further, that, having regard to the circumstances under which the confession of K was given and retracted, it was open to suspicion, and could not safely be acted upon, and that the confession made by H was not legally admissible against her, as they were not being tried jointly for the same offence. *Held*, also, that having regard to the provisions of s. 106, ill. (*a*) of the Evidence Act, and to the fact that there was evidence, apart from the confessions, which tended to show the knowledge and intention which the character and circumstances of the act suggested, the onus lay on K to show that the intention was other than that which the act suggested, or that the employment of the girls as prostitutes was not intended till after they had attained the age of 16 years, and that, as she had failed to show this, and the evidence all tended the other way, the acquittal was erroneous, and must be reversed.—THE DEPUTY LEGAL REMEMBRANCER *v.* KARUNA BAISTOBI, I. L. R., 22 Cal. 164. [Banerjee and Sale, JJ. Oct 19, 1894.] Approved in *Queen-Empress v. Chanda*, I. L. R., 18 All 24, *infra*.

To constitute the offence provided for by s. 373 of the Penal Code it is necessary, first, that a minor under sixteen years of age shall be bought, hired, or otherwise obtained possession of; and, secondly, that the minor shall be bought, hired, or otherwise obtained possession of with the intent that the same minor, while still under the age of sixteen years, shall be employed for the purposes of prostitution, or with the knowledge that it is likely that the said minor, while still under the age of sixteen years will be employed or used for an unlawful and immoral purpose. The offence is complete so soon as the obtaining possession, with the requisite intention or knowledge, of the minor, is accomplished, though the minor may not enter upon prostitution until years after she has attained maturity, or may never enter upon such a profession at all. *The Deputy Legal Remembrancer v. Karuna Baistobi* (I. L. R., 22 Cal. 164) approved.—QUEEN-EMPRESS *v.* CHANDA, I. L. R., 18 All. 24. [Knox, Banerji, and Aikman, JJ. June 26, 1895.]

IN a charge against a dancing girl under s. 373 of the Indian Penal Code for having purchased a young girl with intent that she would be used for the purposes of prostitution or knowing it to be likely that she would be so used, evidence was given of

the fact of purchase for a consideration, and that numerous other dancing girls residing in the neighbourhood were in the habit of obtaining girls and bringing them up as dancing girls or prostitutes, and that there were no instances of girls brought up by dancing girls ever having been married. On its being contended that there was no evidence of intent to support a conviction under s. 373 of the Indian Penal Code. *Held* that there was evidence before the Court to support the conviction.—QUEEN-EMPRESS v. PAPA SANI, I L. R., 23 Mad. 159. [Boddam and Moore, JJ. Aug. 31, 1899.]

**374.** Whoever unlawfully compels any person to labour against the will of that person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Any Mag. Cognizable. Warrant. Bailable. Comp.

Unlawful compulsory labour.

AMENDS cannot be awarded in a case under s 374 of the Penal Code (unlawful compulsory labour), which comes under ch. 14 of the Code of Criminal Procedure (Act XXV. of 1861).—RATEEAH *v.* PHOKONDEE, 5 W. R. 1. Phear and Glover, JJ. Jan. 8, 1866.]

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OF RAPE.*

**375.** A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:—

Rape.

*First.*—Against her will.

*Secondly.*—Without her consent.

*Thirdly.*—With her consent, when her consent has been obtained by putting her in fear of death or of hurt.

*Fourthly.*—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is, or believes herself to be, lawfully married.

*Fifthly.*—With or without her consent, when she is under twelve † years of age.

*Explanation.*—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

*Exception.*—Sexual intercourse by a man with his own wife, the wife not being under twelve † years of age, is not rape.

If the sexual intercourse was by a man with his own wife, the following is the procedure: Police not to arrest without warrant. Summons to issue in the first instance. Bail to be taken. Not compoundable. Triable by Court of Session. In any other case the following is the procedure: Police may arrest without warrant. Warrant to issue in the first instance. Not bailable. Not compoundable. Triable by Court of Session.

**376.** Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for rape.

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* As to whipping, see the Whipping Act (VI. of 1864), ss. 4, 6; and in the Punjab Frontier Districts and Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 8.

As to punishment where an offence is enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crime Regulation (IV. of 1887), s. 14.

† In s. 375, the word "twelve" has been submitted for the word "ten" by the Indian Criminal Law Amendment Act (X. of 1891), s. 1.

SEXUAL intercourse by a man with a woman without her free consent, *i.e.*, a consent obtained without putting her in fear of injury, amounts to rape; and the Judge should *leave the question to the jury, and not direct* them to find that the woman's consent after considerable struggle renders the charge of rape nugatory.—QUEEN *v.* AKBAR KAZEE, 1 W. R. 21. [Kemp and Glover, JJ. Nov. 11, 1864.]

HELD to be improbable and physically impossible that a girl of tender age should be killed by any violence in rape, and not show any external signs of violence.—QUEEN *v.* BANEE MADHUB MOOKERJEE, 1 W. R. 29. [Kemp and Glover, JJ. Nov. 22, 1864.]

THE measure of punishment in a case of rape should not depend on the social position of the party injured, but on the greater or less atrocity of the crime, the conduct of the criminal, and the defenceless and unprotected state of the injured female.—QUEEN *v.* JHANTAH NOSHYO, 6 W. R. 59. [Seton-Karr, J. Aug. 27, 1866.]

UNDER ss. 57, 376, and 511 of the Penal Code, a sentence of ten years' transportation or of five years' rigorous imprisonment, may be passed for the offence of attempt to commit rape; but a sentence of seven years' rigorous imprisonment, commutable under s. 59 of the Penal Code to seven years' transportation, is illegal.—QUEEN *v.* JOSEPH *MERIAM*, 10 *W. R.* 10; 1 *B. L. R. A. Cr* 5. [Loch and Glover, JJ. July 6, 1868.]

WHEN an offence is punishable either with transportation for life or imprisonment for a term of years, if a sentence of transportation for a term less than life is awarded, such term cannot exceed the term of imprisonment.—REG. *v.* NAIADA, I. L. R., 1 All. 43. [Turner, Offg C.J., and Pearson, Spankie, and Oldfield, JJ. Aug 23, 1875.]

AN indecent assault upon a woman does not amount to an attempt to commit rape, unless the Court is satisfied that there was a determination in the accused to gratify his *passions at all events, and in spite of all resistance.*—EMPRESS *v.* SHANKAR, I. L. R., 5 Bom. 403. [Melvill and Nanabhai Haridas, JJ. Mar. 2, 1881.]

AN offence under s. 365 of the Penal Code is, within the meaning of s. 238 of the Criminal Procedure Code, a minor offence as compared with offences under s. 366 and s. 376 of the Penal Code; and the High Court, in dealing with a case under s. 307 of the Criminal Procedure Code, can convict an accused of the former offence without a formal charge having been framed. *Per* Banerjee, J.—The words "minor offence" have not been defined by law, they are to be taken, not in any technical sense, but in their ordinary sense.—QUEEN-EMPRESS *v.* SITANATH MANDAL, I. L. R., 22 Cal. 1006. [Macpherson and Banerjee, JJ. July 16, 1895.]

BEFORE a criminal charge of adultery can be preferred, a formal complaint of that offence must be instituted in the manner provided by s. 199 of the Criminal Procedure Code. Therefore, where an accused person was committed to the Session to stand his trial on a charge preferred by a husband of rape under s. 376 of the Penal Code and the Sessions Judge at the trial added a charge of adultery under s 497 and acquitted the accused under s. 376, but convicted him of rape under s. 497. *Held* that the Sessions Judge had acted without jurisdiction. The fact that the husband appeared as a witness in the prosecution of the offence of rape cannot be regarded as amounting to the institution of a complaint for adultery. *Empress v. Kallu* (I. L. R., 5 All. 233) followed.—CHEMON GARO *v.* EMPEROR, I. L. R., 29 Cal. 415. [Prinsep and Stephen, JJ. Feb. 5, 1902.]

## OF UNNATURAL OFFENCES.*

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

Unnatural offences.

**377.** Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Explanation.*—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

* As to whipping, see the Whipping Act (VI. of 1864), ss. 4 to 6; and in the Punjab Frontier Districts and Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 8

WITH reference to ss. 59 and 377, Penal Code, when an offence is punishable either with transportation for life or imprisonment for a term of years, if a sentence of transportation for a term less than life is awarded, such term cannot exceed the term of imprisonment.—REG. *v.* NAIADA, I. L. R., 1 All. 43. [Turner, Offg. C.J., and Pearson, Spankie, and Oldfield, JJ. Aug. 23, 1875.]

THE accused was tried by the Sessions Court for an unnatural offence, and convicted on a charge which did not allege the time when, place where, or point to any known or unknown person with whom, the offence was committed, and without any proofs of those particulars, the facts proved against him only being that he habitually wore woman's clothes, and exhibited physical signs of having committed the offence. The High Court, in the exercise of its criminal revisional jurisdiction, sent for the records, and delivered the following judgment "This conviction cannot possibly be sustained. The charge upon which the accused was committed, and subsequently tried, alleges neither time when, place where, nor points to any known or unknown person with whom, the particular act charged as an offence against s. 377 of the Penal Code was committed: and for aught that appears to the contrary, the suggested unnatural intercourse may have taken place out of the jurisdiction of the Moradabad Court, and at some place where the Penal Code is not in force. At best, the case for the prosecution is, that the accused is a habitual sodomite; but at present there is no provision of the law that covers it, or renders him amenable to punishment upon evidence of so vague and general a description as that to be found in the present record. I fully appreciate the desire of the authorities at Moradabad to check these disgusting practices; but neither they nor I can set law and procedure at defiance in order to obtain an object, however, laudable. The conviction is quashed, and the accused must be released." —QUEEN-EMPRESS *v.* KHAIRATI, I. L. R., 6 All. 204. [Straight, J. Jan. 31, 1884.]

# CHAPTER XVII.*

## OF OFFENCES AGAINST PROPERTY.

INDIAN LAW COMMISSIONERS' REPORT ON OFFENCES AGAINST PROPERTY.

THERE is such a mutual relation between the different parts of the law that those parts must all attain perfection together. That portion, be it what it may, which is selected to be first put into the form of a Code, with whatever clearness and precision it may be expressed and arranged must necessarily partake, to a considerable extent, of the uncertainty and obscurity in which other portions are still left.

This observation applies with peculiar force to that important portion of the Penal Code which we now propose to consider. The offences defined in this chapter are made punishable on the ground that they are violations of the right of property. But the right of property is itself the creature of the law. It is evident, therefore, that, if the substantive civil law touching this right be imperfect or obscure, the penal law, which is auxiliary to that substantive law, and of which the object is to add a sanction to that substantive law, must partake of the imperfection or obscurity. It is impossible for us to be certain that we have made proper penal provisions for violations of civil rights till we have a complete knowledge of all civil rights, and this we cannot have while the law respecting those rights is either obscure or unsettled. As the present state of the civil law causes perplexity to the Legislator in framing the Penal Code, so it will occasionally cause perplexity to the Judges in administering that Code. If it be matter of doubt what things are the subjects of certain right, in whom that right resides, and to what that right extends, it must also be matter of doubt whether that right has or has not been violated.

For example. A, without Z's permission, shoots snipes on Z's ground, and carries them away. Here, if the law of civil rights grants the property in such birds to any person who can catch them, A has not, by killing them and carrying them away, invaded Z's right of property. If, on the other hand, the law

* As to enhanced punishment for second conviction for certain offences under Ch. XVII., see s. 75, *supra*.

As to punishment where an offence is enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see Punjab Frontier Crimes Regulation (VI. of 1887), s. 14.

INDIAN LAW COMMISSIONERS' REPORT ON OFFENCES AGAINST PROPERTY—*contd.*

of civil right declares such birds the property of the person on whose lands they are, A has invaded Z's right of property. If it be matter of doubt what the state of the civil law on the subject actually is, it must also be matter of doubt whether A has wronged Z or not.

By the English law,* pigeons, while they frequent a dove-cot, are the property of the owner of the dove-cot By the Roman Law,† they were not so. By the French law,‡ they are his property at one time of the year, and not his property at another. Here it is evident that the taking of such a pigeon, which would in England be a violation of the right of property, would be none in a country governed by the Roman law, and that, in France, it would depend on the time of the year whether it were so or not.

A lends a horse to B. B sells the horse to Z, who buys it believing in good faith that B has a right to sell it. A sees the horse feeding. He mounts it, and rides away with it. Here, if the law of civil rights provides that a thing sold by one who has no right to sell it, shall, nevertheless be the property of a *bond-fide* purchaser, A has invaded Z's right of property. If, on the other hand A's right is not affected by what has passed between B and Z, A does not commit an infraction of Z's right of property. If it be doubtful whether the right to the horse be in A or in Z, it must also be doubtful whether A has or has not committed an infraction of Z's right.

A path running across a field which belongs to Z has, during three years, been used as a public way. A, in spite of a prohibition from Z, uses it as such Here it by the civil law, an usage of three years is sufficient to create a right of way. A has committed no infraction of Z's right But, if a prescription of more than three years, or an express grant, be necessary to create a right of way, A has committed an infraction of Z's right of property

A discovers a mine on land occupied by him. Here, if the civil law assigns all minerals to the occupier of the land, A violates no right of property by appropriating the minerals. But, if the civil law assigns all minerals to the Government, A violates the right of property by such appropriation.

The sea recedes, and leaves dry land in the immediate neighbourhood of Z's property, Z cultivates the land. A turns cattle on the land, and destroys Z's crops. Here, if the civil law assigns alluvial additions to the occupier of the nearest land, A is a wrong-doer. If it declares alluvial additions common, A is not a wrong-doer. If it assigns alluvial additions to the Government, both A and Z are wrong-doers. If it be uncertain to whom the law assigns alluvial additions, it must be also uncertain who is the wrong-doer, and whether there be any wrong-doer.

The substantive civil law, in the instances which we have given, is different in different countries, and in the same country at different times. As the substantive civil law varies, the penal law, which is added as a guard to the substantive civil law, must vary also. And while many important questions of substantive civil right are undetermined, the Courts must occasionally feel doubtful whether the provisions of the Penal Code do or do not apply to a particular case

It would evidently be impossible for us to determine in the Penal Code all the momentous questions of civil right which, in the unsettled state of Indian jurisprudence will admit of dispute. We have, indeed, ventured to take for granted in our illustrations many things which properly belong to the domain of the civil law, because, without doing so, it would have been impossible for us to explain our meaning. But we have, to the best of our judgment, avoided questions respecting which, even in the present state of Indian jurisprudence, much doubt could exist. And, in the text of the law, we have as closely as was possible, confined ourselves to what is in strictness, the duty of persons engaged in framing a Penal Code. We have provided punishments for the infraction of rights without determining in whom those rights vest, or to what those rights extend. We are inclined to hope that, even if the Penal Code should come into operation before the Code of civil rights has been framed, the number of cases in which the want of a Code of civil rights would occasion perplexity to the criminal tribunals will bear but a very small proportion to those in which no such perplexity will exist.

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* Blackstone, Book II., ch 25.

† Columbarum fera natura est, nec ad rem pertinet, quod ex consuetudine evolare et revolare solent.—Inst. Lib. II., Tit, I.

‡ Paillet · Manuel de Droit Francais.

INDIAN LAW COMMISSIONERS' REPORT ON OFFENCES AGAINST PROPERTY—*contd.*

All the violations of the rights of property which we propose to make punishable by this chapter fall under one or more of the following heads :—

1. Theft.
2. Extortion.
3. Robbery.
4. The criminal misappropriation of property not in possession
5. Criminal breach of trust
6. The receiving of stolen property.
7. Cheating.
8. Fraudulent bankruptcy.
9. Mischief.
10. Criminal trespass.

All these offences resemble each other in this, that they cause, or have some tendency, directly or indirectly, to cause, some party not to have such a dominion over property as that party is entitled by law to have.

The first great line which divides these offences may be easily traced Some of them merely prevent or disturb the enjoyment of property by one who has a right to it Others transfer property to one who has no right to it. Some merely cause injury to the sufferer. Others, by means of wrongful loss to the sufferer, cause wrongful gain to some other party. The latter class of offences are designated in this Code as fraudulent

Every offence against property may be fraudulently committed. But theft, extortion, robbery, the criminal misappropriation of property not in possession, criminal breach of trust, the receiving of stolen property, fraudulent bankruptcy, and cheating, must be in all cases fraudulently committed. Fraud enters into the definition of every one of these offences. But fraud does not enter into the definition of mischief or of criminal trespass.

Theft, the criminal misappropriation of property not in possession, and criminal breach of trust, are, in the great majority of cases, easily distinguishable. But the distinction becomes fainter and fainter as we approach the line of demarcation, and at length the offences fade imperceptibly into each other. This indistinctness may be greatly increased by unskilful legislation. But it has its origin in the nature of things and in the imperfection of language, and must still remain in spite of all that legislation can effect.

We believe it to be impossible to mark with precision by any words the circumstances which constitute possession. It is easy to put cases about which no doubt whatever exists, and about which the language of lawyers and of the multitude would be the same. It will hardly be doubted for example, that a gentleman's watch lying on a table in his room is in his possession, though it is not in his hand, and though he may not know whether it is on his writing-table or on his dressing-table. As little will it be doubted that a watch which a gentleman lost a year ago on a journey, and which he has never heard of since, is not in his possession. It will not be doubted that, when a person gives a dinner, his silver forks, while in the hands of his guest, are still in his possession; and it will be as little doubted that his silver forks are not in his possession when he has deposited them with a pawn-broker as a pledge. But between these extreme cases lie many cases in which it is difficult to pronounce with confidence, either that property is, or that it is not, in a person's possession.

This difficulty, sufficiently great in itself, would, we conceive, be increased by laws which should pronounce that in a set of cases arbitrarily selected from the mass property is in the possession of some party in whose possession according to the understanding of all mankind, it is not. The rule of English law respecting what is called breaking bulk is an instance of what we mean. A person who has entrusted a hamper of wine to another to carry to a great distance is not in possession of that hamper of wine. But if the person in trust opens the hamper and takes out a bottle, the possession, according to the English lawbooks, forthwith flies back to the distant owner. Mr Livingston has laid down a rule of similar kind, the effect of which, if we understand it rightly, is to annul the whole law of theft as he has framed it, and indeed to render it impossible that theft can be committed in Louisiana. Theft is defined by him to be "the fraudulently taking of corporal personal property having some assignable value, and belonging to another, from his possession and without his assent." But in a subsequent clause he says that "neither the ownership nor the legal possession of property is changed by theft alone, without the circumstances required in such case by the Civil Code, in order to produce a change of property; therefore, stolen goods, if fraudulently taken from the thief, are stolen from the original proprietor." But, if stolen

by the second thief from the original proprietor, they must, according to Mr. Livingston's definition of theft, be taken by the second thief out of the possession of the original proprietor. Therefore, the first thief has left them in the possession of the original proprietor. That is to say, the first thief has not committed theft.

It will not be imagined that we refer to this inconsistency in the Code of Louisiana for the purpose of throwing any censure on the distinguished author of that Code. To do so would be unjust, and in us especially most ungrateful, and also most imprudent. For we are by no means confident that inconsistencies quite as remarkable will not be detected in the Code which we now submit to Government. We note this error of Mr. Livingston for the purpose of showing how dangerous it is for a Legislator to attempt to escape from a difficulty by giving a technical sense to an expression which he nevertheless continues to use in a popular sense.

For the purpose of preventing any difference of opinion from arising in cases likely to occur very often, we have laid down a few rules which we believe to be in accordance with the general sense of mankind as to what shall be held to constitute possession. But, in general, we leave it to the tribunals, without any direction, to determine whether particular property is at a particular time in the possession of a particular person or not.

Much uncertainty will still remain. This we cannot prevent. But we can, as it appears to us, prevent the uncertainty from producing any practical evil. The provision contained in cl. 61 will, we think, obviate all the inconveniences which might arise from doubts as to the exact limits which separate theft from misappropriation and from breach of trust.

The effect of that clause will be to prevent the Judges from wasting their time and ingenuity in devising nice distinctions. If a case which is plainly theft comes before them, the offender will be punished as a thief; if a case which is plainly breach of trust comes before them, the offender will be punished as guilty of breach of trust. If they have to try a case which lies on the frontier, one of those thefts which are hardly distinguishable from breaches of trust, or one of those breaches of trust which are hardly distinguishable from theft, they will not trouble themselves with subtle distinctions; but, leaving it undetermined by which name the offence should be called, will proceed to determine, what is infinitely of greater importance, what shall be the punishment.

In theft, as we have defined it, the object of the offender always is to take property which is in the possession of a person out of that person's possession. Nor have we admitted a single exception to this rule. In the great majority of cases our classification will coincide with the popular classification. But there are a few aggravated cases of what we designate as misappropriation and breach of trust, which bear such an affinity to theft that it may seem idle to distinguish them from thefts. And it certainly would be idle to distinguish such cases from thefts, if the distinction were made with a view to those cases alone. But, as we have a line of distinction which we think it desirable to maintain in the great majority of cases, we think it desirable also to maintain that line in the few cases in which it may separate things which are of a very similar description.

One offence which it may be thought that we ought to have placed among thefts is the pillaging of property during the interval which elapses between the time when the possessor of the property dies and the time when it comes into the possession of some person authorized to take charge of it. This crime in our classification falls under the head, not of theft, but of misappropriation of property not in possession.

The ancient Roman jurists viewed it in the same light. The property taken under such circumstances, they argued, being in no person's possession, could not be taken out of any person's possession. The taking, therefore, was not *furtum*, but belonged to a separate head called the *crimen expilatæ hæreditatis*.* The French lawyers, however, long ago found out a legal fiction by means of which this offence was treated as theft in those parts of France where the Roman law was in force†. Mr. Livingston's definition of theft appears to us to exclude this species of offence, nor indeed do we think that it could be reached by any provision of his Code. That it ought to be punished with severity under some name or other is indisputable. By what name it should be designated may admit of some dispute. If we call it theft, we speak the popular language. If we call it misappropriation of property not in possession, we avoid an anomaly, and maintain a line which, in the great majority of cases, is reasonable and convenient. On the whole, we are inclined to maintain this line.

* Justinian Dig., Lib. XLVII., Tit 19. † Domat, Sup. III.

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CRIMINAL BREACH OF TRUST, ETC.

Again, a carrier who opens a letter entrusted to his charge, and takes thence a bank-note, would be commonly called a thief. It is certain that his offence is not morally distinguishable from theft. Here, however, as before, we think it expedient to maintain our general rule; and we therefore designate the offence of the carrier, not as theft, but as criminal breach of trust.

The illustrations which we have appended to the provisions respecting theft, the misappropriation of property not in possession, and breach of trust, will, we hope, sufficiently explain to His Lordship in Council the reasons for most of those provisions.

It may possibly be remarked that we have not, like Mr. Livingston, made it part of our definition of theft, that the property should be of some assignable value. We would, therefore, observe that we have not done so only because we conceive that the law, as framed by us, obtains the same end by a different road. By one of the general exceptions which we have proposed, it is provided that nothing shall be an offence by reason of any harm which it may cause, or be intended to cause, or be known to be likely to cause, if the whole of that harm is so slight that no person of ordinary sense and temper would complain of such harm. This provision will prevent the law of theft from being abused for the purpose of punishing those venial violations of the right of property which the common sense of mankind readily distinguishes from crimes, such as the act of a traveller who tears a twig from a hedge, of a boy who takes stones from another person's ground to throw at birds, of a servant who dips his pen in his master's ink. It does not appear to us that any further rule on this subject is necessary.

EXTORTION.

The offence of extortion is distinguished from the three offences which we have been considering by this obvious circumstance, that it is committed by the wrongful obtaining of a consent. In one single class of cases theft and extortion are in practice confounded together so inextricably that no judge, however sagacious, could discriminate between them. This class of cases, therefore, has, in all systems of jurisprudence with which we are acquainted, been treated as a perfectly distinct class; and we think that this arrangement, though somewhat anomalous, is strongly recommended by convenience. We have, therefore, made robbery a separate crime.

ROBBERY.

There can be no case of robbery which does not fall within the definition either of theft or of extortion. But in practice it will perpetually be matter of doubt whether a particular act of robbery was a theft or an extortion. A large proportion of robberies will be half theft, half extortion. A seizes Z, threatens to murder him unless he delivers all his property, and begins to pull off Z's ornaments. Z in terror begs that A will take all he has, and spare his life, assists in taking off his ornaments, and delivers them to A. Here, such ornaments as A took without Z's consent are taken by theft. Those which Z delivered up from fear of death are acquired by extortion. It is by no means improbable that Z's right-arm bracelet may have been obtained by theft, and left-arm bracelet by extortion; that the rupees in Z's girdle may have been obtained by theft, and those in his turban by extortion. Probably in nine-tenths of the robberies which are committed, something like this actually takes place, and it is probable that a few minutes later neither the robber nor the person robbed would be able to recollect in what proportions theft and extortion were mixed in the crime; nor is it at all necessary for the ends of justice that this should be ascertained. For, though in general the consent of a sufferer is a circumstance which very materially modifies the character of the offence, and which ought therefore to be made known to the Courts, yet the consent which a person gives to the taking of his property by a ruffian who holds a pistol to his breast is a circumstance altogether immaterial.

DACOITY.

His Lordship in Council will perceive that we have provided punishment of exemplary severity for that atrocious crime which is designated in the Regulations of Bengal and Madras by the name of Dacoity. This name we have thought it convenient to retain for the purpose of denoting, not only actual gang-robbery, but the attempting to rob when such an attempt is made or aided by a gang.

RECEIVING STOLEN GOODS.

The law relating to the offence of receiving stolen goods appears to require no comment.

CHEATING.

The offence of cheating must, like that of extortion, be committed by the wrongful obtaining of a consent. The difference is

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that the extortioner obtains the consent by intimidation, and the cheat by deception. There is no offence in the Code with which we have found it so difficult to deal as that of cheating. It is evident that the practising of intentional deceit for purposes of gain ought sometimes to be punished. It is equally evident that it ought not always to be punished. It will hardly be disputed that a person who defrauds a banker by presenting a forged cheque, or who sells ornaments of paste as diamonds, may, with propriety, be made liable to severe penalties. On the other hand, to punish every defendant who obtains pecuniary favours by false professions of attachment to a patron, every legacy-hunter who obtains a bequest by cajoling a rich testator, every debtor who moves the compassion of his creditors by overcharged pictures of his misery, every petitioner who, in his appeals to the charitable, represents his distresses as wholly unmerited, when he knows that he has brought them on himself by intemperance and profusion, would be highly inexpedient. In fact, if all the misrepresentations and exaggerations in which men indulge for the purpose of gaining at the expense of others were made crimes, not a day would pass in which many thousands of buyers and sellers would not incur the penalities of the law. It happens hourly that an article which is worth ten rupees is affirmed by the seller to be cheap at twelve rupees, and by the buyer to be dear at eight rupees. The seller comes down to eleven rupees, and declares that to be his last word. The buyer rises to nine, and says that he will go no higher. The seller falsely pretends that the article is unusually good of its kind, the buyer that it is unusually bad of its kind, the seller that the price is likely soon to rise, the buyer that it is likely soon to fall. Here we have deceptions practised for the sake of gain, yet no judicious Legislator would punish these deceptions. A very large part of the ordinary business of life is conducted all over the world, and nowhere more than in India, by means of a conflict of skill, in the course of which, deception to a certain extent perpetually takes place. The moralist may regret this; but the legislator sees that the result of the attempts of the buyer and seller to gain an unfair advantage over each other is that, in the vast majority of cases, articles are sold for the prices which it is desirable that they should fetch; and, therefore, he does not think it necessary to interfere. It is enough for him to know that all this great mass of falsehood practically produces the same effect which would be produced by truth, and that any law directed against such falsehood would, in all probability, be a dead letter, and would, if carried into rigorous execution, do more mischief in a month than all the lies which are told in the making of bargains throughout all the bazars of India produce in a century.

If then it be admitted that many deceptions committed for the sake of gain ought to be punished, and that many such deceptions ought not to be punished, where ought the line to run?

It appears to us that the line which we have drawn is correct in theory, that it is not more inconvenient in practice than any other line must be which can be drawn while the civil law of India remains in its present state, and that it will be unexceptionable whenever the civil law of India shall be ascertained, digested, and corrected.

We propose to make it cheating to obtain property by deception in all cases where the property is fraudulently obtained, that is to say, in all cases where the intention of the person who has by deceit obtained the property was to cause a distribution of property which the law pronounces to be a wrongful distribution, and in no other case whatever. However immoral a deception may be, we do not consider it as an offence against the rights of property, if its object is only to cause a distribution of property which the law recognizes as rightful. A few examples will show the way in which this principle will operate.

A intentionally deceives Z into a belief that he is strongly attached to Z. A thus induces Z to make a will, by which a large legacy is left to A. Here A's conduct is immoral and scandalous. But still A has a legal right on Z's death to receive the legacy. Even if the clearest proofs of A's insincerity are laid before a tribunal, even if A in open Court avows his insincerity, the will cannot, on that account, be set aside. The gain, therefore, which A obtains under Z's will, is not, in the legal sense of the expression, wrongful gain. He has practised deception. He has thus caused gain to himself, and loss to others. But that gain is a gain to which the civil law declares him entitled, and which the civil law will assist him to recover if it be withheld from him. That loss is a loss with which the civil law declares that the losers must put up. A, therefore, has not committed the offence of cheating under our definition.

But suppose that the civil law should contain, as we think that it ought to contain, a provision declaring null, a will made in

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favour of strangers by a testator, who erroneously believed his children to be dead. And suppose that A intentionally deceives Z into a belief that Z's only son has been lost at sea, and by this deception induces Z to make a will by which everything is left to A. Here the case will be different. The will being null, any property which A could obtain under that will would be property which he had no legal right so to obtain, and to which another person had a legal right. The object of A has therefore been wrongful gain to himself attended with wrongful loss to another party. A has, therefore, under our definition, been guilty of cheating.

Again, take the case which we before put of a buyer and a seller. They have told each other many untruths, but none of those untruths was such as, after the article had been delivered, and the price paid, would be held by a Civil Court to be a ground for pronouncing that either of them possessed what he had no right to possess. Though the buyer has falsely depreciated the article, yet, when he takes it and pays for it, the legal right to it is transferred to him, as well as the possession. Though the seller has falsely extolled the article, yet, when he receives the price and delivers the article, the legal right to the price passes with the possession. However censurable, in a moral point of view, the deceptions practised by both may have been, yet those deceptions were intended to produce a distribution of property strictly legal. Neither the buyer nor the seller, therefore, has been guilty of cheating. But if the seller has produced a sample of the article, and has falsely assured the buyer that the article corresponds to that sample, the case is different. If the article does not correspond to the sample, the buyer is entitled to have the purchase-money back. The seller has taken and kept the purchase-money without having a legal right to take or keep it, and it may be recovered from him by a legal proceeding. His gain is, therefore, wrongful, and is attended with wrongful loss to the buyer. He is, therefore, guilty of cheating under the definition.

So, if the seller passes off ornaments of paste on the buyer for diamonds, the price which the seller receives is a price to which he has no right, and which the buyer may recover from him by an action. Here, therefore, the object of the seller has been wrongful gain attended with wrongful loss to the buyer. The seller is therefore guilty of cheating.

So, if the buyer, intending to acquire possession of the goods without paying for them, induces the seller by deception to take a note which the buyer knows will be dishonoured, the buyer is guilty of cheating. His object is to retain in his own possession money which he is legally bound to pay to the seller. The gain which he makes by retaining the money is wrongful gain, and is attended with wrongful loss to the seller. He is, therefore within the definition.

Whether the principle on which this part of the law is framed be a sound principle, is a question which will be best determined by examining, first, whether our definition excludes anything that ought to be included; and, secondly, whether it includes anything that ought to be excluded.

It can scarcely, we think, be contended that our definition excludes anything that ought to be included. For surely it would be unreasonable to punish, as an offence against the right of property, an act which has caused, and was intended to cause, a distribution of property which the law declares to be right, and refuses to disturb. If such an act be an offence, it must be an offence on some ground distinct from the effect which it produces on the state of property. Thus, if a person to whom a debt is due, thinking that he shall obtain payment more easily if he assumes the appearance of being in the public service, wears a badge of office which he has no right to wear when he goes to make his demand, he is guilty of the offence defined in cl. 150; but if he gains only what he has a legal right to possess, if he deprives the debtor only of that which the debtor has no legal right to retain, he is not a wrong-doer as respects property, inasmuch as he has only rectified a wrong distribution of property.

Indeed, it appears to us that there is the strongest objection to punishing a man for a deception, and yet allowing him to retain what he has gained by that deception. What the civil law ought to say may be doubtful. But there can be no doubt that the civil and criminal law ought to say the same thing; that the one ought not to invite while the other repeals; that the Code ought not to be divided against itself. To send a person to prison for obtaining a sum of money, and yet to suffer him to keep that sum of money, is to hold out at once motives to deter and motives to incite. Humanity requires that punishment should be the last resource, a resource only employed when no other means can be found of producing the desired effect. Penal laws clearly ought not to be made for the preventing of deception if

deception could be prevented by means of the Civil Code. To tempt men, therefore, to deceive by means of the Civil Code, and then to punish them for deceiving, is contrary to every sound principle.

We are, therefore, not apprehensive that we shall be thought to have granted impunity to any deception which ought to be punished as cheating.

But it is possible that our definition may be thought to include much that ought to be excluded. It certainly includes many acts which are not punishable by the law of England or of France. We propose to punish as guilty of cheating a man who, by false representations, obtains a loan of money not meaning to repay it; a man who, by false representations, obtains an advance of money, not meaning to perform the service, or to deliver the article for which the advance is given, a man who, by falsely pretending to have performed work for which he was hired, obtains pay to which he is not entitled.

In all these cases there is deception. In all, the deceiver's object is fraudulent. He intends, in all these cases, to acquire or retain wrongful possession of that to which some other person has a better claim, and which that other person is entitled to recover by law. In all these cases, therefore, the object has been wrongful gain, attended with wrongful loss. In all, therefore there has, according to our definition, been cheating. We cannot see why such acts as these should be treated as mere civil injuries—why they should be classed with the mere non-payment of a debt and the mere non-performance of a contract. They are infractions of a legal right effected by deliberate dishonesty. They are more pernicious than most of the acts which will be punishable under our Code.

They indicate more depravity, more want of principle, more want of shame, than most of the acts which will be punishable under our Code. We punish the man who gives another an angry push. We punish the man who locks another up for a morning. We punish the man who makes a sarcastic epigram on another. We punish the man who merely threatens another with outrage. And surely the man who, by premeditated deceit, enriches himself to the wrongful loss, perhaps to the utter ruin, of another, is not less deserving of punishment.

That some deceptions of this sort ought to be punished is admitted. But almost every argument which can be urged for punishing any is an argument for punishing all. The line between wilful fraudulent deception and good faith is a plain line. If there is any difficulty in applying it, that difficulty will arise, not from any defect in the line, but from the want of evidence in particular cases. But we are unable to find any reason for distinguishing one sort of fraudulent deception from another sort. The French Courts apply a test which appears to us to be very objectionable. They have decided that it is not *escroquerie* to cheat by false promises, or by exciting chimerical hopes, unless the sufferer had reasons of weight for believing that the promises were sincere, and the hopes well-grounded.* This rule seems to us to be a license for deception granted to cunning against simplicity. A weak and credulous person is more easily imposed on than a judicious and discerning person. And just so an infant is poisoned with a dose of laudanum which would hardly put a grown person to sleep: yet the poisoner is a murderer; a pregnant woman is grievously hurt by a blow which would make no impression on a boxer: yet the person who gives such a blow is punished with exemplary severity. The law in such cases inquires only whether the harm has been voluntarily caused or no. And why should the violation by deceit, of the right of property be treated differently? The deceiver proportions his artifices to the mental strength of those whom he has to deal with, just as the poisoner proportions his drugs to their bodily strength. And we see no more reason for exempting the deceiver from punishment, because he has effected his purpose by a gross fiction which could have duped only a weak person, than for exempting the poisoner from punishment because he has effected his purpose with a few drops of laudanum, which could have been fatal only to a young child.

Some persons may be startled at our proposing to punish as a cheat every man who obtains a loan by making promises of payment which he does not mean to keep. But let it be considered that a debtor, though he may have contracted his debts honestly, though it may be from absolute inability that he does not pay them, though his misfortunes may be the effect of no want of industry or caution on his part, is now actually liable to imprisonment. Surely it is unreasonable to detain in prison the man who, by mere misfortune, has involuntarily violated the rights of property, and to leave unpunished the man who has voluntarily, and by wilful

* Paillet: Manuel de Droit Français. Note on cl. 408 of the Penal Code.

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deceit, attacked those rights, if only he is lucky enough to have money to satisfy the demands on him.

For example, A and B both borrow money from Z. A obtains it by boasting falsely of his great means, of the large remittances which he looks for from England, of his expectations from rich relations of the promises of preferment which he has received from the Government. Having obtained it, he secretly embarks on board of a ship, intending to abscond without repaying what he has borrowed B, on the other hand, has obtained a loan without the smallest misrepresentation, and fully purposes to repay it The failure of an agency-house in which all his funds were placed renders it impossible for him to meet his engagements. Can it be doubted which of these two debtors ought rather to be sent to prison? Can it be doubted that A is a proper subject of punishment, and that B is not so? Yet at present A, if he is arrested before the ship sails, and lays down the money, enjoys entire impunity, while B may pass years in a jail. It would be improper for us here to discuss at length the question of imprisonment for debt. But it seems clear that, whether it be or be not proper that a debtor, as such, should be imprisoned, a distinction ought to be made between the honest and dishonest debtor. We are inclined to believe that the indiscriminate imprisonment of all debtors would be found to be unnecessary if this distinction were made. But, while they are all put on the same footing, the law must be formed upon a rough calculation of the chances of dishonesty All must be treated worse than honest debtors ought to be treated because none are treated so severely as dishonest debtors ought to be treated A respectable man must be imprisoned for a storm, a bad season, or a fire, because his dishonest neighbour is not liable to criminal proceedings for cheating We are satisfied that the only way to get rid of imprisonment for debt, as debt, is to extend the penal law on the subject of cheating in a manner similar to that in which we propose to exte d it.

The provisions which we have framed on the subject of fraudulent bankruptcy are necessarily imperfect, and must remain so until the whole of that important part of the law has undergone an entire revision.

MISCHIEF.

The provisions which we propose on the subject of mischief do not appear to us to require any explanation.

TRESPASS.

We have given the name of trespass to every usurpation, however slight, of dominion, over property. We do not propose to make trespass, as such, an offence, except when it is committed in order to the commission of some offence injurious to some person interested in the property on which the trespass is committed, or for the purpose of causing annoyance to such a person. Even then we propose to visit it with a light punishment, unless it be attended with aggravating circumstances.

These aggravating circumstances are of two sorts. Criminal trespass may be aggravated by the way in which it is committed. It may also be aggravated by the end for which it is committed.

There is no sort of property which it is so desirable to guard against unlawful intrusion as the habitations in which men reside, and the buildings in which they keep their goods. The offence of trespassing on these places we designate as house-trespass, and we treat it as an aggravated form of criminal trespass.

House-trespass, again, may be aggravated by being committed in a surreptitious or in a violent manner. The former aggravated form of house-trespass we designate as lurking house-trespass; the latter we designate as house-breaking Again house-trespass in every form may be aggravated by the time at which it is committed Trespass of this sort has, for obvious reasons, always been considered as a more serious offence, when committed by night, than when committed by day. Thus, we have four aggravated forms of that sort of criminal trespass which we designate as house-trespass, lurking house-trespass by night, and house-breaking by night.

These are aggravations arising from the way in which the criminal trespass is committed. But criminal trespass may also be aggravated by the end for which it is committed. It may be committed for a frolic. It may be committed in order to a murder. It may also often happen that a criminal trespass which is venial, as respects the mode, may be of the greatest enormity as respects the end; and that a criminal trespass committed in the most reprehensible mode may be committed for an end of no great atrocity. Thus, A may commit house-breaking by night for the purpose of playing some idle trick on the inmates of a dwelling. B may commit simple criminal trespass by merely entering another's field for the purpose of murder or gang robbery. Here A commits

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trespass in the worse way. B commits trespass with the worse object. In our provisions, we have endeavoured to combine the aggravating circumstances in such a way that each may have its due effect in settling the punishment.

## *Of Theft.**

**378.** Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

**Theft.**

*Explanation 1.*—A thing, so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

*Explanation 2.*—A moving, effected by the same act which effects the severance, may be a theft.

*Explanation 3.*—A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it.

*Explanation 4.*—A person who by any means causes an animal to move is said to move that animal, and to move every thing which, in consequence of the motion so caused, is moved by that animal.

*Explanation 5.*—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority, either express or implied.

*Illustrations.*

(*a*.) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession, without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(*b*.) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(*c*.) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(*d*.) A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

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* All persons are bound to give information of offences punishable under s. 38a.—See the new Code of Criminal Procedure (Act V. of 1898), s. 44.

As to whipping for offences under ss. 378, 380, 381, 382, see the Whipping Act (VI. of 1864), ss 2, 3; and (in the Assam Hill Districts) Reg. III. of 1875 ss. 2, 3.

As to whipping for offences under s. 382 in Upper Burma, see the Upper Burma Laws Act (XIII. of 1898), s. 4 (3) (*b*), and Sch. II and Sch. III.; in the Punjab Frontier Districts and Baluchistan, the Punjab Frontier Crimes Regulation (IV. of 1887), s. 8.

As to punishment for offences under ss. 379-382 enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s 14.

As to extortion by threat of accusation of an offence under s. 377, see ss. 388, 389, *infra*.

(*e*.) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a gold-smith, and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(*f*.) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and, if A dishonestly removes it, A commits theft.

(*g*.) A finds a ring lying on the high road, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(*h*.) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place, and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(*i*.) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(*j*.) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(*k*.) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he had borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

(*l*.) A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly. A has therefore committed theft.

(*m*.) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent, for the purpose merely of reading it, and with the intention of returning it. Here it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(*n*.) A asks charity from Z's wife. She gives A money, food, and clothes, which A knows to belong to Z, her husband. Here it is probable that A may conceive that Z's wife is authorized to give away alms. If this was A's impression, A has not committed theft.

(*o*.) A is the paramour of Z's wife. She gives A valuable property which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(*p*.) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

A DUG up and immediately carried away, without any authority or right, several cart-loads of earth, part of unassessed lands of a village. *Held* that A was not guilty of theft.—QUEEN-EMPRESS *v.* KOTAYYA, I. L. R., 10 Mad. 255. [Collins, C.J., and Kernan and Brandt, JJ. Feb. 22, and Mar. 18, 1887.] But see *Queen-Empress* v. *Shivaram*, I. L. R., 15 Bom. 702, *infra*.

FISH in a public river cannot be said to be property in the possession of the person who may have the fishery-right, and the infringement of that right is not *theft* under s. 378 of the Penal Code. The accused were charged with unlawfully taking fish along with some eleven others in a public river, the right of fishing in which had been let out by the Government to the complainant, and the lower Court, amongst other offences, convicted them of theft, criminal misappropriation, mischief, criminal trespass, and unlawful assembly. *Held* that the conviction was wrong, and that no offence had been committed.—BHAGIRAM DOME *v.* ABAR DOME, I. L. R., 15 Cal. 388. [Norris and Ghose, JJ. Jan. 24, 1888.]

A CHARGE of theft will lie under s. 378 of the Penal Code (Act XLV. of 1860), even where there is no intention to assume entire

dominion over the property taken, or to retain it permanently. When a person takes another man's property, believing, under a mistake of fact and in ignorance of law, that he has a right to take it, he is not guilty of theft, because there is no dishonest intention, even though he may cause wrongful loss within the meaning of the Penal Code. The accused was the brother of a farmer or contractor of a public ferry on the Tadri river. He seized a boat belonging to the complainant while conveying passengers across the creek which flows into the river at a point within three miles from the public ferry. His intention was apparently to compel persons who had to cross the creek to use the ferry in the absence of the complainant's boat, and thereby increase his brother's income derived from fees to be paid by passengers crossing the creek. The accused had no reason to believe that he was justified in seizing the boat. *Held* that the accused was guilty of theft, though it was not his intention to convert the boat to his own use, or deprive the complainant permanently of its possession.—QUEEN-EMPRESS v. NAGAPPA, I. L. R., 15 Bom. 344. [Birdwood and Jardine, JJ. Jan. 27, 1890.]

THE word "object" in s. 295 of the Penal Code does not include animate objects. A bull dedicated and set at large at the *Sradha* of a Hindu in accordance with religious usage is not an "object" within the meaning of that section. Where such an animal was killed by certain Mahomedans secretly and at night in the presence of none but Mahomedans for the sake of the meat and value of the skin, *held* that no offence had been committed under s. 295. *Queen-Empress* v. *Iman Ali* (I. L. R., 10 All 150) followed. *Held* further, that such a bull is not "moveable property" within the meaning of ss 378 and 403, or "property" within the meaning of s. 425 of the Penal Code, and could not therefore be the subject of theft, criminal misappropriation, or mischief. The fact that such a bull receives some attention from the cowherd of the persons who set it at liberty, and is daily fed by him by direction of his employers, and is not used for breeding purposes without their permission being asked, is not inconsistent with a total surrender by those who set it at liberty of all their rights as proprietors. *Queen-Empress* v. *Bandhu* (I. L. R., 8 All. 51) followed *Queen-Empress* v. *Nalla* (I. L. R., 11 Mad. 145) referred to and commented on. For the purpose of construing a section of an Act, and ascertaining the intention of the Legislature, the Report of the Indian Law Commissioners or a Select Committee appointed to consider a Bill may be referred to. *Queen-Empress* v. *Kartick Chunder Das* (I. L. R., 14 Cal. 721) followed.—ROMESH CHUNDER SANNYAL v. HIRU MONDAL, I. L. R., 17 Cal. 852. [Norris and Macpherson, JJ. Mar. 27, and April 15, 1890.]

EARTH, that is soil, and all the component parts of the soil, inclusive of stones and minerals, when severed from the earth or land to which it was attached, is moveable property capable of being the subject of theft. Whoever dishonestly severs such earth from the earth commits theft. Where a person dishonestly carried away 100 cart-loads of earth from the complainant's land, *held* that he was guilty of theft. *Queen-Empress* v. *Kotayya* (I. L. R., 10 Mad. 255) dissented from.—QUEEN-EMPRESS v. SHIVRAM, I. L. R., 15 Bom. 702. [Birdwood and Parsons, JJ. Mar. 24, 1891.]

THERE is no presumption of law that a wife and husband constitute one person in India for the purpose of criminal law. If the wife, removing her husband's property from his house, does so with dishonest intention, she is guilty of theft.—QUEEN-EMPRESS v. BUTCHI, I. L. R., 17 Mad. 401. [Muttusami Ayyar and Best, JJ. May 5, 1893.]

AN accused was found to have loosed the complainant's cattle at night from a cattle-pen, and to have driven them to the pound with the object of sharing with the pound-keeper the fees to be paid for their release. He was proceeded against under Act I. of 1871 (Cattle Trespass Act), and under the provisions of s. 22 ordered to pay compensation to the complainant, and in default to undergo one month's rigorous imprisonment. *Held* that s. 22 was inapplicable to the facts of the case, and that the order must be set aside. On the facts it was not a case of "illegal seizure and detention" of cattle, but rather one of theft, as all the elements of that offence were present, and the accused should have been charged with and tried for that offence. *Held*, further, that the sentence of imprisonment in default of payment of the compensation was not warranted by law. Compensation may be levied as a fine, and the ordinary mode of levying fines is laid down in s. 386 of the Code of Criminal Procedure. The law nowhere provides that fines may be levied by means of imprisonment.—PARYAG RAI v. ARJU MIAN, I. L. R., 22 Cal. 139. [Petheram, C.J., and Beverley, J. Aug. 18, 1894.]

WITH a view to coerce the complainant to pay a sum of Rs. 14, which he owed to the accused, three head of cattle worth Rs. 60 were removed from the complainant's homestead under the order of the accused. *Held* the offence of theft was not committed by the accused. The illustrations to s. 378 of the Penal Code indicate that it was the

intention of the Legislature that, in order to have committed theft within the meaning of the section, the taker must have taken the thing with the intention of keeping it himself, or disposing of it for his own benefit, or in some way which would compel the owner to pay him money which he did not owe him in order to regain his property. The words "intending to take dishonestly any moveable property" in the above section, read with s. 23 and s. 24 of the Penal Code, mean "with the intention of gaining by unlawful means property to which he is not legally entitled." "To gain property by unlawful means" means "to gain the thing moved for the use of the gainer," and not "the gaining possession of it for a time for a temporary purpose." S. 363 of the Penal Code, as drafted in 1837, discussed.—PROSONNO KUMAR PATRA *v.* UDOY SANT, I. L. R., 22 Cal. 669. [Petheram, C.J., and Beverley, J. April 30, 1895.] Overruled by *Queen-Empress v. Sri Churn Chungo*, I. L. R., 22 Cal. 1017, *infra*.

A CREDITOR by taking any moveable property of his debtor from the debtor's possession without his consent with the intention of coercing him to pay his debt commits the offence of theft as defined in s. 378 of the Penal Code. Ss. 23 and 24 of the Penal Code discussed and explained. *Prosonno Kumar Patra v. Udoy Sant* (I. L. R., 22 Cal. 669) overruled.—QUEEN-EMPRESS *v.* SRI CHURN CHUNGO, I. L. R., 22 Cal. 1017. Petheram, C.J., and Prinsep Pigot, Macpherson, and Banerjee, JJ. Dec. 20, 1895.]

**379.** Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

*Punishment for theft.*

Any Mag. Cognizable. Warrant. Not bailable. Not comp.

CHARGE—THAT you on or about the day of , at , committed theft of , the property of , valued at Rs , and thereby committed an offence punishable under s. 379 of the Indian Penal Code, and within, &c.

*Charge for Theft after a Previous Conviction.*

I (*name and office of Magistrate, &c.*) hereby charge you (*name of accused person*) as follows:—

That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under s. 379 of the Indian Penal Code and within the cognizance of the Court of Session (*or* High Court, *or* Magistrate, *as the case may be*

And you the said (*name of accused*) stand further charged that you, before the committing of the said offence, that is to say, on the day of , had been convicted by the (*state Court by which conviction was had*) at , of an offence punishable under Ch. XVII. of the Indian Penal Code with imprisonment for a term of three years, that is to say, the offence of house-breaking by night [*describe the offence in the words used in the section under which the accused was convicted*], which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under s. 75 of the Indian Penal Code.

And I hereby direct that you be tried, &c.—CRIM. PRO. CODE (Act V. of 1898), Sch. V., Form XXVIII. (III).

WHENEVER any person causes a police-officer to arrest another person in a presidency-town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding fifty rupees, to be paid by the person so causing the arrest to the person so arrested for his loss of time and expenses in the matter, as the Magistrate thinks fit. In such cases, if more persons than one are arrested or complained against, the Magistrate may, in like manner, award to each of them such compensation, not exceeding fifty rupees as such Magistrate thinks fit. All compensation awarded under this section may be recovered as if it were a fine, and if it cannot be so recovered the person by whom it is payable shall be sentenced to simple imprisonment for such term, not exceeding thirty days, as the Magistrate directs, unless such sum is sooner paid.—CRIM. PRO. CODE (Act V of 1898), s. 582.

THE offence of a person who makes away with property which has been placed in his charge and possession is not theft, but criminal breach of trust.—IN THE MATTER OF BHARUT CHUNDER CHRISTIAN, 1 W. R. 2. [Kemp and Glover, JJ. Aug. 8, 1864.]

THEFT is defined (s. 378) to be a dishonest taking of any moveable property out of the possession of any person without that person's consent.—QUEEN *v.* MADAREE CHOWKEEDAR, 3 W. R. 2. [Peacock, C.J., and Kemp and Glover, JJ. Feb. 17, 1865.]

A PERSON can be convicted of abetment of theft under the 1st explanation of s. 107 of the Penal Code only if he either procures or attempts to procure the commission of the theft. Mere subsequent knowledge of the of-

fence is insufficient.—QUEEN v. SHUMSERUDDEEN, 2 W. R. 40. [Kemp and Glover, JJ. Mar. 14, 1865.]

THE theft and the taking and retention of stolen goods form one and the same offence, and cannot be punished separately.—QUEEN v. SREEMUNT ADUP, 2 W. R. 62. [Glover, J. April 16, 1865.]

HOUSE-BREAKING by night and theft form a single and entire offence, and cannot be punished separately.—QUEEN v. TONAOKOCH, 2 W. R. 63. [Jackson and Glover, JJ. April 19, 1865.]

THE term "dishonest" is applied to a person who does anything with the intention of causing wrongful gain or wrongful loss. Where the accused forcibly seized a woman's bullocks for something which her husband may have owed in his lifetime, he was held to have caused wrongful loss and therefore guilty of theft.—QUEEN v. PREONATH BANERJEE, 1 Wyman's Rev., Crim. and Civ. Rep., p. 60; 5 W. R. 68. [Jackson, J. April 16, 1866.]

A DOUBLE sentence for theft and mischief is illegal and improper—BICHUK AHEER v. AUHUCK BHOONEEA, 6 W. R. 5. [Jackson and Campbell, JJ. June 18, 1866.]

IT is illegal to convict prisoners of mischief as well as of theft, the offences charged being that they had cut down Government trees without leave, and appropriated them.—REG. v. NARAYAN KRISHNA, 2 Bom. H. C. R. 392. [Couch, C.J., and Newton, J. June 27 1866.]

THE prisoner, acting *bonâ fide* in the interest of his employers, and finding a party of fishermen poaching on his master's fisheries, took charge of the nets, and retained possession of them, pending the orders of his employers. *Held* that the prisoner was not guilty of theft—QUEEN v. NOBIN CHUNDER HOLDAR, 6 W. R. 79. [Kemp and Markby, JJ. Sep. 28, 1866.]

THEFT is the sequel of, and cannot be separated from, house-breaking. A cumulative sentence of three years' imprisonment was held to be illegal in such a case.—MUSSAHUR DAOUDH, 6 W. R. 92. [Kemp and Markby, JJ. Dec. 19, 1866.]

STEALING property, and then destroying it, are but one offence, *viz.*, theft—not two, theft and mischief, but the fact that the offender has rendered the property irrecoverable should be considered in awarding punishment.—CROWN v. HAMIRA, Panj. Rec., No. 37 of 1866.

NO security can legally be demanded from persons convicted of theft—QUEEN v. KUNEE SONAR, 7 W. R. 57. [Seton-Karr and Markby, JJ. April 5, 1867.]

A PERSON acting under a claim of right (however ill-founded such claim may be) is not guilty of theft by asserting it.—QUEEN v. RAM CHURN SINGH, 7 W. R. 57. [Seton-Karr and Markby, JJ. April 15, 1867.]

SEPARATE convictions and sentences under ss. 429 and 379, and under ss. 457 and 380 of the Penal Code, were set aside, and the conviction under s. 429 in the former case, and under s. 457 in the latter, allowed to stand.—QUEEN v. SAHRAE, 8 W. R. 31. [Jackson and Hobhouse, JJ. July 1, 1867.]

WHERE a Court finds that parties came with a number of armed men, and carried off a crop, the finding amounts to that of a forcible carrying off without the consent of the owner. Even if they took no part in the actual taking, they must, with reference to s. 114, Penal Code, be considered guilty of the substantive offence under s. 378.—QUEEN v. SHIB CHUNDER MUNDLE, 8 W. R. 59. [Kemp and Glover, JJ. Aug. 5, 1867.]

A PRISONER who consented to form one of a party who committed theft, and resiled from his agreement, but was present at the commission of theft, does not come within cl. 2, s. 107, Penal Code, and ought not to have been convicted of the theft, but of the abetment thereof under cl. 3, s. 107, and s. 109, Penal Code, read together.—QUEEN v. BOOBHUN MOOSHUR, 8 W. R. 78. [Glover, J. Oct. 30, 1867.]

WHERE loss is occasioned to a person whose property has been stolen, it is not illegal for the trying Magistrate to award a portion of the fine inflicted on the accused as amends to the owner of such property, although the stolen property is recovered and restored to the owner.—REG. v. YESSAPPA BIN NINGAPPA, 5 Bom. H. C. R. 41. [Newton, Offg. C.J., and Tucker, J. May 20, 1868.]

CONVICTION and sentence by a Magistrate reversed, as the act of which the accused were convicted—taking pods (almost valueless) from a tree standing upon Government waste ground—came within the meaning of s. 95 of the Penal Code, and did not, therefore, amount to an offence.—REG. v. KASYA BIN RAVJI, 5 Bom. H. C. R. 35. [Newton, Offg. C.J., and Tucker, J. May 20, 1868.]

WHERE a policeman in whose sight a theft was committed arrested the thief, and, being himself unable to take or send the accused to a Magistrate, sent a report on which the Magistrate issued a warrant, *held* that, under these circumstances, the accused was legally brought before the Magistrate.—REG. v. MAHIPYA *valad* BOMYA MAHAR, 5 Bom. H. C.

R. 99. [Newton and Tucker, JJ. Sep. 24, 1868.]

A CONVICTION for theft under the Penal Code is illegal if the owner has given up all property in, and all possession of, the subject of the alleged theft. Thus, if a man digs up the carcass of a bullock, which the owner, suspecting to have been poisoned, caused to be buried, he cannot be convicted of theft.—PRO., Feb. 5, 1869, 4 Mad. H. C. R. Ap 30.

WHERE, in a case in which a prisoner was convicted of theft and also of receiving stolen property, the sentence passed was really one for theft, the High Court nevertheless refused to allow the conviction for receiving stolen property to remain on the record against the accused, and reversed it.—QUEEN v. SHEEB CHUNDER HAREE, 11 W. R. 12n. [Jackson and Hobhouse, JJ. Mar. 1, 1869.]

A MAHOMEDAN married woman may be convicted of theft, or abetment of theft, in respect of the property of her husband.—REG. v. KHATABI, 6 Bom. H. C. R. 9. [Tucker and Gibbs, JJ. Mar. 4. 1869.]

LOODUN was on terms of intimacy with Marwareed, who encouraged his visits; and when Loodun's father sent him away with a view to break up the connection, the woman followed him. She was brought back, and Loodun returned and renewed the intimacy with her. He was prohibited from his father's house, and carried away things which he gave to the woman. Loodun was convicted by the Magistrate of house-trespass in order to commit theft, and Marwareed of abetment of that offence. *Held* that her conviction could not be sustained, as no act subsequent to the commission of an offence can be construed into an abetment.—CROWN v. LOODUN, Panj. Rec., No. 11 of 1869.

THE moving by the same act which effects the severance may constitute a theft. Thus, the cutting down of trees without removing them may amount to theft.—PRO., Oct. 22, 1870, 5 Mad. H. C. R. Ap. 36.

THE prisoner was convicted of theft on his own confession. The charge to which the prisoner pleaded did not allege the taking out of the possession of some person dishonestly, and there was no evidence of such taking. *Held* that the conviction was bad.—PRO., Oct. 28, 1870, 5 Mad. H. C. R. Ap. 37.

A HINDU woman, who removes from the possession of her husband, and without his consent, her palla or stridhan, cannot be convicted of theft, nor can any person who joined her in removing it be convicted of that offence.—REG. v. NATH KALYANAND BAI, 8 Bom. H. C. R. 11. [Gibbs and Melvill, JJ. Jan. 9, 1871.]

THE mere assertion of a fair claim of property or right, or the mere existence of a doubt as to right, is not sufficient to justify an acquittal in a case of plunder of crops. The claim to the property must be proved by evidence to be fair and good.—NASSIB CHOWDHRY v. NANOO CHOWDHRY, 15 W. R. 47. [Bayley and Mitter, JJ. Mar. 25, 1871.]

S. 378 of the Penal Code does not include under the offence of theft the case when one joint-proprietor takes into his own sole possession property belonging to himself and his co-proprietor which had previously been in their joint-custody. K, the gomashta of a shop, was coming out of the Small Cause Court with some account-books belonging to that shop. A, who had a share in that shop, took them out of the possession of K, and kept them against the will of K, saying they were his. The Deputy Magistrate found A guilty of theft, and convicted him. On reference, the High Court quashed the conviction on the grounds. (1) that, when property is in the possession of a person's servant, it is in that person's possession within the meaning of s. 27 of the Penal Code, and, therefore, s. 378 does not include under the offence of theft the case where one joint-proprietor takes into his own sole possession property belonging to himself and his co-proprietors, which had been previously in their joint-possession; (2) that the books were not taken dishonestly, and that, if any offence was committed, it was not theft.—KIAMUDDIN v. ALLAH BUKSH, 15 W. R. 51. 6 B. L. R. Ap. 133; 13 B. L. R. 210n. [Norman, Offg. C.J., and Loch, J. April 15, 1871.]

A MERE plea by an accused that the property of the theft of which he is charged is his own property, unsupported by proof or by some circumstances which tend to indicate that there is some truth in the statement, is not sufficient to entitle him to be summarily discharged.—RUNNOO SINGH v. KALI CHURN MISSER, 16 W. R. 18: 7 B. L. R. Ap. 55 [Bayley and Paul, JJ. July 11, 1871.]

A BOAT may be the subject of theft. Although under s. 442 it is for certain purposes classed with houses, it does not cease to be moveable property under s. 378.—QUEEN v. MEHAR DOWALIA, 16 W. R. 53. [Kemp, Offg. C.J., and Ainslie, J. Oct. 6, 1871.]

INABILITY to prove a prescriptive right to fish within certain limits free from payment of rent is quite distinct from the want of right of any kind to fish therein, rendering a person so fishing liable to be brought up for the theft of fish taken by him.—KHETTER NATH DUTT v. INDRO JALLA, 16 W. R. 68. [Kemp and Jackson, JJ. Dec. 16, 1871.]

THE carrying off of certain buffaloes belonging to the complainant by order of the accused, and the retention of them in the custody of the latter's servant, were held to amount to an abetment of theft as defined in the Penal Code.—IN THE MATTER OF TARINEE PROSAUD BANERJEE, 18 W. R. 8. [Kemp and Glover, JJ. June 14, 1872.]

ACCUSED was convicted by an Assistant Magistrate of theft of paddy. The facts found were that prisoner was found in possession of rice not thrashed in the usual way, and that, having no paddy-land of his own, he failed to account satisfactorily for the possession of the rice. *Held* that this was such a case as no Judge would leave to a jury, and that the conviction must be quashed as founded upon evidence which, if all true, would not justify the inference of guilt. The meaning of the term *corpus delicti* explained.—PRO., Feb. 18, 1873, 7 Mad. H. C. R. Ap. 19.

THE taking of fish in that portion of a navigable river over which a right of jalkar exists in another person does not fall within s 378, Penal Code —HORIMOTI MONDOCK v. DENO NATH MALO, 19 W R 47 [Kemp and Pontifex JJ. Mar 20 1873]

WHERE the accused caught fish in a portion of a navigable river which was claimed by the prosecutor, it was held they could not be convicted of theft, and that if the right of the prosecutor was infringed, he could sue in the Civil Court for damages —BHUSUN PARUI v. DENONATH BANERJEE 20 W. R 15. [Jackson and Mitter, JJ May 7, 1873 c 2

DISHONEST removal of salt naturally ed in a creek, which was under the sup sion of an officer belonging to the Customs Department, constitutes theft, the salt having been legally appropriated by such officer (*per* Bayley and West, JJ.) But removal for one's own use from a creek of such salt not legally appropriated constitutes no offence either under the Penal Code or Act XXXI. of 1850 or XXVII. of 1837, though, under s 7 of the latter Act, made applicable by s. 8 of the former, the salt removed becomes liable to detention (*per* Lloyd and Kemball JJ.)—REG. v. MANSANG BHAVSANG, 10 Bom H. C R. 74. [Bayley and West JJ. May 21, 1873.]

IN a charge for stealing it must be proved that at the time of the act being done, the property stolen was in the possession of the prosecutor —HOSSENEE SHEIKH v. RAJ KRISHNA CHATTERJEE, 20 W. R 80. Phear and Morris, JJ. Nov. 18, 1873.]

A SENTENCE of whipping cannot, with reference to VI of 1864, s 7, be passed on a conviction for theft under s. 379, Penal Code, as the former section only provides for sentences of imprisonment for a term not exceeding three years.—QUEEN v. ESAN CHUNDER DEY, 21 W. R. 40. [Jackson and Ainslie, JJ. Feb. 5, 1874.]

POSSESSION of property which has been stolen from the owner is generally, at best, only evidence of theft when the date of the theft is so recent as to make it reasonable to presume in the absence of explanation that the person in whose possession the property is found must have obtained the possession by stealing.—QUEEN v. POROMESHUR AHEER, 23 W. R. 16. [Phear and Morris, JJ. Jan. 8, 1875.]

THE High Court declined to interfere with the order of a Deputy Magistrate, who, in a case of theft, dismissed the complaint, and fined the complainant under s. 209 of the Code of Criminal Procedure (Act X. of 1872), for making a frivolous and vexatious complaint.—KALI CHURN LAHARI v. SOSHEE BHOOSHUN SANYAL, 23 W. R. 17. [Phear and Ainslie, JJ. Jan. 13, 1875.]

THE illegal seizure and impounding of cattle is not theft within the meaning of the Penal Code, even if effected with the malicious intent of subjecting the owners to additional expense, inconvenience, and annoyance. A Sessions Judge has no power to release on bail persons convicted by the Magistrate, pending a reference to the High Court under Act X. of 1872, s. 296.—ARADHUN MUNDUL v MYAN KHAN TARADOGER, 24 W. R. 7. [Glover and Mitter, JJ. June 4. 1875.]

ALTHOUGH a person who is convicted of theft cannot, in respect of the same property, be convicted at the same time of receiving stolen property, yet a person who is acquitted of the theft of any property, or who is not charged with stealing it may, in respect of the identical property, be charged with, and convicted of, receiving it, knowing it to be stolen so that the mere fact of a person's having once been acquitted of the charge of stealing any property does not of itself prevent his trial at any future time on the charge of receiving the same property knowing it to be stolen.—QUEEN v. NYAZ ALI, 25 W. R. 47. [Kemp and Glover, JJ. May 25. 1876.]

POSSESSION of wood by a forest-inspector, who is a servant of Government, is possession of the Government itself; and a dishonest removal of it, without payment of the necessary fees, from his possession, albeit with his actual consent, constitutes theft within the meaning of s. 378, if that consent was unauthorized or fraudulent.—REG. v. HANMANTA, I. L. R., 1 Bom. 610. [Melvill and Kemball, JJ. Feb 26, 1877.]

A SOUGHT the aid of B with the intention of committing a theft of the property of B's master B, with the knowledge and consent

of his master, and for the purpose of procuring A's punishment, aided A in carrying out his object. On the prosecution of A for theft, *held* that, as the property removed was so taken with the knowledge of the owner, the offence of theft had not been committed; *held further*, that it is not necessary to an indictment for the abetment of an abetment of an offence to show that such offence was actually committed.—EMPRESS v. TROYLUCKHO NATH CHOWDHRY, I. L. R., 4 Cal. 366; 3 C. L. R. 525. [Jackson and White, JJ. Nov. 12, 1878.]

THE accused caught fish in the Sundridund, a sheet of water five miles long by twenty feet broad. The right of fishing in this and other dunds had been leased to a contractor by the Government. *Held* that the fish in the pond were not in the possession of any person within the meaning of s. 378, and could not, therefore, be the subject of theft.—CROWN v. JAMAL, Panj. Rec., No. 11 of 1878.

S A, a resident of foreign territory, was found concealed with three companions who were Jowaki Afridis, all armed to the teeth in the deserted house in Surgul Kohat district. Some Government camels were grazing in the village, and the theory for the prosecution was that S A and the other accused came down to steal these camels, or such other property as they might be able to lay hand upon. The Deputy Commissioner convicted all the accused under ss. 109 and 382, and the Commissioner, to whom the proceedings went up for confirmation, altered the conviction to one under s. 393. *Held* (by a majority of the Court, Elsmie, J., dissenting) that the conviction could not be sustained. *Per* Smyth, J.—The mere assembling of a number of persons together with a general intention of committing theft and not for the purpose of committing a specific theft or theft of specific property, cannot be considered to amount to the abetment of an offence of theft, so as to be punishable under ss. 110 and 379, or, as in the present case under ss. 116 and 382. There must be some design to commit a specific offence before a person can be held guilty of abetment of such offence by having conspired with others to commit it. *Per* Elsmie, J., *contra*.—That the case clearly came within the meaning of the 2nd clause of s. 107, and that the conviction was sustainable. *Per* Plowden, J.—On a charge of abetment of conspiracy, it is necessary to prove, and it ought therefore to be alleged, not only that the person charged engaged with one or more other person or persons in a conspiracy for the commission of an offence, (specify the offence), but also that some act or illegal omission (specify the particular act or omission) took place in pursuance of that conspiracy, and in order to the commission of the said offence. That in this case the facts alleged were not proved with sufficient certainty to justify a conviction; as it could not be said positively that the purpose of the accused was theft, or that they came into British territory in pursuance of a conspiracy to commit theft there. *Held* further (*per* Plowden, J.).—That a charge against several persons of engaging in a conspiracy to commit an offence of a particular kind (as, for instance, theft), as opportunity should offer, within a determinate area (as, for instance, a village), would not be bad as being too vague.—SHER ALI v. EMPRESS, Panj. Rec., No. 18 of 1879.

WHERE an accused person, who had been previously convicted of theft under s. 379, was sentenced to whipping in addition to imprisonment upon a subsequent conviction of house breaking by night with intent to commit theft under s. 457, and it appeared that theft was distinctly charged in the formal charges prepared by the Cole, though s. 457 alone was cited, and it was found that the theft was completed. *Held* by the Full Bench that the omission to formally charge the accused with, and convict him of, theft, under s. 378 or s. 380, was not a ground for setting aside the sentence of whipping on the revision side of the Court, such omission not having in any way prejudiced the accused in his defence.—EMPRESS v. RADHA, Panj. Rec., No. 14 of 1880.

A HINDU, intending to separate himself from his family, emigrated to Demerara as a coolie. After an absence of thirty years he returned to his family, bringing with him money and other moveable property which he had acquired in Demerara by manual labour as a coolie. On his return to his family, he lived in commensality with it, but he did not treat such property as joint-family property, but as his own property. *Held* that such property was his sole property, and his brother was not a joint owner of it, and could properly be convicted in respect of theft of it. It is irregular to convict and punish a person for abetment of theft, and at the same time to convict and punish him for receiving the stolen property.—EMPRESS v. SITA RAM RAI, I. L. R., 3 All. 181. [Straight, J. Aug. 16, 1880.]

PERSONS removing property under the provisions of the rent law relating to distraint ought not to be proceeded against under the criminal law, but the parties aggrieved by a wrongful distraint should have recourse to the remedy provided by Act VIII. of 1869 (B. C.).—SHEIKH AGHANI v. BHAGI HALWAI, 8 C. L. R. 204. [Pontifex and Field, JJ. Mar. 9, 1881.]

WHERE the plaintiff in a suit referred to arbitration by consent, with a view to prevent a witness from referring to an endorsement on a bond (which tended to show that defendant had paid more than it was alleged had been paid by him), snatched up the bond which was lying beside the arbitrator, ran away, and refused to produce it: *held* that the offence committed was not theft, but secreting a document under s. 204 of the Penal Code.—SUBRAMANIA GHANAPATI *v.* REG., I. L. R., 3 Mad. 261. [Turner, C.J., and Muttusami Ayyar, J. Sep. 2, 1881.]

A SWAMP, the property of Government, having been surrounded with police-guards by Government to prevent salt being removed, *held* that the taking against the will of Government, and with the intention of obtaining an unlawful gain of salt which had been spontaneously produced on the swamp, was theft.—REG. *v.* TAMMA GHANTAYA, I. L. R., 4 Mad. 228. [Turner, C.J., and Kernan, J. Oct. 19, 1881.]

THE wrongful taking of fish from a creek is not theft.—REG. *v.* RAVI POTHADU, I. L. R., 5 Mad. 390. Muttusami Ayyar and Tarrant, JJ. Aug. 5, 1882.]

WHERE property is in the joint-possession of two persons as joint-owners, and one of them dishonestly removes it from the possession of the other, the removal constitutes theft.—VIRAMKUTTI *v.* CHIYAMU, I. L. R. 7 Mad. 557. [Turner, C.J., and Hutchins, J. Aug. 14, 1884.]

TO constitute theft it is sufficient if property is removed, against his wish, from the custody of a person who has an apparent title, or even a colour of right to such property.—QUEEN-EMPRESS *v.* GUNGARAM SANARAY, I. L. R., 9 Bom. 135. [West and Scott, JJ. Oct. 29, 1884. Referred to in *Panchu* alias *Rahmatulla Pramanik v. Rahmatulla Akundo*, I. L. R. 27 Cal. 501, *infra*.]

WHERE the accused were found fishing without permission in an enclosed tank belonging to the municipality of the town of Sirai, it was held that they could be convicted of theft, as the tank from which the fish were taken was apparently an enclosed tank and the fish were, therefore, restrained of their natural liberty, and liable to be taken at any time according to the pleasure of the owner, and were, therefore, subjects of theft.—QUEEN-EMPRESS *v.* SHAIKH ADAM *valad* SHAIK FARID, I. L. R., 10 Bom. 193. [Bird wood and Jardine, JJ. Jan. 8, 1886.]

THEFT of joint property may be committed by a co-parcener if he takes it from joint-possession, and converts such possession into separate possession. This was a case referred for the orders of the High Court under s. 438 of the Code of Criminal Procedure (Act X. of 1882) by the District Magistrate. The case was stated as follows: "P, the accused, a boy of 18, took a cart from his father's mandi, or shop, without his father's knowledge, and sold it, and appropriated the proceeds. He admitted all this, but pleaded, first, that he was undivided from his father, and was a joint-owner of the cart; and, secondly, that the reason he took the cart was that his father, who was married a second time, does not support either him or his mother. He kept, he said, part of the proceeds for his own support, and sent the rest to his mother. The Second-class Magistrate took the accused person's word for all these allegations, and found: 'He seems to have acted under a *bond-fide* claim of right,' and discharged him." Judgment of High Court: "The Second-class Magistrate's judgment and order are wrong. Theft of joint property of a family may be committed by one of the family, though a co-parcener, if he takes it from joint-possession into separate possession. See Weir's Criminal Rulings, p. 154, on s. 379, Penal Code. The acquittal is set aside, and the Magistrate is directed to re-try the case and to have regard to the definition of theft in s. 378, Penal Code, and of the word 'dishonestly' in s. 24.'—QUEEN-EMPRESS *v.* PONNURANJAN, I. L. R., 10 Mad. 186. [Kernan and Muttusami Ayyar, JJ. Mar. 1, 1887.]

A HOE up and immediately carried away, without any authority or right, several cartloads of earth part of unassessed lands of a village. *Held* that A was not guilty of theft.—QUEEN-EMPRESS *v.* KOTAYYA, I. L. R., 10 Mad. 255. Collins, C.J., and Kernan and Brandt, JJ. Mar. 18, 1887.]

A PERSON who has been convicted of the offence of theft (an offence punishable under ch. 17 of the Penal Code) does not, on being convicted of an attempt to commit the offence of theft, become liable to the enhanced punishment allowed by s. 75 of the Penal Code.—QUEEN-EMPRESS *v.* SRICHARAN BAURI, I. L. R., 14 Cal. 357. [Petheram, C.J., and Cunningham, J. Mar. 19, 1887.]

UNDER ss. 35 and 235 of the Criminal Procedure Code, a Magistrate may legally pass a separate sentence of two years' rigorous imprisonment and fine under each of the ss. 379 or 380 and 454 of the Penal Code for housebreaking in order to the commission of theft, and theft, the two offences forming part of the same transaction, and being tried together. In such a case where the prisoner had been three times previously convicted, *held* that the better course would have been to commit him to the Court of Session under ss. 459-75 of the Code. But a Sessions Judge trying such a case under s. 379 or s. 380 and s.

454 would, under no circumstances, be justified in passing a sentence of ten years' imprisonment under the latter part of s. 444, and of four years' imprisonment under s. 380. The latter portions of ss. 454 and 457 were framed to include the cases of house-trespassers and house-breakers who had not only intended to commit, but had actually committed theft. *Queen-Empress* v. *Ajudhia* (I. L. R., 2 All. 644) and *Queen-Empress* v. *Sukharam Bhau* (I. L. R., 10 Bom. 493) referred to.—QUEEN-EMPRESS v. ZOR SINGH, I. L. R., 10 All. 146. [Straight and Brodhurst, JJ. Dec. 16, 1887.]

ACCUSED were charged with having taken fish from a tank belonging to the complainant and convicted of theft and criminal trespass under ss. 379 and 447 of the Penal Code. It was found that the tank in question was not enclosed on all sides, and was dependent on the overflow of a neighbouring channel which was connected with flowing streams for its supply of fish that the fish were not reared and preserved in the tank and that the occurrence complained of took place at a time when the floods were high, and the tank was connected with the streams, so that the fish could leave it at pleasure. *Held* that the fish were *feræ naturæ*, and not in "the possession of" the complainant, and consequently no offence had been committed. *Held* further that, had the fish been taken at a time when they were restrained of their natural liberty and were liable to be taken at the pleasure of the owner of the tank, the conviction would have been upheld. The Meherpore case of 1887 (I. L. R., 15 Cal. 390) distinguished.—MAYA RAM SURMA v. NICHALA KATANI, I. L. R., 15 Cal. 402. [Norris and Ghose, JJ. Jan. 21, 1888.]

THE accused, being in the employ of Government in the Post-office Department, while assisting in the sorting of letters secreted two letters with the intention of handing them to the delivery-peon and sharing with him certain moneys payable upon them. He was charged under the Post-office Act, s. 48. *Held* (1) that since the intention of the accused was not to prevent the delivery of the letters to the addressees he was not guilty of the offence of secreting them within the meaning of that section; (2) that he was guilty of the offence of stealing and of fraudulently misappropriating the letters within the meaning of that section, and of the offence of theft and of attempt to commit dishonest misappropriation of property within the meaning of the Penal Code.—QUEEN-EMPRESS v. VENKATASAMI, I. L. R., 14 Mad. 229. [Collins, C.J., and Weir, J. Oct. 17, Nov. 13, 1890.]

CERTAIN crops which had been distrained for arrears of revenue were harvested and removed by the owners and occupiers of the land, who were thereupon charged with theft. The accused were not the defaulters, the demand having been made upon certain other persons in whose name the pattas stood as the registered proprietors. The accused were acquitted. *Held* that the acquittal was wrong in the absence of a finding whether or not the accused were aware of the distraint, and dishonestly removed the crops with such knowledge.—QUEEN-EMPRESS v. RAMASAMI, I. L. R., 16 Mad. 364. [Muttusami Ayyra and Parker, JJ. Nov. 30, 1892.]

WITH a view to coerce the complainant to pay a sum of Rs. 14 which he owed to the accused, three head of cattle worth Rs. 60 were removed from the complainant's homestead under the order of the accused. *Held* the offence of theft was not committed by the accused. The illustrations to s. 378 of the Penal Code indicate that it was the intention of the Legislature that, in order to have committed theft within the meaning of the section, the taker must have taken the thing with the intention of keeping it himself, or disposing of it for his own benefit, or in some way which would compel the owner to pay him money which he did not owe him in order to regain his property. The words "intending to take dishonestly any moveable property" in the above section, read with s. 23 and s. 24 of the Penal Code, mean "with the intention of gaining by unlawful means property to which he is not legally entitled." "To gain property by unlawful means" means "to gain the thing moved for the use of the gainer," and not "the gaining possession of it for a time for a temporary purpose." S. 363 of the Penal Code, as drafted in 1837, discussed.—PROSONNO KUMAR PATRA v. UDOY SANT, I. L. R., 22 Cal. 609. Petheram, C.J., and Beverley, J. April 30, 1895. Dissented from in *Queen-Empress* v. *Agha Muhammed Yusuf*, I. L. R., 18 All. 88, *infra*.

HELD that the removal by a creditor, against the will of his debtor, of property belonging to such debtor, with the view of compelling such debtor, to discharge his debt, amounts to theft within the meaning of s. 379 of the Penal Code. *Queen-Empress* v. *Sumesher Rai* (Weekly Notes, 1888, p. 97) referred to. *Prosonno Kumar* v. *Uday Sant* (I. L. R., 22 Cal. 609) dissented from.—QUEEN-EMPRESS v. AGHA MUHAMMAD YUSUF, I. L. R., 18 All. 88. [Edge, C.J., and Burkitt, J. Nov. 16, 1895.]

IN a case where the accused were convicted by a Deputy Magistrate of the offence of rioting under s. 147 and theft under s. 379 of the Penal Code, and sentenced to four

months for the first and two months for the latter offence, but on appeal the District Magistrate, considering the case to be one of theft rather than rioting, abandoned the sentence under s. 147, but upheld the conviction under s. 379, of the Penal Code, and sentenced them to six months' rigorous imprisonment: *held* that what the District Magistrate had in effect done was to enhance the sentence under s. 379 of the Penal Code, which he had no power to do under s. 423, cl. (*b*), sub-s. 3 of the Code of Criminal Procedure. —RAMZAN KUNJRA v. RAMKHELAWAN CHOWBE, I. L. R., 24 Cal. 316. [Ghose and Gordon, JJ. Jan. 19, 1897.]

AN accused person alleged and claimed that certain paddy was grown upon his *jote*, and that he cut and removed it as a matter of right and in an assertion of a *bonâ-fide* claim to the land. It was admitted by the complainant, who also claimed the paddy and the land, that there had been a boundary dispute between his landlord and the landlord of the accused. The accused was convicted in a summary trial of the paddy. *Held per* Prinsep, J.—That, if the complainant's *barqadars* had grown the crops as found and nevertheless the accused cut and carried them off, there could be no *bonâ-fide* belief that he was entitled to do so to justify his action in regard to the complainant. With the fact found that possession was with the complainant by the growing by him of the crops cut by the accused, the accused was without justification in thus taking the law into his hands, even if he was entitled to hold the lands because he was not in actual possession of them. His Lordship refused to interfere. *Per* Stevens, J.—The findings of the lower Court taken as a whole amounted to a finding that the accused acted *mala fide* and the mere fact that he brought some witnesses to speak to his long possession of the land, and the cultivation of the crops by him could not be taken as showing that a *bonâ-fide* dispute as to title existed between the complainant and himself. To constitute theft it is sufficient if property is removed against his wish from the custody of a person who has an apparent title or even a colour of right to such property. In the present case the complainant had an apparent title as tenant of the land, together with long possession, and he had, on the strength of that apparent title and long possession, raised the crops which the accused removed. The application should be dismissed *Queen-Empress* v. *Gangaram Santram* (I. L. R., 9 Bom. 135) referred to. *Per* Stanley, J., *contra*.—That the evidence, as well for the prosecution as for the defence, conclusively established that there was a *bonâ-fide* dispute as to the title to the land upon which the paddy was sown. Once this was sown the criminal charge failed. The fact, if it be the fact, that the paddy was sown by the complainant, would not give him the property in the crop, if it were sown on the land of the accused. If the land was the land of the accused, it was an act of trespass on the part of the complainant to sow it with paddy, and the complainant had no right to complain if the accused resented his act of aggression by cutting and removing the crop. A dishonest intent is a necessary ingredient in the offence of theft. No such intention has been found on the part of the accused. That the conviction and sentence should be set aside. PANDITA *alias* RAHMATULLA PRAMANIK v. RAHIMULLA ARUNDO, I. L. R., 27 Cal. 501. [Prinsep, Stevens, and Stanley, JJ. Jan. 15, 1900.]

FISH in an ordinary irrigation tank are not in the possession of any person so as to be capable of being the subject of theft. Nor does the removal of such fish constitute any other offence. *Queen* v. *Revu Pothadu* (I. L. R., 5 Mad. 301), *Bhagiram Dome* v. *Ahar Dome* (I. L. R., 15 Cal. 388) referred to. —SUBBA REDDI v. MUNSHOOR ALI SAHIB, I. L. R., 24 Mad. 81. [Benson and Moore, JJ. Mar. 16, 1900.]

THERE is no jurisdiction in the High Court to hear appeals in respect of sentences passed on conviction of offences committed within the districts known as the Chittagong Hill Tracts.—QUEEN-EMPRESS v. SONAI MUGH, I. L. R., 27 Cal. 654. [Prinsep and Stanley, JJ. Mar. 30, 1900.]

THE accused were convicted by a Magistrate of theft of mangoes and also of rioting, the common object of the unlawful assembly being the forcibly taking away of mangoes belonging to the complainant. On appeal the Sessions Judge not only found that the common object was not the taking of the mangoes, but that the dispute between the parties was as to certain land. He, however, dismissed the appeal, and confirmed the conviction. *Held* that, as the accused were convicted on a different finding of fact from that to which they were called upon to plead and to defend themselves at the trial, they were entitled to an acquittal.—RAHIMUDDI v. ASGAR ALI, I. L. R., 27 Cal. 990. [Prinsep and Handley, JJ. June 6, 1900.]

WHERE a Subordinate Magistrate convicted the prisoner under s. 379 of the Penal Code of theft, and the District Magistrate on appeal merely affirmed the conviction, and added to his judgment an order under s. 106 of the Criminal Procedure Code, binding over the petitioner to keep the peace. *Held* that

he was not competent to pass such an order except on an express finding that the petitioner had committed an offence with the terms of s. 106.—KINOO SHEIKH v. DAMASTULLAH MOLLAH, I. L. R., 29 Cal. 393. [Prinsep and Stephen, JJ. Feb. 5, 1902.]

**380.** Whoever commits theft in any building, tent, or vessel, which building, tent, or vessel is used as a human dwelling, or for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Theft in dwelling-house &c.

Any Mag. Cognizable. Warrant. Not bailable. Not comp.

A PRISONER may be convicted of theft in a building and of house-breaking by night with intent to commit theft, though, if the Judge considers the punishment for the first offence sufficient, he need not award any additional sentence for the second.—QUEEN v. TINCOWREE, W. R. Gap., 1864, 31. [Jackson, J. May 11, 1864.]

THEFT, by constables, of property from the house they were employed to guard, is punishable under s. 380, and not s. 409.—QUEEN v. BOIDONATH SINGH, 3 W. R. 29 [Jackson and Glover, JJ. June 17, 1865.]

THE prisoner was convicted by the Magistrate of two separate offences under ss. 456 and 380 of the Penal Code, and sentenced for both. On appeal the Sessions Judge holding that the offence proved was under s. 457, ordered a new trial for offences under ss 457 and 380. *Held* that there ought not to be a new trial, but that the conviction and sentence under s. 310 should be set aside.—QUEEN v. RAMCHARAN KAIRI, B. L. R. Sup. Vol. 488: 6 W. R. 30 [Peacock, C. J. and Norman, Kemp, Seton-Karr, and Campbell, JJ. July 9, 1866.]

A CATTLE-SHED has been held to be "a building used for the custody of property."—Mad. H. C. R. Nov. 24, 1866.

A HIRED boatman does not come within the definition of a clerk or servant under s. 381 of the Penal Code. Theft by such a person on board a boat comes under s. 380.—QUEEN v. BAWOOL MANJEE, 8 W. R. 32. [Kemp and Glover, JJ. July 2, 1867.]

A DEPUTY MAGISTRATE has no power to convict of theft (s. 380 Penal Code) where the offence charged is lurking house-trespass by night, with aggravating circumstances (ss. 458, 459, Penal Code), but must commit on the latter charge.—PURAN TELEE v. BHUTTOO DOME, 9 W. R. 5. [Kemp and Jackson, JJ. Jan. 13, 1869.]

WHERE the accused stole property at night belonging to two different persons from the same room of a house, it was held that he could not be sentenced separately as for two offences of theft.—QUEEN v. SHEIK MONEERAH, 11 W. R. 38. [Loch and Jackson, JJ. April 14, 1869.]

A PRISONER convicted of "theft in a dwelling-house," who has previously been convicted of "simple theft, is not thereby rendered liable to whipping under Act VI. of 1864, s. 3.—REG. v. CHANGIA *alad* SHUNIA, 7 Bom. H. C. R. 68. [Westropp, C.J., and Gibbs and Lloyd, JJ. Sep. 22, 1870.]

THE Magistrate convicted the accused under s. 380 of the Penal Code, and a previous conviction having been proved under s. 379 of the Penal Code, sentenced of imprisonment and whipping was passed. *Held* that, in order to justify the sentence of whipping the previous conviction should have been in respect of the same specific offence.—PRO., Oct. 28, 1870, 5 Mad. H. C. R. Ap. 38.

ON a conviction for theft in a dwelling, under s. 380 of the Penal Code, fine cannot be substituted in lieu of imprisonment, though it may be added to imprisonment.—SHEIKH DULLOO v. ZAINAH BEBEE, 16 W. R. 17. [Kemp and Glover, JJ. July 1, 1871.]

ALL that is necessary in order to constitute the offence of theft in a building is that the property should be under the protection of the building. It is not necessary to show unlawful entrance into the building.—QUEEN v. ISHREE PERSHAD, 24 W. R. 49. [Markby and McDonell, JJ. Aug. 23, 1875.]

S. 380 which makes it an offence punishable with seven years imprisonment to commit theft in any building &c., used as a human dwelling or for the custody of property, is intended to give greater security only to property deposited in a house, so as to be under the protection of the house, and not to property about the person of the party from whom it is stolen. Theft from a person in a dwelling-house is therefore, simple theft under s. 379.—TANDRI RAM v. CROWN, Panj. Rec., No. 14 of 1876.

ACCUSED, with intent to commit theft, entered at night a *dalan*, or entrance-hall, surrounded by a wall in which there were two door-ways, but without doors, which was used for the custody of property. *Held* that the *dalan* was a building within the meaning of ss. 380 and 442, and that a conviction under s. 457 was therefore maintainable.—DAD v. CROWN, Panj. Rec., No. 10 of 1879.

HELD that, where, in the course of one and the same transaction, an accused person appears to have committed several acts, directed to one end and object, which together amount to a more serious offence than each of them taken individually by itself could constitute, although for purposes of trial it may be convenient to vary the form of charge, and to designate, not only the principal, but the subsidiary crimes alleged to have been committed, yet, in the interests of simplicity and convenience, it is best to concentrate the conviction and sentence on the gravest offence proved. Where, therefore, a person who broke into a house by night, and committed theft therein, was charged and tried for offences under ss. 380 and 457 of the Penal Code, and was convicted of both those offences, and punished for each with rigorous imprisonment for eighteen months, the Court convicted him of the offence under s. 457, and sentenced him to rigorous imprisonment for three years, and acquitted him of the offence under s. 380.—EMPRESS v. AJUDHIA, I. L. R., 2 All. 644. [Straight, J. Jan. 19, 1880. Referred to in *Queen-Empress* v. *Zor Singh*, I. L. R., 10 All. 146, *infra*.

THE accused was convicted at one trial by a Magistrate of the first class of the offences of house-breaking by night with intent to commit theft, punishable under s. 457, and of theft in a dwelling-house, punishable under s. 380 of the Penal Code (Act XLV. of 1860), the two offences being part of the same transaction, the theft following the house-breaking. The prisoner was sentenced to two years' rigorous imprisonment under s. 457, and to six months rigorous imprisonment and a fine of Rs. 100, or, in default of payment, three months' further rigorous imprisonment under s. 380. The District Magistrate referred the case to the High Court, on the ground that the aggregate of punishment awarded on the two heads of charge exceeded the powers of the First-class Magistrate who tried the case. The Sessions Judge, to whom an appeal had been preferred, was of the same opinion, and reduced the sentence to two years' rigorous imprisonment. *Held* that, as the accused committed two distinct offences which did not "constitute, when combined, a different offence" punishable under any section of the Penal Code (Act XLV. of 1860), s. 71 of the Code did not apply, and, as the aggregate punishment did not exceed twice the amount of punishment which the trying Magistrate was competent to inflict, the sentences were legal under s. 35 of the Criminal Procedure Code (Act X. of 1882). *Per* Jardine, J.—The rules for assessment of punishment, contained in s. 454 of the Criminal Procedure Code of 1872, having been omitted in s. 235 of the Criminal Procedure Code of 1882, must now be sought for in s. 71 of the Penal Code (Act XLV. of 1860) and in s. 35 of the Criminal Procedure Code (Act X. of 1882).—QUEEN-EMPRESS v. SAKHARAM BHAU, I. L. R., 10 Bom. 493. [Birdwood and and Jardine, JJ. Feb. 1886.] Referred to in *Queen-Empress* v. *Zor Singh*, I. L. R., 10 All. 146, *infra*.

UNDER ss. 35 and 235 of the Criminal Procedure Code, a Magistrate may legally pass a separate sentence of two years' rigorous imprisonment and fine under each of the ss. 379 or 380 and 454 of the Penal Code for house-breaking in order to the commission of theft and theft, the two offences forming part of the same transaction, and being tried together. In such a case, where the prisoner had been three times previously convicted, *held* that the better course would have been to commit him to the Court of Session under ss. 454-75 of the Code. But a Sessions Judge trying such a case under s. 379 or s. 380 and s. 454 would, under no circumstances, be justified in passing a sentence of ten years' imprisonment under the latter part of s. 454, and of four years' imprisonment under s. 380. The latter portions of ss. 454 and 457 were framed to include the cases of house-trespassers and house-breakers who had not only intended to commit, but had actually committed, theft.—*Queen-Empress* v. *Ajudhia* (I. L. R., 2 All 644) and *Queen-Empress* v *Sakharam Bhau* (I. L. R., 10 Bom. 493) referred to.—QUEEN-EMPRESS v. ZOR SINGH, I. L. R., 10 All. 146. [Straight and Brodhurst, JJ. Dec. 16, 1887.]

WHERE the accused stole a piece of cloth spread out to dry on the top of a house, to which he got access by scaling a wall, it was held that he had not committed theft in a building, but simple theft. The fact that the roof was used for domestic purposes makes no difference.—1 Mad. Jur. 282.

A COURT has no power under s. 395 of the Criminal Procedure Code to revise its sentence of whipping by inflicting a fine. In cases where the sentence of whipping cannot be carried out, all that the Court can do is either to remit the whipping altogether, or to sentence the offender, in lieu of such whipping, or of so much of the sentence of whipping as was not carried out, to imprisonment, &c. The word "imprisonment" in s. 395 of the Criminal Procedure Code means a substantive sentence of imprisonment and not imprisonment for default in payment of a fine.—QUEEN-EMPRESS v. SHEODIN, I. L. R., 11 All. 308. [Straight, J. Jan. 5, 1889.]

ON suspicion of theft of certain articles from a running goods train, a van on the train, in which four railway-coolies were tra-

veiling, was searched. The property missed was not found, but, hidden under a heap of clothing belonging to the four coolies, were discovered 10 *thans* of cloth, which on investigation were ascertained to have been abstracted from the next van. *Held* that none of the four coolies travelling in the van where the 10 *thans* of stolen cloth were found could be convicted of the theft of cloth in the absence of evidence to connect one or more of them individually with the possession of the cloth.—KING-EMPEROR *v.* ALI HUSAIN, *I. L. R., 23 All. 306.* [Blair, J. April 12, 1901.]

**381.** Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Warrant. Not bailable. Not comp.

**Theft, by clerk or servant, of property in possession of master.**

THE prisoners were charged with having stolen a sum of money shut up in a box, and placed in the police treasury-buildings, over which they, as barkandazes were placed in guard. *Held* that the charge should have been made under s. 381 (theft by a servant in possession of property), and not under s 409 (criminal breach of trust by a public servant).—QUEEN *v.* JUGGURNATH SING, 2 W. R. 55. [Seton-Karr, Jackson, and Glover, JJ. April 3, 1865.]

A HIRED boatman does not come within the definition of a clerk or servant under s. 381 of the Penal Code. Theft by such a person on board a boat comes under s. 380. —QUEEN *v.* BAWOOL MANJEE, 8 W. R. 32. [Kemp and Glover, JJ. June 2, 1867.]

THE civil station at Rajkot is not part of British India within the meaning of Stat. *21 and 22 Vict., c. 106. Where the accused*, a subject of a Native State, committed theft at Rajkot Civil Station, and was found in possession of the stolen property at Thana, *held* that, as the offence was not committed in British India, and as the accused was the subject of a Native State, the Sessions Court at Thana had no jurisdiction to try the accused for theft under s. 381 of the Penal Code. But it was competent to try him for dishonest retention of stolen property under s. 410 of the Penal Code as amended by Act VIII. of 1882.—QUEEN-EMPRESS *v.* ABDUL LATIF *alias* ABDUL RAHIMAN, I. L. R., 10 Bom. 186. [Birdwood and Jardine, JJ. Nov. 24, 1885.]

*L*, *K*, and *J* were tried jointly and convicted, *L* under s. 381 of the Penal Code of stealing tea in the possession of his master, *K* and *J* under s. 411 of the Penal Code of dishonestly retaining some stolen tea which they had received from *L*. It was contended that the joint trial of a person charged under s. 411 of the Penal Code with a person charged under s. 381 of the Penal Code was necessarily void and the conviction bad. *Held* that a misjoinder of parties is not fatal to the proceedings but is an irregularity which requires that the Court should consider whether, *under the terms of s. 537 of the Code* of Criminal Procedure, it has in fact occasioned a failure of justice. *Bishnu Banmar v. Empress* (1 C. W. N. 35) referred to. *In the Matter of Abdur Rahman* (I. L. R., 27 Cal. 839) and *Kali Prosad Mahisal v. Queen-Empress* (I. L. R., 28 Cal. 7) followed.—KARU KALAI *v.* RAM CHARAN PAL, I. L. R., 28 Cal 10. [Pratt and Brett, JJ. Nov. 12, 1900.]

**382.** Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp.

**Theft after preparation made for causing death or hurt or restraint in order to the committing of the theft.**

*Illustrations.*

(*a*.) A commits theft on property in Z's possession: and, while committing this theft he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z in case Z should resist. A has committed the offence defined in this section.

(*b*.) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z if Z should perceive what is passing, and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under

s. 382 of the Penal Code, shall forthwith give information to the nearest Magistrate or Police-officer of such commission or intention. —CRIM. PRO. CODE (Act V. of 1898), s. 44.

CHARGE.—That you, on or about the day of , at , committed theft, having made preparation for causing death to a person in order to the committng of such theft, and thereby committed an offence punishable under s. 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

That you, on or about the day of , at , committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby commi.ted an offence punishable under s. 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

That you, on or about the day of , at , committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable under s 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].—CRIM. PRO. CODE (Act V. of 1898), Sch. V., Form XXVIII. (II.).

AN omission to give information that a crime has been committed does not, under s. 107 of the Penal Code, amount to abetment, unless such omission involves a breach of a legal obligation. A private individual is not bound by any law to give information of any offence which he has seen committed. —QUEEN *v.* KHADIM SHEIKH, 4 B. L. R. A. Cr. 7. [Loch and Glover, JJ. Nov 23, 1869.]

S A, a resident of foreign territory was found concealed with three companions (who were Jowaki Afridis), all armed to the teeth, in a deserted house in Surgul, Kohat district. Some Government camels were grazing in the village, and the theory for the prosecution was that S A and the other accused came down to steal these camels, or such other property as they might be able to lay hand upon. The Deputy Commissioner convicted all the accused under ss. 109 and 382, and the Commissioner, to whom the proceedings went up for confirmation, altered the conviction to one under s. 393. *Held* (by a majority of the Court, Elsmie, J., dissenting) that the conviction could not be sustained. *Per* Smyth, J.—The mere assembling of a number of persons together with a general intention of committing theft, and not for the purpose of committing a specific theft or theft of specific property, cannot be considered to amount to the abetment of an offence of theft, so as to be punishable under ss. 116 and 379, or, as in the present case, under ss. 116 and 382. There must be some design to commit a specific offence before a person can be held guilty of abetment of such offence by having conspired with others to commit it. *Per* Elsmie, J., *contra*.—That the case clearly came within the meaning of the 2nd clause of s. 107, and that the conviction was sustainable. *Per* Plowden, J.—On a charge of abetment of conspiracy, it is necessary to prove, and it ought, therefore, to be alleged, not only that the person charged engaged with one or more other person or persons in a conspiracy for the commission of an offence (specify the offence), but also that some act or illegal omission (specify the particular act or omission) took place in pursuance of that conspiracy, and in order to the commission of the said offence That in this case the facts alleged were not proved with sufficient certainty to justify a conviction, as it could not be said positively that the purpose of the accused was theft, or that they came into British territory in pursuance of a conspiracy to commit theft there. *Held* further (*per* Plowden, J.)—That a charge against several persons of engaging in a conspiracy to commit an offence of a particular kind (as, for instance, theft), as opportunity should offer, within a determinate area (as, for instance, a village), would not be bad as being too vague.—SHER ALI *v.* EMPRESS, Panj. Rec., No 18 of 1879.

## *Of Extortion.**

**383.** Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person

**Extortion.**

* As to the application of ss. 388 and 389 to offences under special or local laws, see s. 40, *supra*.

As to whipping for offences defined in ss. 388 and 389, see the Whipping Act (VI of 1864), ss. 2, 3, and (in the Assam Hill Districts) Reg. III. of 1875, ss 2, 3.

As to whipping for offences defined in ss. 386 and 387 in Upper Burma, see the Upper Burma Laws Act (XIII. of 1898), s. 4 (3) (*b*).

any property or valuable security, or anything signed or sealed, which may be converted into a valuable security, commits "extortion."

*Illustrations.*

(*a.*) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(*b.*) A threatens Z that he will keep Z's child in wrongful confinement unless Z will sign and deliver to A a promissory note binding Z to pay certain moneys to A. Z signs and delivers the note. A has committed extortion.

(*c.*) A threatens to send club-men to plough up Z's fields unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(*d.*) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper, and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

THE making use of real or supposed influence to obtain money from a person against his will under threat, in case of refusal, of loss of appointment, is extortion within the meaning of s. 384 of the Penal Code.—MEER ABBAS ALI *v.* OMED ALI, 18 W. R. 17. [Kemp and Glover, JJ. June 17, 1872.

WHERE more than one offence is proved in respect of which the accused has been charged and tried, a conviction for each such offence must follow, whether s. 71 of the Penal Code applies to the case or not, and subject to the provisions of s. 71, a separate sentence must be passed in respect of each such conviction. Under s. 35 of the Criminal Procedure Code, sentences of imprisonment cannot be passed so as to run concurrently. In a trial for offences under ss. 170 and 383 of the Penal Code, committed in the same transaction, it appeared that, but for personating a public servant, the accused would not have been in a position to commit the act of extortion complained of. *Held* that the first and second paragraphs of s. 71 of the Penal Code did not apply to the case; that the third paragraph also did not apply, because the words "constitute an offence" refer to the definitions of offences contained in the Code, irrespective of the evidence whereby the acts complained of are proved, and personating a public servant as defined in s. 170 was not a constituent element of extortion as defined in s. 383, that in the present case the former offence was completed before the latter had begun; and that separate sentences for each offence were, therefore, not illegal.—QUEEN-EMPRESS *v.* WAZIR JAN, I. L. R., 10 All. 58. [Mahmood, J. Sep. 16, 1887.]

**384.** Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for extortion.

Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Not comp.

A CHAUKIDAR who obtains money from another person, either by fraudulent inducement or dishonesty, or by putting that person in fear of injury, is punishable under s. 417 of the Penal Code for cheating, or under ss. 383 and 384 for extortion, but not for criminal misappropriation of public money entrusted to him as a public servant.—QUEEN *v.* RAMNARAIN CHAUKIDAR, 3 W. R. 32 [Loth and Seton-Karr, JJ. June 21, 1865.]

To amount to the offence of extortion, property must be obtained by intentionally putting a person in fear of injury, and thereby dishonestly inducing him to part with his property. The mere issue of hukumnama (to collect statistical information) by a police-officer is no legal ground for a conviction of abetment of cheating or of extortion.—QUEEN *v.* MEAJAN, 4 W. R. 5. [Kemp and Seton-Karr, JJ. Sep. 9, 1865.]

UNDER s. 384, delivery of the property by the person put in fear is the essence of the offence. Where there is no delivery, but the person intimidated passively allows his property to be taken away, the offence is not extortion, but would be robbery, if the threats used came within the meaning of s. 390.—QUEEN *v.* DULEELOODDEEN SHEIKH, 5 W.

R. 19; 1 Wyman's Rev., Civ., and Crim. Rep. 20. [Macpherson, J. Jan. 30, 1866.]

WHERE a constable and others enter a house, and apprehend certain persons as gamblers, and afterwards release them on payment of a sum of money by the latter, the offence committed is not house-trespass and extortion, but taking a bribe as regards the constable, and abetment of that offence as regards the others.—GOVT. v. MAHOMED HOSSEIN, 5 W. R. 49. [Norman and Campbell, JJ. Mar. 5, 1866.]

IT is not necessary, in a case of extortion under the Penal Code, that the threat should be used, and the property received, by one and the same individual, nor that the receiver should be charged with abetment, although that might be done.—REG. v. SHANKAR BHAGBAT, 2 Bom. H. C. R. 394. [Couch, C.J., and Warden, J. July 12, 1866.]

A CONVICTION of extortion by a Full-power Magistrate, and an order of a Sessions Judge rejecting an appeal therein, reversed by the High Court, as there was no such *fear of injury* as is contemplated by s. 383 of the Penal Code, nor was the delivery of money by the complainants *thereby induced*, nor did it appear from the evidence that the money was obtained *dishonestly* by the prisoner, who might have demanded it, believing in good faith that he was entitled to it.—REG. v. ABDUL KADIR *alad* BALA ABUJE, 3 Bom. H. C. R. 45. [Couch, C.J., and Warden, J. Oct. 31, 1866.]

WHERE accused extorted money by threatening to bring a criminal charge, it was held that he had committed extortion, whether the charge which he threatened to bring was true or false. The terror of a criminal charge is a fear of injury within the meaning of those words in s. 383 of the Penal Code. Extortion may be equally committed whether the charge threatened is true or false.—QUEEN v. MUBARRUK, 7 W. R. 28; 3 Wyman's Rev., Civ., and Crim. Rep. 19. [Norman and Seton-Karr, JJ. Feb. 4, 1867.]

WHERE a complainant charged a person, who was one of the public servants mentioned in s. 167 of Act XXV of 1861, with committing acts which, if committed by a private individual, would have constituted the offence of extortion, it was held that it was not illegal to treat the charge as one of extortion, and to proceed to trial without sanction for the prosecution.—REG. v. PARBHURAM KERNAV, 7 Bom. H. C. R. 61. [Gibbs and Melvill, JJ. July 28, 1870.]

THE making use of real or supposed influence to obtain money from a person against his will under threat, in case of refusal, of loss of appointment, is extortion within the meaning of s. 384 of the Penal Code.—MEER ABBAS ALI v. OMED ALI, 18 W. R. 17. [Kemp and Glover, JJ. June 17, 1872.]

THE mere fact that the offence of extortion under s. 384 of the Penal Code is committed in the presence of the village-chaukidar, without eliciting any disapproval on his part, will not render him liable as an abettor of the offence.—IN THE MATTER OF GOPAL CHUNDER SIRDAR: GOPAL CHUNDER SIRDAR v. FOOLMONI BEWA, I. L. R., 8 Cal. 728; 11 C. L. R. 223. [McDonell and Field, JJ. April 20, 1882.]

THE mere going about and collecting money, upon an assertion that an order had issued to tax the persons upon whom the demand was made, is not extortion, but cheating.—5 Rev., Jud., and Pol. Jour. 147.

THE accused, a Sub-inspector of Police, arrested one J, wrongfully confined him, and extorted from him Rs 200 under a threat that he, the accused, would not release J, unless the money were paid. The money was paid on this account by P, a money-lender, who lent J the money for this purpose. Accused was convicted under ss. 342 and 384 of the Penal Code. In appeal the Sessions Judge held that P was not an accomplice, and having considered his evidence accordingly dismissed the appeal. *Held* that it was sufficiently shown that the money was not voluntarily given, that it was given by J to obtain his release from police-custody, in which he was detained on no reasonable or sufficient ground, and it was extorted, because the Sub-inspector refused to release J, as he was bound to do, unless he were paid that money. That P paying such money under such circumstances could not be regarded as an accomplice of the Sub-inspector in such misconduct.—AKHOY KUMAR CHUCKERBUTTY v. JAGAT CHUNDER CHUCKERBUTTY, I. L. R. 27 Cal. 925. [Prinsep and Stanley, JJ. Mar. 29, April 2, 1900.]

Cl. of Sec., Presy. Mag., or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Not comp.

**385.** Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Putting person in fear of injury in order to commit extortion.

**386.** Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Gt. of Sec. Uncog. Warrant. Not bailable. Not comp.

Extortion by putting a person in fear of death or grievous hurt.

**387.** Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Ditto.

Putting person in fear of death or of grievous hurt, in order to commit extortion.

THE feigning of an attempt to commit suicide in order to extort money is an offence under s. 387 of the Penal Code—REG. v. GUZORY, 1 Ind. Jur. N. S. 423. [Peacock, C.J., and Phear and Macpherson, JJ. Sep. 8, 1866.]

**388.*** Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed, or attempted to commit, any offence punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under section 377 of this Code, may be punished with transportation for life. Ditto.

Extortion by threat of accusation of an offence punishable with death or transportation, &c.

IN this section the word "offence" denotes a thing punishable under this Code or under any special or local law as defined in this Code—S. 40, Penal Code.

THE terror of a criminal charge is a fear of injury within the meaning of those words in s. 383 of the Penal Code. Extortion under ss. 388 and 389 may be equally committed whether the charge threatened be true or false.—QUEEN v. MOBARRUK, 7 W. R. 28. [Norman and Seton-Karr, JJ. Feb. 4, 1867.]

**389.*** Whoever, in order to the committing of extortion, puts, or attempts to put, any person in fear of an accusation against that person or any other, of having committed, or attempted to commit, an offence punishable with death or with transportation for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with transportation for life. Ditto.

Putting person in fear of accusation of offence in order to commit extortion.

IN this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

THE terror of a criminal charge is a fear of injury within the meaning of those words in s. 383 of the Penal Code. Extortion under ss. 388 and 389 may be equally committed whether the charge threatened be true or false.—QUEEN v. MOBARRUK, 7 W. R. 28. [Norman and Seton-Karr, JJ. Feb. 4, 1867.]

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* In ss. 388 and 389, the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

### *Of Robbery and Dacoity.**

Robbery.

**390.** In all robbery there is either theft or extortion.

When theft is robbery.

Theft is "robbery," if, in order to the committing of the theft, or in committing the theft or in carrying away, or attempting to carry away, property obtained by the theft, the offender, for that end, voluntarily causes, or attempts to cause, to any person, death, or hurt, or wrongful restraint, or fear of instant death, or of instant hurt, or of instant wrongful restraint.

When extortion is robbery.

Extortion is "robbery," if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person, or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

*Explanation.*—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

*Illustrations.*

(*a*) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(*b*.) A meets Z on the high road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being, at the time of committing the extortion, in his presence. A has therefore committed robbery.

(*c*) A meets Z and Z's child on the high road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(*d*.) A obtains property from Z by saying: "Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees." This is extortion, and punishable as such; but it is not robbery, unless Z is put in fear of the instant death of his child.

Dacoity.

**391.** When five or more persons conjointly commit, or attempt to commit, a robbery, or, where the whole number of persons conjointly committing, or attempting to commit, a robbery, and persons present and aiding such commission or attempt,

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* All persons are bound to give information of offences punishable under ss. 392 to 399 or 402.—See the new Code of Criminal Procedure (Act V. of 1898), s. 44. See also the same section as amended for Burma by the Upper Burma Village Regulation (XIV. of 1887), s. 4, and by the Lower Burma Village Act (III. of 1889), s. 5, as to dacoity and robbery.

As to whipping for offences under ss. 390, 391, 393, 394 see the Whipping Act (VI. of 1864), ss. 4, 6, for offences under ss. 392-402 (in Upper Burma), see the Upper Burma Laws Act (XIII. of 1898), s. 4 (3) (*b*), and Sch. II., for offences under ss. 392-399 (in the Punjab Frontier Districts and in Baluchistan), see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 8.

As to punishment for offences under ss. 392-399, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

amount to five or more, every person so committing, attempting, or aiding, is said to commit "dacoity."

THE definition of dacoity in the Penal Code is so wide as to extend to what would have been treated as cases of plunder under the old law.—QUEEN v. KHOYRAT ALLY BEG, 3 W. R. 60. [Kemp and Seton-Karr, JJ. Aug. 8, 1865.]

WHERE several Hindus acting in concert forcibly removed an ox and two cows from the possession of a Mahomedan, not for the purpose of causing "wrongful gain" to themselves, or "wrongful loss" to the owner of the cattle, but for the purpose of preventing the killing of the cows, *held* that they could not properly be convicted of dacoity, but only of riot.—QUEEN-EMPRESS v. RAGHUNATH RAI, I. L. R., 15 All. 22. [Tyrrell, J. Aug. 6, 1892.]

**392.** Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

Punishment for robbery.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp.

CHARGE.—That you, on or about the day of , at , robbed [*state the name*], and thereby committed an offence punishable under s. 392 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].—CRIM. PRO. CODE (Act V. of 1898), Sch. V., Form XXVIII. (II.).

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 392 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—CRIM. PRO. CODE (Act V. of 1898), s. 44.

A PERSON convicted of robbery or theft cannot be also convicted of dishonestly receiving in respect of the same property.—QUEEN v. SHEIK MUDDUN ALLY, 1 W. R. 27. [Kemp and Glover, JJ. Nov. 23, 1864.]

WHEN stolen property is found in the possession of dacoits, the offence of "knowingly having in possession" is to be considered as included in the original one of dacoity, unless there are circumstances clearly separating the one crime from the other, *e.g.*, length of time or distance.—QUEEN v. ABDOOL HOSSEIN, 1 W. R. 48. [Kemp and Glover, JJ. Dec. 22, 1864.]

IN a trial for robbery, it is competent to the jury, if they disbelieve the evidence as to the assault (*i.e.*, as to the circumstances of aggravation), to bring in a verdict of guilty of theft.—QUEEN v. SAKHAUT SHEIKH, 2 W. R. 13. [Kemp and Glover, JJ. Jan. 23, 1865.]

THEFT with violence is robbery. A conviction under s. 397 of the Penal Code of using a deadly weapon whilst engaged in the commission of robbery or dacoity is equally good whether the number of thieves be five or under.—QUEEN v. DWARKA AHEER, 2 W. R. 49. [Glover, J. Mar. 21, 1865.]

WHEN persons are found within six hours of the commission of a dacoity with portions of the plundered property in their possession, the presumption of law is that they are participators in the dacoity, and not merely receivers.—QUEEN v. CASSY MUL, 3 W. R. 10. [Glover, J. May 6, 1865.]

WHERE a person through fear, &c., offers no resistance to the carrying-off of his property, but does not deliver any of the property to those who carry it off, the offence committed is robbery, and not extortion.—QUEEN v. DULEELOODDEEN SHEIKH, 5 W. R. 19. [Macpherson, J. Jan. 30, 1866.]

THE offence is robbery where, in committing theft, there is indubitably an intention, seconded by an attempt, to cause hurt.—QUEEN v. TEEKAI BHEER, 5 W. R. 95. [Jackson and Glover, JJ. May 28, 1866.]

A SENTENCE of fine only is illegal in a case of dacoity.—QUEEN v. BHOJA, 6 W. R. 54. [Norman and Seton-Karr, JJ. Aug. 13, 1866.]

WHERE persons are committed on three separate and distinct charges for three separate and distinct robberies committed on the same night in three different houses, they must be tried separately on each of the three charges. Remarks on the irregularities in the investigation of the present case.—QUEEN v. ITWAREE DOME, 6 W. R. 83. [Loch and Markby, JJ. Oct. 20, 1866.]

BY the infliction of grievous hurt, theft becomes robbery, and all parties concerned in the offence are liable to punishment.—QUEEN v. HUSHRUT SHEIKH, 6 W. R. 85. [Loch, J. Nov. 27, 1866.]

Ch. of Sec., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp.

**393.** Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Attempt to commit robbery.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 393 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—CRIM. PRO. CODE (Act V. of 1898), s. 44.

THE two offences of robbery and of voluntarily causing hurt, when combined, are punishable under s. 394 alone and not under ss. 392 and 394.—QUEEN *v.* MOOTKEE KORA, 2 W. R. 1. [Kemp and Glover, JJ. Jan. 2, 1865.]

S A, a resident of foreign territory, was found concealed with three companions (who were Jowaki Afridis), all armed to the teeth, in a deserted house in Surgul, Kohat district. Some Government camels were grazing in the village, and the theory for the prosecution was that S A and the other accused came down to steal these camels or such other property as they might be able to lay hand upon. The Deputy Commissioner convicted all the accused under ss. 109 and 382, and the Commissioner, to whom the proceedings went up for confirmation, altered the conviction to one under s 393. *Held* (by a majority of the Court, Elsmie, J., dissenting) that the conviction could not be sustained. *Per* Smyth, J.—The mere assembling of a number of persons together with a general intention of committing theft, and not for the purpose of committing a specific theft or theft of specific property, cannot be considered to amount to the abetment of an offence of theft, so as to be punishable under ss. 116 and 379, or, as in the present case, under ss. 116 and 382. There must be some design to commit a specific offence before a person can be held guilty of abetment of such offence by having conspired with others to commit it. *Per* Elsmie, J., *contra*.—That the case clearly came within the meaning of the 2nd clause of s. 107, and that the conviction was sustainable. *Per* Plowden, J.—On a charge of abetment of conspiracy, it is necessary to prove, and it ought therefore to be alleged, not only that the person charged engaged with one or more other person or persons in a conspiracy for the commission of an offence (specify the offence), but also that some act or illegal omission (specify the particular act or omission) took place in pursuance of that conspiracy, and in order to the commission of the said offence. That, in this case, the facts alleged were not proved with sufficient certainty to justify a conviction, as it could not be said positively that the purpose of the accused was theft, or that they came into British territory in pursuance of a conspiracy to commit theft there. *Held* further (*per* Plowden, J.) that a charge against several persons of engaging in a conspiracy to commit an offence of a particular kind (as, for instance, theft), as opportunity should offer within a determinate area (as, for instance, a village), would not be bad as being too vague. —SHER ALI *v.* EMPRESS, Panj. Rec., No. 18 of 1879.

Ditto.

**394.** If any person, in committing, or in attempting to commit, robbery, voluntarily causes hurt, such person and any other person jointly concerned in committing, or attempting to commit, such robbery, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt in committing robbery.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 394 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—CRIM. PRO. CODE (Act V. of 1898), s. 44.

THE two offences of robbery and of voluntarily causing hurt, when combined, are punishable under s. 394 alone, and not under ss. 392 and 394.—QUEEN *v.* MOOTKEE KORA, 2 W. R. 1. [Kemp and Glover, JJ. Jan. 2, 1865.]

WHERE, in a case of robbery attended with death, there was no intention of causing death or such bodily injury as was likely to cause death, the conviction was altered from voluntarily causing hurt in committing robbery to voluntarily causing grievous hurt in committing robbery.—QUEEN *v.* CHAKOR HAREE, 6 W. R. 16. [Kemp and Seton-Karr, JJ. June 30, 1866.]

**395.** Whoever commits dacoity shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

Punishment for dacoity.

CHARGE.—That you, on or about the day of , at , committed dacoity, an offence punishable under s. 395 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court.]—CRIM. PRO. CODE (Act V. of 1898), Sch. V., Form XXVIII. (II.).

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 395 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention. —CRIM. PRO. CODE (Act V of 1898), s. 44.

A PERSON convicted of, and sentenced for, dacoity, cannot also be convicted of, and sentenced for, receiving or retaining the stolen property thereby acquired (*dissentiente*, Loch, J.).—IN THE MATTER OF BHYRUB SEAL, W. R. Gap., 1864, 27. [Loch, Steer, and Glover, JJ. May 2, 1864.]

IF a person concerned in a dacoity unintentionally commits murder, he is liable to punishment under s. 396 of the Penal Code, but he cannot be separately convicted of murder under s. 302, and of committing dacoity under s. 395.—QUEEN v. RUGHOO, W. R. Gap., 1864, 30. [Loch and Jackson, JJ. May 3, 1864.]

FIVE men armed were discovered committing an act of house-breaking by night. One of the parties was engaged in cutting a hole through the wall, while the others stood on guard. When the alarm was given, the neighbours ran up, and one of the robbers cut down one of the villagers. The robbers effected their escape, not however before two of them were identified, the prisoners in the case. *Held* that the crime of which the prisoners were guilty was house-breaking by night, and not dacoity.—QUEEN v. REWUT RAJWAR, W. R. Gap., 1864, 39. [Loch, Seton-Karr, and Jackson, JJ. July 19, 1864.]

WHEN stolen property is found in the possession of dacoits, the offence of "knowingly having in possession" is to be considered as included in the original one of dacoity unless there are circumstances clearly separating the one crime from the other, *e.g.*, length of time or distance.—QUEEN v. ABDOOL HOSSEIN, 1 W. R. 48. [Kemp and Glover, JJ. Dec. 22, 1864.]

THE Sessions Judge should record under what section, or on what grounds, he orders a portion of the fines inflicted on prisoners convicted of dacoity to be made over to the complainant.—QUEEN v. BISSONATH MUNDLE, 2 W. R. 58. [Jackson, J. April 10, 1865.]

WHEN persons are found within six hours of the commission of a dacoity with portions of the plundered property in their possession, the presumption of the law is that they are participators in the dacoity, and not merely receivers.—QUEEN v. CASSY MUL, 3 W. R. 10. [Glover, J. May 6, 1865.]

KNOWING of a design to commit a dacoity, and voluntarily concealing the existence of that design with the knowledge that such concealment would facilitate the commission of dacoity, does not amount to an abetment of the dacoity.—QUEEN v. JHUGROO, 4 W. R. 2 [Seton-Karr and Jackson, JJ. Sep. 4, 1865.

WHEN a prisoner is apprehended eight days after the commission of a dacoity with part of the plunder in his possession, there is as good ground for charging him with the dacoity as with having received or retained with guilty knowledge, and he ought to be charged in the alternative form.—QUEEN v. MOTEE JOLAHA, 5 W. R. 66. [Jackson, J. April 9, 1866.]

SEVERE sentence of transportation for life, in a case of aggravated dacoity, confirmed as required by the state of the district.—QUEEN v. KHOODA SONTHAL, 6 W. R. 9. [Seton-Karr, J. June 21, 1866.]

A SENTENCE of fine only is illegal in a case of dacoity.—QUEEN v. BHOJA, 6 W. R. 54. Norman and Seton-Karr, JJ. Aug. 13, 1866.]

IN a case of dacoity, a sentence of 14 years' transportation was held illegal, and reduced to ten years' transportation under s. 395 of the Penal Code.—QUEEN v. RAM CHAND PUNJAH, 6 W. R. 88. [Kemp and Seton-Karr, JJ. Dec. 3, 1866.]

ON an application to the High Court as a Court of Revision, to discharge an order made by a Sessions Judge, under s. 435, Criminal Procedure Code (Act XXV. of 1861), for the committal of certain accused persons for trial on a charge of dacoity, *held* that, as all that was done under a claim of right in good faith entertained by the accused, however erroneously, the charge could not be sustained. The order of the Sessions Judge annulled.—*Ex-parte* KARAKA NACHIAR, 3 Mad.

H. C. R. 254. [Collett and Ellis, JJ. Dec. 17, 1866.]

WHEN a body of men attack and plunder a house, the mere fact of the proprietor's family having been able to make their escape a few minutes before the robbers forced an entrance does not take that offence out of the purview of s. 395 of the Penal Code. It is sufficient for the application of the section that the robbers cause, or attempt to cause, the fear of instant hurt or of instant wrongful restraint.—QUEEN v. KISSOREE PATER, 7 W. R. 35. [Glover, J. Feb. 19, 1867.]

S. 511 of the Penal Code does not apply to a case of dacoity. Where a prisoner was found guilty of an attempt at dacoity under that section, and of causing grievous hurt in such attempt under s. 397, and a sentence of three years' rigorous imprisonment was passed on him, the finding was amended by striking out "ss. 397 and 511," and substituting "s. 395."—QUEEN v. KOONEE, 7 W. R. 48. [Jackson and Glover, JJ. Mar. 25, 1867.]

THE evidence of an approver, for whose appearance at the trial there was not the slightest reason, and the mere fact that in the houses of each of the four prisoners only one article of the stolen property was found, was held insufficient, under the circumstances of this case, where the best witnesses were not examined, to support a conviction of the prisoners on a charge of dacoity.—QUEEN v. RAM SAGAR, 8 W. R. 57. [Loch and Seton-Karr, JJ. Aug. 5, 1867.]

A SENTENCE of 14 years' imprisonment cannot be passed for dacoity under s. 395 of the Penal Code.—QUEEN v. HAROO RUJWAR, 13 W. R. 27. [Bayley and Glover, JJ. Feb. 14, 1870.]

THE practice of dividing the facts which constitute the parts of one offence into several minor offences condemned. A person convicted of dacoity under s. 395, Penal Code, cannot be convicted also of dishonestly receiving stolen property under s. 411, or of receiving stolen property transferred by commission of dacoity under s. 412, when there is no evidence of the commission. Mode of treating the confession of prisoners as evidence in a case of receiving stolen property pointed out.—QUEEN v. SHAHABUT SHEIKH, 13 W. R. 42. [Norman, Offg. C.J., and Bayley, J. Mar. 8, 1870.]

MERELY being seen getting on board a boat with four persons who have on their own admissions been convicted of belonging to a gang of dacoits, is not sufficient evidence against those so seen. To make an admission of guilty knowledge of the means by which money supposed to have been acquired by dacoity was obtained, evidence under s. 150 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 26 of the Evidence Act (I. of 1872), it must be shown that the admission was antecedent to the discovery of the money.—QUEEN v. KAMAL FUKEER, 17 W. R. 50. [Couch, C.J., and Ainslie, J. April 15, 1872.]

IN this case the charge was originally one of dacoity under s. 395, Penal Code, and the proceedings were first conducted under ch. 18 of the Code of Criminal Procedure (Act X. of 1872); but during the progress of the case the charge under s. 395 was lost sight of, and the accused were put on their defence on a charge of being members of an unlawful assembly under s. 143, Penal Code, and the proceedings were continued under ch. 17 of the Procedure Code (or ch. 21 of the new Procedure Code) in a summary way. *Held* that, had the complaint been one under s. 143, Penal Code, the Magistrate could, under s. 222, Code of Criminal Procedure (Act X of 1872), have tried it in a summary manner under ch. 17 (or ch. 21 of the new Code); but, as the complaint was of a charge of dacoity under s. 395, the Magistrate had no jurisdiction to try the case in a summary manner, but should have inquired into it in a regular manner under ch. 18 (or ch. 22 of the new Code).—DWARKANATH MOZOOMDAR v. NALU DASS, 21 W. R. 89. [Kemp and Birch, JJ. April 20, 1874.]

A AND B were committed for trial, the former for dacoity under s. 395 of the Penal Code, and the latter under s. 412 for receiving stolen property, knowing it to be such. A made two confessions, and in both he stated he had handed over to B some pieces of gold and silver stolen at the dacoity. When B was arrested, a gold ring and a silver wristlet were found in his possession. At the trial, A pleaded guilty, and B claimed to be tried. A goldsmith deposed that he had made the ring and wristlet found with B out of pieces of gold and silver given to him for the purpose by B. On this evidence and on the confessions made by A, the Sessions Judge convicted B. On appeal to the High Court, *held* that, A and B not having been tried jointly for the same offence, the confession of A was inadmissible as evidence against B. There was, therefore, no evidence of the identity of the goods stolen at the dacoity with those found in B's possession, and the case against him failed. Conviction quashed.—EMPRESS v. BALA PATEL, I. L. R., 5 Bom. 63. [Westropp, C.J., and Melvill, J. April 7, 1880.]

WHERE a large body of Hindus, acting in concert, and apparently under the influence of religious feeling, attacked certain Mahomedans who were driving cattle along a pub-

the road, and forcibly deprived them of the possession of such cattle under circumstances which did not indicate any intention of subsequently restoring such cattle to their lawful owners, *held* that the offence of which the Hindus were guilty was dacoity under s. 395 of the Penal Code, and not merely riot.—QUEEN-EMPRESS v. RAM BARAN, I. L. R., 15 All. 299. [Edge, C.J., and Burkitt and Aikman, JJ. July 14, 1893.]

IN order to support a conviction under s. 396 of the Penal Code, it is necessary to establish, not only that the person accused under that section was committing dacoity conjointly with others, but it must be shown that the murder was committed in his presence. Hence, where certain persons were shown to have been concerned in a dacoity in the course of which murder was committed, but it was not shown that they were in the house in which the dacoity was committed at the time the murder took place, and the evidence, if anything, pointed to a contrary conclusion, it was held that the accused could not properly be convicted under s. 396 but only under s. 395 of the Penal Code.—QUEEN-EMPRESS v. UMRAO SINGH, I. L. R., 16 All. 437. [Knox and Blair, JJ. June 20, 1894.]

TEN persons were committed to a Sessions Court charged with offences under the Penal Code, ss. 395, 396, and some of them were also charged with offences under s. 412. One of the accused had made a confessional statement before the Magistrate, who recorded it, but did not make on it a memorandum to the effect stated in the Criminal Procedure Code, s. 164, and did not admit it in evidence for the reasons that the accused was produced from the custody of the police in which he had been detained for five days, and there was a proposal on the part of the police to treat him as an approver. It appeared that a perusal of the preliminary register would have shown that the accused were either guilty under s. 396, or not guilty under s. 395 at all. The accused were tried by the Sessions Judge with a jury. The confessional statement was not admitted in evidence. The jury found the accused not guilty of dacoity, but the Judge, disagreeing with the verdict, referred the case to the High Court under the Criminal Procedure Code, s. 307. *Held* (1) that the procedure adopted by the Judge was wrong, and that he should have tried the accused with the aid of assessors under the Penal Code, s. 396; (2) that the Judge should have enquired, under the Criminal Procedure Code, s. 533, whether the confessional statement had been duly made; and (3) that, under the circumstances the High Court should determine on the evidence on record, after giving due weight to the opinions of the Judge and the jury whether the accused were guilty under s. 395.—QUEEN-EMPRESS v. ANGA VALAYAN, I. L. R., 22 Mad. 15. [Collins, C.J., and Benson, J. Mar. 31, April 14, 1898.]

**396.** If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Dacoity with murder.

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 396 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—CRIM. PRO. CODE (Act V of 1898), s. 44.

IF the act by which death is caused does not in itself constitute the crime of murder, it does not constitute murder, because it is coupled with dacoity.—QUEEN v. RAMCOOMAR CHUNG, 1 Ind. Jur. O. S. 108. Steer, Seton-Karr, and Jackson, JJ. Nov. 17, 1862.]

IF a person concerned in a dacoity unintentionally commits murder, he is liable to punishment under s. 396 of the Penal Code, but he cannot be separately convicted of murder under s. 302, and of committing dacoity under s. 395.—QUEEN v. RUGHOO, W. R. Gap., 1864, 30. [Loch and Jackson, JJ. May 3, 1864.]

THE case of a prisoner who, after having committed dacoity attended with murder, absconded to Bhootan. On the annexation of the Bhootan Dooars by the British Government, he was arrested, and, after conviction, was sentenced to transportation for life.—QUEEN v. ROOPA, 2 W. R. 49. [Glover, J. Mar. 21, 1865.]

IN order to support a conviction under s. 396 of the Penal Code, it is necessary to establish, not only that the person accused under that section was committing dacoity conjointly with others, but it must be shown that the murder was committed in his presence. Hence, where certain persons were shown to have been concerned in a dacoity in the course of which murder was commit-

ted, but it was not shown that they were in the house in which the dacoity was committed at the time the murder took place, and the evidence, if anything, pointed to a contrary conclusion, it was held that the accused could not properly be convicted under s. 396, but only under s. 395 of the Penal Code.—QUEEN-EMPRESS v. UMRAO SINGH, I. L. R., 16 All. 437. [Knox and Blair, JJ. June 20, 1894.]

WHEN, in the commission of a dacoity, murder is committed, it matters not whether the particular dacoit charged under s. 396 of Act XLV. of 1860 was inside the house where the dacoity is committed or outside the house, or whether the murder was committed inside or outside the house, so long only as the murder was committed in the commission of that dacoity. *Queen-Empress v. Umrao Singh* (I. L. R., 16 All. 437) distinguished.—QUEEN-EMPRESS v. TEJA, I. L. R., 17 All. 86. [Edge, C.J. and Banerjee, J. Jan. 11, 1895.]

TEN persons were committed to a Sessions Court charged with offences under the Penal Code, ss. 395, 396 and some of them were also charged with offences under s. 412. One of the accused had made a confessional statement before the Magistrate, who recorded it, but did not make on it a memorandum to the effect stated in the Criminal Procedure Code, s. 164 and did not admit it in evidence for the reasons that the accused was produced from the custody of the police in which he had been detained for five days, and there was a proposal on the part of the police to treat him as an approver. It appeared that a perusal of the preliminary register would have shown that the accused were either guilty under s. 396, or not guilty under s. 395 at all. The accused were tried by the Sessions Judge with a jury. The confessional statement was not admitted in evidence. The jury found the accused not guilty of dacoity, but the Judge, disagreeing with the verdict, referred the case to the High Court under the Criminal Procedure Code, s. 307. *Held* (1) that the procedure adopted by the Judge was wrong, and that he should have tried the accused with the aid of assessors under the Penal Code, s. 396; (2) that the Judge should have enquired, under the Criminal Procedure Code, s. 533, whether the confessional statement had been duly made; and (3) that, under the circumstances, the High Court should determine on the evidence on record, after giving due weight to the opinions of the Judge and the jury, whether the accused were guilty under s. 395.—QUEEN-EMPRESS v. ANGA VALAVAN, I. L. R., 22 Mad. 15. [Collins, C.J., and Benson, J. Mar. 31, April 14, 1898.]

APPELLANT was convicted and sentenced to transportation for life on a charge of dacoity. The most material evidence for the prosecution was the statement, in the nature of a dying declaration made to the Jamadar of police by one Fakira Shimpi, who received wounds during the dacoity and who died before the trial commenced. The Assistant Surgeon, who made the *post-mortem* examination on the deceased was not called, being on leave, but the Civil Surgeon, on a perusal of the notes left by the Assistant Surgeon, gave evidence that the cause of death of the deceased was pneumonia aggravated by a stab. In the notes themselves no cause of death was given, and there was no evidence as to how the pneumonia was aggravated. No explanation was given as to how the opinion was formed that the pneumonia was aggravated by the injury, and there was nothing in the notes to support it. *Held* that the statement of the deceased ought not to have been admitted in evidence in the absence of evidence to show that his death was caused or accelerated by the wounds received at the dacoity, or that the dacoity was the transaction which resulted in his death.—IMPERATRIX v. RUDRA, I. L. R., 25 Bom. 45. [Parsons and Ranade, JJ. April 10, 1900.]

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

**397.** If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

Robbery or dacoity, with attempt to cause death or grievous hurt.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 397 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—CRIM. PRO. CODE (Act V. of 1898), s. 44.

THEFT with violence is robbery. A conviction under s. 397 of the Penal Code is equally good, whether the number of thieves be five or under.—QUEEN v. DWARKA AHEER, 2 W. R. 49. Glover, J. Mar. 21, 1865.]

WHEN grievous hurt is inflicted with a deadly weapon by one of ten men armed with such weapons, and engaged in dacoity, all the

men are liable to the *minimum* punishment prescribed by s. 397 of the Penal Code.—4 W. R. Cr. L. 1. [No. 855, Aug. 26, 1865.]

S. 511 of the Penal Code does not apply to a case of dacoity. Where a prisoner was found guilty of an attempt at dacoity under that section, and of causing grievous hurt in such attempt under s. 397, and a sentence of three years' rigorous imprisonment was passed on him, the finding was amended by striking out "ss. 397 and 511" and substituting "s. 395."—QUEEN v. KOONEE, 7 W. R. 48. [Jackson and Glover, JJ. Mar. 25, 1867.] Referred to in *Queen-Empress* v. *Beni*, I. L. R., 23 All. 78, *infra*.

UNDER s. 397, it is only the offender actually causing grievous hurt who is liable to the enhanced punishment.—Mad. H. C. Rul., Mar. 18, 1868.

A JUDGMENT-DEBTOR, whose standing crops were attached, harvested them while the attachment was in force, and was convicted of theft. *Held* that the accused was not guilty of theft, but of the offence of dishonestly removing the property under the Penal Code, s. 424. *Per* Benson J.—The offence was also criminal misappropriation within the meaning of the Indian Penal Code, s. 403.—QUEEN-EMPRESS *v.* OBAVVA, I. L. R., 22 Mad. 151. [Davies and Benson, JJ. Sep. 13, 1898.]

HELD that the words "such offender" in s. 397 of the Indian Penal Code, include any person taking part in the dacoity who, though he may not himself have struck the blow causing the grievous hurt, is nevertheless liable for the act by reason of s. 34 of the Code.—QUEEN-EMPRESS v. MAHABIR TIWARI, I. L. R., 21 All. 263. [Strachey, C.J. Mar. 23, 1899.]

WHERE several persons were found endeavouring to break into a house, and some of them, being armed, used violence, but only in attempting to escape being arrested, it was *held* that they could not properly be convicted under s. 397 read with s. 511 of the Indian Penal Code. *Queen* v. *Koonee* (7 W. R. 48 referred to.—QUEEN-EMPRESS v. BENI, I. L. R., 23 All. 78. [Henderson, J. July 25, 1900.]

**398.** If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

Cr. of Sen. Cognizable. Warrant. Not bailable. Not comp.

**Attempt to commit robbery or dacoity when armed with deadly weapon.**

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 399 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—CRIM. PRO. CODE (Act V. of 1898), s. 44.

**399.** Whoever, makes any preparation for committing dacoity shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Ditto.

**Making preparation to commit dacoity.**

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 399 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—CRIM. PRO CODE (Act V. of 1898), s. 44.

UNDER the Penal Code, preparation to commit an offence is punishable only when the preparation was to commit dacoity. Preparation to commit any other offence, such as house-breaking or robbery, is not an offence.—REG. v. SHERA, 3 Panj. Rec. 43.

**400.** Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Ditto.

**Punishment for belonging to a gang of dacoits.**

MERELY being seen getting on board a boat with four persons who have on their own admissions been convicted of belonging to a gang of dacoits, is not sufficient evidence against those so seen. To make an admission of guilty knowledge of the means by

which money supposed to have been acquired by dacoity was obtained, evidence under s. 26 of Act I. of 1872, it must be shown that the admission was antecedent to the discovery of the money.—QUEEN *v.* KAMAL FUKEER, 17 W. R. 50. [Couch, C.J., and Ainslie, J. April 15, 1872.]

IT is necessary, in order to establish a charge under s. 400, Penal Code, that the prosecution should make out that there existed at the time specified a gang of persons associated together for the purpose of habitually committing dacoity, and that the accused was one of the gang.—QUEEN *v.* MOOKTARAM SIRDAR, 23 W. R. 18. [Phear and Ainslie, JJ. Jan. 13, 1875.]

*FOR supporting a conviction under s. 400 of the Penal Code (Act XLV. of 1860), evidence ought to be given of the existence of a gang of persons, of their association and such association for the purpose of habitually committing dacoity and robbery.*—EMPRESS *v.* NABA KUMAR PATNAIK, 1 C. W. N. 146. [Ghose and Gordon, JJ. Jan. 15, 1897.]

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

**401.** Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Punishment for belonging to gang of thieves.

IT is an offence under s. 401 to belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, but it is not sufficient to support a conviction under that section, that the accused should be proved to be simply a member of a robber-tribe; it should also be shown that he actually consorted with persons who were themselves associated for the purpose of habitually committing theft or robbery.—PEERA *v.* CROWN, Panj. Rec., No 37 of 1869.

IN the trial of prisoners for the offence of belonging to a gang of persons associated for the purpose of habitually committing theft or robbery (s. 401, Penal Code), the Judge should, in his charge, put clearly to the jury (1) the necessity of proof of association; 2. the need of proving that that association was for the purpose of habitual theft, and that the habit is to be proved by an aggregate of acts.—*In re* SHRIRAM VENKATASAMI, 6 Mad. H. C. R. 120. [Holloway and Kindersley, JJ. Feb. 21, 1871.]

To sustain a conviction on a charge under s. 401, there must be (1st) proof of association, and (2nd) proof that the association was for the purpose of habitual theft, and that habit should be proved by an aggregate of acts. Where, therefore, the accused were arrested together in one village, and there was no doubt that each of the accused had individually committed theft or robbery, but it was not shown that there had been any association among the accused for the purpose of committing theft or robbery, much less for the purpose of *habitually* committing such offences *held* that the conviction under s. 401 was not sustainable.—AFRIDI *v.* EMPRESS, Panj Rec., No. 9 of 1880.

THE character of the accused not being a fact in issue in the offence of belonging to a gang of persons associated for the purpose of habitually committing theft, punishable under s. 401 of the Penal Code, evidence of bad character or reputation of the accused is inadmissible for the purpose of proving the commission of that offence. Where it was proved that certain persons were found together at some distance from their houses, that they were all intimately connected with one another and were in the habit of visiting *melas* together, that one of them was arrested in the act of picking a pocket and that when they were arrested many of them gave false names and false addresses *Held* they could not be convicted under s. 401 of the Penal Code, there being no proof that they belonged to a gang of persons associated for the purpose of habitually committing theft.—MANKURA PASI *v.* QUEEN-EMPRESS, I. L. R., 27 Cal. 139. [Prinsep and Hill, JJ. Aug. 7, 1899.]

Ditto.

**402.** Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Assembling for purpose of committing dacoity.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 402 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—CRIM. PRO. CODE (Act V. of 1898), s. 44.

CASE of an unlawful assembly, the members of which were held guilty of an offence under s. 402 of the Penal Code on their own admission that they not only knew that the assembly was an assembly for the purpose of committing dacoity, but also that all the persons (including themselves) constituting the assembly lived on the proceeds of dacoity, and had no other means of living.—QUEEN v. KENDRA KAMAR, 7 W. R. 61. [Hobhouse, J. April 30, 1867.]

SEVERAL persons were found at 11 o'clock at night on a road just outside the city of Agra, all carrying arms (guns and swords) concealed under their clothes. None of them had a license to carry arms, and none of them could give any reasonable explanation of his presence at the spot under the particular circumstances. *Held* that these persons were rightly convicted under s. 402 of the Indian Penal Code of assembling together with intent to commit dacoity. *The Deputy Legal Remembrancer* v. *Karuna Baistobi* (I. L. R., 22 Cal. 164), *Balmakand Ram* v. *Ghansam Ram* (I. L. R., 22 Cal. 391), and *Queen-Empress* v. *Papa Sani* (I. L. R., 23 Mad. 159) referred to. —QUEEN-EMPRESS v. BHOLU, I. L. R., 23 All. 124. [Knox and Burkitt, JJ. Dec. 21, 1900.]

## *Of Criminal Misappropriation of Property.*

**403.*** Whoever dishonestly misappropriates or converts to his own use any moveable property shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Any Mag. Uncog. Warrant. Bailable. Not comp.

Dishonest misappropriation of property.

*Illustrations.*

(*a*.) A takes property belonging to Z out of Z's possession, in good faith, believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(*b*) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(*c*.) A and B being joint-owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse, and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

*Explanation 1.*—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

*Illustration.*

A finds Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

*Explanation 2.*—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is

* As to framing charge under s. 403, see s. 222 of the new Code of Criminal Procedure (Act V. of 1898).

not guilty of an offence; but he is guilty of the offence above defined if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner, and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means, or what is a reasonable time, in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it; it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believes that the real owner cannot be found.

*Illustrations.*

(*a.*) A finds a rupee on the high road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.

(*b.*) A finds a letter on the road, containing a bank-note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(*c.*) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person who has drawn the cheque appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(*d.*) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(*e.*) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

(*f.*) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

A, THE male managing member of a joint Hindu family, removed an iron-safe, the property of the joint estate, but containing properties which exclusively belonged to the other members of the family, from the possession of the latter, without their consent. *Held* that A, by removing the iron-safe, did not commit theft or any other offence, but he was guilty of criminal misappropriation if, on discovering the contents of the iron-safe to be properties belonging to others, he retained those properties and attempted to appropriate them.—IN THE MATTER OF KOOMAR JOGINDRO NATH ROY, Shome's Rep. 31.

THE mere fact that the prosecution gave the prisoner time to make out his accounts, and pay the balance due, does not vitiate a conviction for dishonest misappropriation, or show that the matter is one for the Civil Courts only.—*In re* SREEKANT BISWAS, 5 W. R. 56. [Macpherson, J. Mar. 24, 1866.]

To bring a prisoner within s. 403 of the Penal Code there must be actual conversion of the thing appropriated to the prisoner's own use. Where, therefore, the accused found a thing, and merely retained it in his possession, he was acquitted of criminal misappropriation under the section referred to.—QUEEN v. ABDOOL, 10 W. R. 23 [Loch and Glover, JJ. July 27, 1868.]

A SERVANT, who retains in his hands money which he was authorized to collect, and which he did collect, from the debtor of his master, because money is due to him as wages, is guilty of criminal misappropriation.—QUEEN v. BISSESSUR ROY, 11 W. R. 51. [Jackson and Markby, JJ. May 13, 1869.]

IN a case in which the accused is charged with having dishonestly appropriated property under s. 403 of the Penal Code, the charge should specify the person to whom the property belonged. Where the accused is interested in the property jointly with others, he is not necessarily guilty of a criminal act if he takes possession of it, and disposes of it.—QUEEN v. PARBUTTY CHURN CHUCKER-

BUTTY, 14 W. R. 13. [Phear and Mitter, JJ. July 2, 1870.]

WHERE money is paid to a person by mistake, and such person, either at the time of the receipt of the money, or at any time subsequently before its refund, discovers the mistake, and determines to appropriate the money, he is guilty of criminal misappropriation, but he is not guilty of cheating—QUEEN v. SHAMSUNDER, 2 N.-W. P. 475. [Turner, J. Dec. 17, 1870.]

IF it be the duty of the agent of a landholder to keep the collections he makes for his master separate from his own moneys, expending thereout moneys on his master's behalf, and handing over the balance to his master, and if he, in breach of his trust, converts the money to his own use, he is amenable to a criminal prosecution. And where a landowner permits the agent to mix the collections with his own moneys, if the agent applies the money so collected to his own use fraudulently and dishonestly, and falsifies the account, so as to conceal his fraud, there is evidence of a criminal misappropriation.—QUEEN v. KAREEM BUX, 3 N.-W. P. 30. [Turner, J. Feb. 7, 1871.]

THIS was considered to be a matter of trade between the prosecutrix and the prisoner, who took certain hides from the former, but refused to pay for them, and was held not guilty of dishonest misappropriation under s. 403 of the Penal Code.—QUEEN v. BOYSTUM MOOCHEE, 17 W. R. 11. [Kemp and Jackson, JJ. Feb. 3, 1872.]

A PERSON was convicted and sentenced under s. 411 of the Penal Code for dishonestly receiving a bull, knowing the same to have been criminally misappropriated. It was found that, at the time of the alleged misappropriation, the bull had been set at large by some Hindu, in accordance with Hindu religious usage, at the time of performing funeral ceremonies. *Held* that the bull was not, at the time of the alleged misappropriation, "property" within the meaning of the Penal Code, inasmuch as, not only was it not the subject of ownership by any person, but the original owner had surrendered all his rights as its proprietor, that it was therefore *nullius proprietas*, and incapable of larceny being committed in respect of it, and that the conviction must be set aside.—QUEEN-EMPRESS *v.* BAMDHU, I. L. R., 8 All. 51. [Straight, J. Dec. 7, 1885.] Followed in *Romesh Chunder Sannyal* v. *Hiru Mondal*, I. L. R., 17 Cal. 852, *infra*.

A BULL dedicated to an idol, and allowed to roam at large, is not *fera bestia*, and therefore *res nullius*, but, *primâ facie*, the trustee of the temple, where the idol is worshipped, has the rights and liabilities attaching to its ownership.—QUEEN-EMPRESS *v.* NALLA, I. L. R., 11 Mad. 145. [Muttusami Ayyar and Brandt, JJ. Sep. 13, 1887.] Referred to and commented on in *Romesh Chunder Sannyal* v. *Hiru Mondal*, I. L. R., 17 Cal. 852, *infra*.

FISH in a public river cannot be said to be property in the possession of the person who may have the fishery right, and the infringement of that right is not *theft* under s. 378 of the Penal Code. The accused was charged with unlawfully taking fish along with some eleven others in a public river, the right of fishing in which had been let out by the Government to the complainant, and the lower Court, amongst other offences, convicted them of theft, criminal misappropriation, mischief, criminal trespass, and unlawful assembly. *Held* that the conviction was wrong, and that no offence had been committed.—BHAGIRAM DOME v. ABAR DOME, I. L. R., 15 Cal. 388. [Norris and Ghose, JJ. Jan. 24, 1888.]

R WAS a Government servant, whose duty it was to receive certain moneys, and to pay them into the treasury on receipt. He admitted that he had retained two sums of money in his possession for several months, when fearing detection he paid them into the treasury, making a false entry at the time in his books with a view to avert suspicion. His explanation as to his reason for retaining the money was not credited by the Magistrate, who convicted him of criminal misappropriation under s. 403 of the Penal Code. *Held* that the conviction was right.—QUEEN-EMPRESS v. RAMAKRISHNA, I. L. R., 12 Mad. 49. [Wilkinson and Shephard, JJ. Sep. 11, 1888.]

THE word "object" in s. 295 of the Penal Code does not include animate objects. A bull dedicated and set at large at the *sradha* of a Hindu in accordance with religious usage is not an "object" within the meaning of that section. When such an animal was killed by certain Mahomedans, secretly and at night, in the presence of none but Mahomedans, for the sake of the meat and value of the skin, *held* that no offence had been committed under s. 295. *Queen-Empress* v. *Immam Ali* (I. L. R., 10 All. 150) followed. *Held*, further that such a bull is not "moveable property" within the meaning of ss. 378 and 403, or "property" within the meaning of s. 425 of the Penal Code, and could not, therefore, be the subject of theft, criminal misappropriation, or mischief. The fact that such a bull receives some attention from the cowherd of the persons who set it at liberty, and is daily fed by him by direction of his employers, and is not used for breeding purposes

without their permission being asked, is not inconsistent with a total surrender by those who set it at liberty of all their rights as proprietors. *Queen-Empress* v. *Bandhu* (I. L. R., 8 All. 51) followed. *Queen-Empress* v. *Nalla* (I. L. R., 11 Mad. 145) referred to and commented on. For the purpose of construing a section of an Act, and ascertaining the intention of the Legislature, the Report of the Indian Law Commissioners or a Select Committee appointed to consider a Bill may be referred to. *Queen-Empress* v. *Kartick Chunder Das* (I. L. R., 14 Cal. 721) followed.—ROMESH CHUNDER SANNYAL *v.* HIRU MONDAL, I. L. R., 17 Cal 852. [Norris and Macpherson, JJ. Mar. 27 and April 15, 1890.]

THE accused, being in the employ of Government in the Post-office Department, while assisting in the sorting of letters, secreted two letters with the intention of handing them to the delivery-peon, and sharing with him certain moneys payable upon them. He was charged under the Post-Office Act, s 48. *Held* (1) that, since the intention of the accused was not to prevent the delivery of the letters to the addressees, he was not guilty of the offence of secreting them within the meaning of that section; (2) that he was guilty of the offence of stealing and of fraudulently misappropriating the letters within the meaning of that section; and of the offence of theft and of attempt to commit dishonest misappropriation of property within the meaning of the Penal Code.—QUEEN-EMPRESS *v.* VENKATASAMI, I. L. R., 14 Mad. 229. [Collins, C.J., and Weir, J. Oct. 17, Nov. 13, 1890.]

THE accused, finding a gold mohur on an open plain, sold it the next day to a shroff for the full value, and appropriated the sale-proceeds. *Held* that, in the absence of any information as to the circumstances under which the coin was lost, and as it was not improbable that the property in the coin had been abandoned by the original owner, the accused could not be convicted of criminal misappropriation under s. 403 of the Penal Code. —QUEEN-EMPRESS *v.* SITA, I. L. R., 18 Bom. 212. [Candy and Fulton, JJ. Mar 9, 1893.]

THE property referred to in s. 405 of the Penal Code is, as in s. 403, moveable property, and criminal breach of trust cannot be committed in respect of immoveable property. *Reg.* v. *Girdhar Dharamdas* (6 Bom. H. C. R. 33) followed.—JUGDOWN SINHA *v.* QUEEN-EMPRESS, I. L. R., 23 Cal. 372. [Beverley and Gordon, JJ. Dec. 4, 1895.]

A JUDGMENT-DEBTOR, whose standing crops were attached, harvested them while the attachment was in force, and was convicted of theft *Held* that the accused was not guilty of theft, but of the offence of dishonestly removing the property under Penal Code, s. 424. *Per* Benson, J.—The offence was also criminal misappropriation within the meaning of Penal Code, s. 403.—QUEEN-EMPRESS *v.* OBAYYA, I. L. R., 22 Mad. 151. [Davies and Benson, JJ. Sep. 13, 1898.]

Ct. of Ses. Presy. Mag., or Mag. of 1st or 2nd class. Warrant. Bailable. Not comp.

**404.** Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and, if the offender, at the time of such person's decease, was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Dishonest misappropriation of property possessed by a deceased person at the time of his death.

*Illustration.*

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

A PERSON may commit the offence of dishonest misappropriation of property possessed by a deceased person at the time of his death (s. 404, Penal Code) by dishonestly misappropriating the money entrusted to him, although he does not bring such money to his own use.—IN THE MATTER OF ENAYET HOSSEIN, 11 W. R. 1. [Jackson and Markby, JJ. Jan. 12, 1869.]

S. 404 of the Penal Code (relating to the misappropriation or conversion of "property" left by a deceased person) does not apply to immoveable property.—REG. *v.* GIRDHAR DHARAMDAS, 6 Bom. H. C R. 33. [Tucker and Gibbs, JJ. Mar. 5, 1869.]

IT is not necessary for a conviction for dishonest misappropriation of property possessed by a deceased person at the time of

his death, under s. 404 of the Penal Code, that the accused should misappropriate it to his own use. *Held* by Markby, J., that under s. 404 all the elements are required to constitute the offence which would be required to constitute the offence of criminal misappropriation in respect of a person who is alive.—QUEEN *v.* NOBIN CHUNDER SIRCAR, 12 W. R. 39. [Jackson and Markby, JJ. July 27, 1869.]

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*Of Criminal Breach of Trust.*

**405.*** Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."

Criminal breach of trust.

*Illustrations.*

(*a*.) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(*b*.) A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.

(*c*.) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z that all sums remitted by Z to A shall be invested by A according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions, and employs the money in his own business. A has committed criminal breach of trust.

(*d*.) But if A, in the last illustration, not dishonestly, but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(*e*.) A, a revenue-officer, is entrusted with public money, and is either directed by law or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(*f*.) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

THE subsequent making away with property by a person originally in lawful possession of the same is not theft but criminal breach of trust.—BHARUT CHUNDER CHRISTIAN, *In re*, 1 W. R. 2. [Kemp and Glover, JJ. Aug. 8, 1864.]

WHERE a complaint only amounted to a statement that the accused had, in consequence of certain arrangements made with the complainant's father, received certain moneys, and had refused to render accounts, but contained no allegation that he had, in fact, realized and dishonestly misappropriated any particular sum, and obviously was made for the purpose of forcing him to render accounts, *held* that the Magistrate was right in dismissing it, since the facts alleged did not constitute criminal breach of trust.—QUEEN-EMPRESS *v.* MURPHY, I. L. R., 9 All. 666. [Mahmood, J. April 18, 1887.]

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* As to framing charge under s. 405, see s. 222 of the new Code of Criminal Procedure (Act V. of 1898).

WHEN a bank takes a deposit from its customer, it takes it on the understanding that that deposit is not to be used to pay dividends to shareholders at a time when the bank is insolvent, and cannot legally pay dividends. In the case of a bank registered under the Indian Companies Act as a company limited by shares, and governed by the regulations contained in Table A in the first schedule to the Act, it was *held* that the directors had dominion over the property and the management of the funds of the bank, that they were bound not to pay dividends except out of the profits of the bank; and that, if they dishonestly, that is, knowingly and intentionally, paid dividends to the shareholders out of deposits when there were no profits, intending to cause gain to themselves or others to which they were not entitled, or to cause wrongful loss to other persons, they were guilty of criminal breach of trust as bankers under s. 400 of the Penal Code, but that the manager and the accountant or assistant manager were not, within the meaning of the section, persons who were entrusted with property or with dominion over property as bankers or agents, and therefore did not come directly under s. 409, though they might be guilty of abetment under s. 409 read with s. 109, by conspiring with the directors to commit criminal breach of trust, if they assisted the directors to obtain the sanction of the shareholders to the illegal payment of dividends, and did so for the dishonest purpose of causing wrongful gain or wrongful loss. Whether the illegal payment of dividends under the circumstances stated could be regarded as causing wrongful loss to the bank as a corporate body, *quære*. Whether moneys deposited in the bank by its customers, and not in any way ear-marked could, after such deposit, be regarded as "property" of the depositors within the meaning of s. 409, *quære*. *Held* also that, if the directors, manager, and accountant, dishonestly, that is, to obtain wrongful gain for themselves or to cause wrongful loss to others, put before the shareholders balance-sheets which they knew to be materially false and misleading, and likely to mislead the public as to the condition of the bank, and concealed its true condition, and thereby induced depositors to allow their money to remain in deposit in the bank, they were guilty of cheating in the aggravated form made punishable by s. 418 of the Penal Code; and if they acted together to put forward such a false balance-sheet, they were guilty of abetment by conspiracy to cheat. *Semble*.—The making of such a false balance-sheet is not an offence within s. 191 of the Penal Code, and, where it is made prior to the commencement of the winding-up of the company, is not an offence within s. 215 of the Indian Companies Act (VI. of 1882). A balance-sheet of a company under the Indian Companies Act must be a true balance-sheet, in the sense that it must represent the actual state of the company's assets and liabilities. If it falsely states the condition of the company, it is a false balance-sheet, though it follows the accounts as shown in the books of the company, and correctly represents what is in the books. A balance-sheet which shewed all the debts owing to the company, amounting to Rs. 28 lakhs, under the head of assets, without specifying, in accordance with the form of balance-sheet annexed to Table A, which of such debts were good and secured, which good and unsecured, and which considered bad and doubtful, and also showed a divisible balance of profits amounting to Rs 19,000, the facts being that out of the Rs. 28 lakhs some Rs. 13 lakhs were bad and irrecoverable, and that the capital reserve-fund and other provision for bad debts had been lost, and that the company, instead of making profits, was, and long had been, insolvent, was found to be false and misleading. Having regard to the nature of the charges above referred to, the Court, under s. 239 of the Code of Criminal Procedure, rejected an application by the defence that the accused should be tried separately. The word "European" in s. 451 of the Code of Criminal Procedure means persons born in Europe. The word "compelled" in the proviso to s. 132 of the Evidence Act (I. of 1872) applies only where the Court has compelled a witness to answer a question and not to a case where the witness has not asked to be excused from answering a question, but gives his answer without any claim to have himself excused. A deposition on oath made by one of several accused, as a witness, in a previous inquiry under ss. 162, 163 of the Indian Companies Act (VI. of 1882) was admitted in evidence against himself only, and not against the other accused. The action of the defence, during the cross-examination of a witness for the Crown, in tendering a document to such witness, and using the same as evidence for the defence, was held to entitle the Crown to reply under s. 202 of the Code of Criminal Procedure.—QUEEN-EMPRESS v. Moss, I. L. R., 16 All. 88. [Edge, C.J., and a Jury. Nov. 20, Dec. 18, 1893.]

THE property referred to in s. 405 of the Penal Code is, as in s. 403, moveable property, and criminal breach of trust cannot be committed in respect of immoveable property.—*Reg.* v *Girdhar Dharamdas* (6 Bom. H. C. R. 33) followed.—JUGDOWN SINHA v. QUEEN-EMPRESS, I. L. R., 23 Cal. 372. [Beverley and Gordon, JJ. Dec. 4, 1895.]

**406.** Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for criminal breach of trust.

Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Warrant. Not bailable. Not comp.

CHARGE.—That you, on or about the , at , being entrusted with certain property, to wit, , committed criminal breach of trust in respect of such property, and that you thereby committed an offence punishable under s 406 of the Indian Penal Code, and within, &c.

To sustain a charge of criminal breach of trust, it is essential to establish the criminal character of the act by which the trust has been violated.—GOVT. v. DOORGA PERSHAD, 5 N. A., N.-W. P., Pt. II, 49.

THE acceptor of a bond covenanting to return a sum embezzled was held to be precluded from prosecuting the giver for criminal breach of trust.—GOVT. v. GOLAM HOSSEIN, 6 N. A., N.-W. P., Pt. II., 86

IN cases which can lawfully be compounded, a composition entitling a party to bring a civil action thereupon amounts to a condonation of the criminal offence, and to an implied agreement not to prosecute. Where the terms of the composition are infringed, a civil suit would lie—not a criminal prosecution.—GOVT v. SEWARAM, 5 N. A., N. W. P. Pt. II., 227, 1864.

A REFUSAL to give up land alleged to have been mortgaged, the mortgage being denied, cannot be treated as a dishonest misappropriation of the documents of title amounting to a criminal breach of trust under s 405 of the Penal Code.—REG. v. JAFFIR NAIK 2 Bom. H. C. R. 127. [Couch and Newton JJ. Dec. 7, 1864.]

IF a mortgagor in possession, who is entrusted with dominion over the mortgaged property by the mortgagee in whom the property is in mortgage in the English form, wilfully defaults, and causes the property to be sold for arrears of Government revenue for the purpose of defrauding the mortgagee, and purchases it benami, he is liable to be punished for criminal misappropriation under s. 405 of the Penal Code.—RAM MANIK SHAHA v. BRINDABUN CHUNDER POTDAR, 5 W. R. 230 (Civ. Rul.). [Norman and Campbell, JJ. May 2, 1866.]

THE misappropriation of each separate item of money with which a person is entrusted is a separate offence and the facts connected with it should form the subject of a separate inquiry. The duty of a committing officer in such a case is to select certain distinct items, to frame his charges upon them, and to adduce evidence specially upon those items.—IN THE MATTER OF CHETTER, (C. A.), 15 W. R. 5 [Jackson and Mookerjee, JJ. Jan. 21, 1871.]

A PERSON who pledges what is pledged to him may be guilty of criminal breach of trust. There are two elements: (1) the disposal in violation of any direction of law or contract, expressed or implied, prescribing the mode in which the trust ought to be discharged, (2) such disposal dishonestly.—PRO., May 23, 1871, 6 Mad H. C. R. Ap. 28.

TO constitute the offence of criminal breach of trust, there must be dishonest misappropriation by a person in whom confidence is placed as to the custody or management of the property in respect of whom the breach of trust is charged.—ISSUR CHUNDER GHOSE v. PEARI MOHUN PALIT, 16 W. R. 39. [Kemp and Glover, JJ. Aug. 5, 1871.]

WHERE a sub-inspector of police was charged with having purchased a pony which had been impounded, it was held that the Magistrate should have proceeded under s. 19, Act I of 1871, taken with s 169, Penal Code, and that the accused could not be convicted, under s 406 of the Penal Code, of criminal breach of trust.—IN THE MATTER OF RAJKRISTO BISWAS, 16 W. R. 52; 8 B. L. R. Ap. 1. [Kemp, Offg. C.J., and Ainslie, J. Sep. 25, 1871.]

A PARTNER who dishonestly misappropriates or converts to his own use, or dishonestly uses or disposes of any of the partnership property which he is entrusted with, or has dominion over, is guilty of criminal misappropriation under s 405 of the Penal Code.—NRIGENDRO LALL CHATTERJEE v. OKHOY COOMAR SHAW, 21 W. R. 59; 13 B. L. R. 307. [Couch, C.J., and Jackson, Phear, Birch, and Morris, JJ. Mar. 30, 1874.] Overrules *Lall Chand Roy*, 9 W. R. 37. *Follows Queen v. Gour Benode Dutt.* 21 W. R. 59; 13 B. L. R. 308n.

WHEN a master entrusts his servant with money for the payment of an *open* account, *i.e.*, an account of which the items have never been checked or settled, and the tradesman makes the servant a present, and the transaction amounts to a taxation of the bill and a reduction of the price by the servant, the latter obtains the reduction for his master's benefit, the money in his hands always remains the master's property, and, if he appropriates it, he commits criminal breach of trust. But where the master himself has *settled* the account with the tradesman for a specific sum, and sends the servant with the money, and

the servant, after making the payment, accepts a present from the tradesman, in that case the servant does not commit criminal breach of trust, inasmuch as the money is given to him by a person whom he believes to have a right to give it, though it may be that, according to the strict equitable doctrines of the Court of Chancery, he is bound to account to the master for the money. *Hay's Case [In re Canadian Oil Works Corporation* (L. R., 10 Ch. Ap. 393)] referred to Where the Court of Session had tried, convicted, and sentenced an accused person under s. 409 of the Penal Code, and the High Court was of opinion that the conviction was not sustainable under that section, the Court refused to alter the finding, under s. 423 of the Criminal Procedure Code, to a conviction for some other offence for which the accused had not been charged or tried. *Observations on* the necessity of requiring corroboration, in material particulars, of the evidence of an accomplice. *Empress* v. *Ram Saran* (Weekly Notes, 1885, p. 311) referred to.—QUEEN-EMPRESS v. IMDAD KHAN, I. L. R., 8 All. 130. [Petheram, C.J. Dec. 21, 1885.]

AN accused person should not be convicted of criminal breach of trust on refusing to give to the complainant money which is claimed by another person as well as by the complainant, and which the accused denies is due to the complainant. The fact that that other person has brought a suit to recover the amount claimed by him against the accused is a complete answer to the charge of criminal breach of trust against the accused and to the findings of the Courts that the claim made by that other person was a false claim. —RAJ KISHORE PATTER v. JOY KRISHNA SEN, I. L. R., 28 Cal. 362. [Prinsep and Handley, JJ. July 16, 1900.]

Ct. of Ses., Pres. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp.

**407.** Whoever, being entrusted with property as a carrier, wharfinger, or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Criminal breach of trust by carrier, &c.

A IS charged under s. 407 of the Penal Code with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under s. 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under s. 406.—CRIM. PRO. CODE (Act V. of 1898), s. 238, ill. (*a*)

B, ENTRUSTED with rice at M (a port in British India) for conveyance to C (also a port in British India), took the rice to G, a port in foreign territory, and there sold it. He was convicted at M of criminal breach of trust as a carrier under s. 407 of the Penal Code. *Held* that the Sessions Court at M had no jurisdiction to try the offence under the Code of Criminal Procedure. *Held* also that no offence was committed on the high seas so as to give the Court jurisdiction under 12 and 13 Vict., c. 29, extended by 23 and 24 Vict. c. 88.—BAPU DALDI v. REG., I. L. R., 5 Mad. 23. [Innes and Muttusami Ayyar, JJ. Feb. 26, 1882.]

THE accused were charged under s. 407 of the Penal Code with committing criminal breach of trust in respect of certain property entrusted to them as carriers. They were all native Indian subjects of Her Majesty. The offence was alleged to have been committed in Portuguese territory, and they were found in a place in British territory. *Held* that, under s. 188 of the Criminal Procedure Code (Act X. of 1882), the accused could be tried in the place where they were found.—QUEEN-EMPRESS v. DAYA BHIMA, I. L. R., 13 Bom. 147. Birdwood and Parsons, JJ. July 5, 1888.]

K S, K P, and K M were tried jointly and convicted: K S under s. 407 of the Penal Code, K P and K M under s. 411 of that Code. No objection to the joint trial was taken either before the trying Magistrate or before the Appellate Court. *Held*, in revision upon objection being taken to the joint trial of K S with K P and K M, that a misjoinder of parties is not fatal to the proceedings, but is an irregularity which requires that the Court should consider under the terms of s. 537 of the Code of Criminal Procedure whether it has in fact occasioned a failure of justice. *In the Matter of Abdur Rahman* (I. L. R., 27 Cal. 839) followed. *Held* further that, having regard to the explanation to s. 537 of the Code of Criminal Procedure, the objection was not one which could be properly taken in revision; that the objection should have been raised at an earlier stage of the proceedings; and that, therefore, it might be taken that not having been so raised it had not in fact occasioned a failure of justice.—KALI PROSAD MAHTOAL v. QUEEN-EMPRESS, I. L. R., 28 Cal. 7. [Prinsep and Handley, JJ. July 2, 1900.]

**408.** Whoever, being a clerk or servant, or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Criminal breach of trust by a clerk or servant.

Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Warrant. Not bailable. Not comp.

CHARGE.—That you, on or about the , at , being a servant of , and being in such capacity entrusted with dominion over property, to wit, worth Rs. , committed criminal breach of trust in respect of that property.—2 W. R. Cr. L. 15, No. 203 of 1865.

WHERE a Court Inspector improperly delegated to a constable the custody, &c., of Government money (taking from him private security to save himself from loss in case of defalcation), and the constable dishonestly converted the money to his own use, although he afterwards restored it, the case was held to fall under s. 408, and not s. 409 of the Penal Code, and the sentence reduced from 10 years' transportation and a fine of Rs. 500 to one year's rigorous imprisonment without fine.—QUEEN *v.* BANEE MADHUB GHOSE, 8 W. R. 1. [Seton-Karr and Glover, JJ. June 1, 1867.]

A SERVANT, who receives money for a specific purpose, and does not use it for that purpose, and, on being called on to account for the money, falsely says that he used it for that purpose, is guilty of criminal breach of trust under s. 408 of the Penal Code.—WATSON & Co. *v.* GOLAB KHAN, 10 W. R. 28. 1 B. L. R. S. N. 21. [Loch and Glover, JJ. Aug. 22, 1868.]

ACCUSED was employed by the Panjab Bank as its treasurer at Multan. After serving for a few days in that capacity, he, with the consent of the Bank, put in one D as his agent or gomashta, himself removing to other employment at Amritsar, but continuing to receive pay from the Bank. D misappropriated certain moneys of the Bank, and finally absconded. The Sessions Court found that accused had received some of the misappropriated money from D, and had connived at D's defalcation; and convicted him of criminal breach of trust as a servant, and of abetting the same. In appeal, it was contended for the accused, *inter alia*, that he was treasurer only in name, and had no dominion over the misappropriated property; consequently he was not a participator in reference to D's defalcation; and, as to the latter, he was the servant of the accused, not of the Bank, so that, whatever his offence, he had not committed breach of trust as a servant. Found by the Chief Court that both accused and D were servants of the Bank; that D had committed breach of trust as such, and that accused had received the misappropriated money from D with a guilty knowledge. On the question whether this amounted to abetment of D's offence, or to dishonest receiving under s. 411, it was held that, although no act done by accused after D's offence was committed would make the former guilty as an abettor, yet as accused, who, as the Bank's treasurer, was bound to disclose the fact that he had irregularly received the Bank's money on the first defalcation, did not do so, he was guilty of an illegal omission, by which he voluntarily caused the sole abstraction and transmission to himself of the second sum, and had, thereby, abetted the breach of trust by a servant.—KALOO RAM *v.* CROWN, Panj Rec., No 30 of 1868.

AN accused person who was in the service of zemindars, and whose duty it was to pay into the Collectorate Government revenue due in respect of their estates, immediately before the due date of a kist, received from them a certain sum of money with no specific instruction as to its application. On receipt of that money he paid a portion only of it into the Collectorate on account of the revenue, and having done so he then altered the challan given back to him showing the amount actually paid, and made it appear that a much larger amount had been paid in than was the fact. This challan he sent to his employer for the purpose of showing the application of the money. He was charged (1) with criminal breach of trust as a servant (s 408 of the Penal Code) in respect of the difference between the amount actually paid into the treasury and the amount shown to have been paid in by the altered challan; (2) with forgery (s. 467) in respect of the challan; and (3) with using a forged document (s. 471) in respect of the same document. The accused was convicted on all these charges. It was contended (*a*) that the charge under s 408 was not sustainable, inasmuch as the money was not alleged to have been sent to the accused for the specific purpose of paying the Government revenue, and that the accounts between him and his employers had not been adjusted, and that it was not shown whether at the date of the alleged breach of trust the accused was indebted to his employ-

er or the reverse; (*b*) that the charges under ss. 467 and 471 were bad, as there was no evidence to support them, and even admitting the alteration of the challan, such alteration did not come within the term "forgery" as used in the Penal Code, not having been made with the intention of causing any wrongful gain or wrongful loss, but with the intention of screening the offence of criminal breach of trust which had been previously committed. *Held* that, as the money was sent to the accused immediately before the kist day, and the challan was sent to the employers showing in its altered state the amount really payable as revenue which nearly covered the whole amount remitted, it was reasonable to infer that the accused was aware of the implied purpose for which the money was remitted, and as he deposited a very much smaller amount than that remitted, and tried to pass off the altered challan as genuine, there was a dishonest misappropriation of the difference sufficient to constitute the offence under s 408. *Held*, further, that it is not necessary for the purpose of constituting the offence of forgery that the false document should be made with the intention of committing a fraud or dishonesty in the future, and that, if the intention with which a false document is made be to conceal a fraudulent act which has been previously committed, the intention cannot be other than to commit fraud, and the offence of forgery as defined in s. 463 is committed The word "fraudulently" as used in s. 464 must not be taken as being the same as "dishonestly" and implying wrongful gain or wrongful loss, but must be taken to mean as "with intent to defraud." *Empress of India* v *Jiwanand* (I. L. R., 5 All 221) and *Queen-Empress* v. *Girdhari Lal* (I L R, 8 All. 653) dissented from. *Queen-Empress* v. *Vithal Narain Jo hi* (I. L. R, 13 Bom. 515 note) and *Queen-Empress* v. *Subapati* (I L. R., 11 Mad. 411) followed. *Held*, therefore, that upon the facts of the case there was ample evidence to show that the accused had abetted the forgery of the challan, and had used the sum, and that he had been properly convicted of all the offences charged against him except that of the actual forgery, and that he should have been convicted of abetment of that offence.—LOLIT MOHAN SARKAR v. QUEEN-EMPRESS, I. L. R, 22 Cal. 313. [Banerjee and Sale, JJ. Nov. 2, 1894.]

WHERE the first two counts of an indictment charged the prisoner under s 408 of the Penal Code with criminal breach of trust in respect of two sums of money, *viz.*, Rs. 23-7 and Rs. 850 respectively, and the third and last count charged him with criminal breach of trust in respect of a sum of Rs. 9,168-6, which last-mentioned sum, as appeared from the depositions, represented a general deficiency in the prisoner's account, *held* that the third count must be struck out.—QUEEN-EMPRESS v. PURSOTAM DASS MORARJEE, I L. R, 24 Cal. 193. [Hill, J. Feb. 26, 1896.]

B, an employé of a Company, the office of which was at Cawnpore, was charged with the offence punishable under s. 408 of the Indian Penal Code The complainant alleged that B, being in charge on behalf of the Company at a place in Bengal, of certain goods belonging to the Company, and being ordered to return the said goods to Cawnpore, never did so, and failed to account for the goods, or their value, to the loss of the Company *Held* that on the statement of the case by the complainant, the Courts at Cawnpore had jurisdiction to inquire into the charge, inasmuch as the consequence of B's acts, namely, loss to the Company, occurred in Cawnpore.—QUEEN-EMPRESS v. O'BRIEN, I. L. R., 19 All 111. [Edge, C.J., Aug. 21, 1896.]

Ct. of Sess., Presy. Mag., or Mag. of 1st class. Uncog. Warrant. Not bailable. Not comp.

**409.** Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant, or in the way of his business as a banker, merchant, factor, broker, attorney, or agent, commits criminal breach of trust in respect of that property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Criminal breach of trust by public servant, or by banker, merchant, or agent.

THE offence of a person who makes away with property which has been placed in his charge and possession is not theft, but criminal breach of trust.—IN THE MATTER OF BHARUT CHUNDER CHRISTIAN, 1 W. R 2. [Kemp and Glover, JJ. Aug. 8, 1864.]

THEFT by constables of property from the house they were employed to guard is punishable under s. 380, and not s. 409, Penal Code. —QUEEN v. BOIDNATH SINGH, 3 W. R. 29. [Jackson and Glover, JJ. June 17, 1865.]

A CONSTABLE who dishonestly misappropriates to his own use the pay of his thana-police entrusted to him is guilty of criminal breach of trust.—QUEEN v. SUBDAR MEHAN, 3 W. R. 44. [Kemp and Seton-Karr, JJ. July 11, 1865.]

THE mere fact of there being a large deficit of salt, without distinct proof of a criminal misappropriation, is not sufficient to convict the Salt Darogah in charge of the golahs of criminal breach of trust under s. 409 of the Penal Code.—QUEEN *v.* BRINDABUR PUTNAIK, 5 W. R. 21. [Kemp and Glover, JJ. Jan. 31, 1866.]

THE mere fact that the prosecutor gave the prisoner time to make out his account, and pay the balance due, does not vitiate a conviction for dishonest misappropriation, or show that the matter is one for the Civil Courts only.—*In re* SREEKANT BISWAS, 5 W. R 56. [Macpherson, J. Mar. 24, 1866.]

WHERE a Court Inspector improperly delegated to a constable the custody, &c., of Government money (taking from him private security to save himself from loss in case of defalcation), and the constable dishonestly converted the money to his own use, although he afterwards restored it, the case was held to fall under s. 408, and not s. 409, of the Penal Code, and the sentence reduced from 10 years' transportation and a fine of Rs. 500 to one year's rigorous imprisonment without fine.—QUEEN *v.* BANEE MADHUB GHOSE, 8 W. R. 1. [Seton-Karr and Glover, JJ. June 1, 1867.]

A VILLAGE-SHROFF, whose duty it was to assist in collecting the public revenue, received grain from ryots, and gave receipts as if for money received by virtue of a private arrangement. *Held* that he could not be convicted of criminal breach of trust by a public servant under s. 409 of the Penal Code, as he was not authorized to receive the public revenue in kind, and the party who delivered the grain did not thereby discharge himself from liability for the revenue.—PRO., Feb. 12, 1869. 4 Mad. H C R. Ap. 32.

S. 409 of the Penal Code does not limit the mode in which a trust arises, whether by specific order, or by reason of its being part of the proper duty of a public functionary. Where, therefore, it was proved that the head clerk of an office entrusted the management of stamps, with the knowledge and sanction of his superiors, to one of his assistants, the latter was held to be guilty of criminal misappropriation by a public servant within the meaning of s. 409 when he made away with the stamps.—QUEEN *v.* RAM DHUN DEY, 13 W. R 77. [Jackson and Glover, JJ. May 28, 1870.]

THE naib-nazir is a public servant within the meaning of s. 409 of the Penal Code and not the mere private servant of the nazir.—QUEEN *v.* MAHMOOD HOSSEIN, 2 N.-W. P. 298. [Spankie, J. July 18, 1870.]

A TRAVELLER, with considerable property, partly cash and gold coins, put up at a sarai, and, believing himself to be dying, sent to the police-station for protection of his property. The accused, the thana-mohurir, went to the sarai, and received charge of the property. *Held* by Lindsay and Fitzpatrick, JJ. (Plowden, J., dissenting), that the accused was entrusted with the property in his capacity of a public servant within s 409, as the accused was empowered by s. 95, Criminal Procedure Code, to receive the property to prevent the commission of an offence, *i.e.*, theft by other persons taking advantage of the illness or death of the traveller.—BHAG SING *v.* CROWN, Panj. Rec., No. 24 of 1876.

THE prisoners were charged with having stolen a sum of money shut up in a box, and placed in the Police Treasury buildings, over which they, as barkandazes, were placed in guard. *Held* that the charge should have been made under s 381 of the Penal Code (theft by a servant in possession of property), and not under s. 409 (criminal breach of trust by a public servant).—QUEEN *v* JUGGURNATH SINGH, 2 W. R. 55. [Seton-Karr, Jackson, and Glover, JJ. April 3, 1877.]

WHERE a Magistrate, erroneously holding that the offence committed was one under s. 406, Penal Code, over which he had jurisdiction, instead of under s. 409, which was cognizable only by the Court of Session, tried and sentenced the accused, it was held by the High Court as a Court of Revision that his proceedings were contrary to law, and he was directed to commit the case for trial by the Court of Session. To constitute an offence under s 409 it is not necessary that the property should be that of Government, but that it should have been entrusted to a public servant in that capacity.—IN THE MATTER OF RAM SOONDER PODDER, 2 C. L. R 515. [Ainslie and Broughton, JJ. June 13, 1878.]

WHERE the accused, in his capacity of revenue-patel, received from the Government treasury small sums of money on account of certain temple allowances, and did not at once pay over the same to the persons entitled to receive them, as he was bound to do, but it appeared that such persons were willing to trust him, and had actually passed receipts which the accused forwarded to the Revenue-authorities, *held* that the accused fulfilled the trust reposed in him by Government, and that his mere retention of the money for a time, in the absence of any evidence of dishonesty, did not amount to criminal breach of trust within the meaning of s. 409 of the Penal Code.—QUEEN-EMPRESS *v.* GANPAT TAPIDAS, I. L. R., 10 Bom. 256. [Birdwood and Jardine, JJ. Dec. 17, 1885.]

WHEN a master entrusts his servant with money for the payment of an *open* account, *i.e.*, an account of which the items have never been checked or settled, and the tradesman makes the servant a present, and the transaction amounts to a taxation of the bill and a reduction of the price by the servant, the latter obtains the reduction for his master's benefit, the money in his hands always remains the master's property, and, if he appropriates it, he commits criminal breach of trust. But where the master himself has *settled* the amount with the tradesman for a specific sum, and sends the servant with the money, and the servant, after making the payment, accepts a present from the tradesman, in that case the servant does not commit criminal breach of trust, inasmuch as the money is given to him by a person whom he believes to have a right to give it, though it may be that, according to the strict equitable doctrines of the Court of Chancery, he is bound to account to the master for the money. *Hay's Case [In re Canadian Oil Works Corporation* (L. R., 10 Ch. Ap 393)] referred to. Where the Court of Session had tried, convicted, and sentenced an accused person under s. 409 of the Penal Code, and the High Court was of opinion that the conviction was not sustainable under that section, the Court refused to alter the finding, under s 423 of the Criminal Procedure Code, to a conviction for some other offence for which the accused had not been charged or tried. Observations on the necessity of requiring corroboration, in material particulars, of the evidence of an accomplice. *Empress* v. *Ram Saran* (Weekly Notes, 1885, p. 311) referred to.—QUEEN-EMPRESS v. IMDAD KHAN, I. L. R., 8 All. 126. [Petheram, C.J. Dec. 21, 1885.]

AN accused person may be charged with criminal breach of trust in respect of a general deficiency, and it is not necessary in all cases to charge the accused with the embezzlement of a particular sum received on a certain date from some particular person. *Reg.* v. *Lloyd Jones* (8 C. and P. 288), *Reg.* v. *Chapman* (1 C. and K. 119), *Reg.* v. *Wolstenholme* (11 Cox. Cr. Ca. 313), and *The Queen* v. *Lambert* (2 Cox. Cr Ca. 309) referred to.—QUEEN-EMPRESS v. KELLIE, I. L. R., 17 All. 153. [Aikman, J. Jan. 14, 1895.] Approved in *Buddhu* v. *Babu Lal*, I. L. R., 18 All. 116, *infra*.

HELD that a person accused under s. 409 of the Penal Code might be legally convicted of the offence defined in that section on proof of a general deficiency in his accounts, and that it was not necessary that the receipt of, and non-accounting for, specific items should be charged and proved against him.—*Queen-Empress* v. *Kellie* (I. L. R., 17 All. 153) approved.—BUDDHU v. BABU LAL, I. L. R., 18 All 116. [Edge, C.J., and Burkitt, J. Dec 9, 1895.]

SENTENCES of imprisonment passed for distinct offences to run concurrently are not warranted by law. *Queen-Empress* v. *Wasir Jan* (I. L. R., 10 All. 58) referred to.—DAITARI DAS v. QUEEN-EMPRESS, I. L. R., 25 Cal. 557. Banerjee and Hill, JJ. Dec. 6, 1897. [NOTE.—The law has since been amended in the new Code.]

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*Of the Receiving of Stolen Property.*[*]

Stolen property.

**410.** Property the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated, or in respect of which† criminal breach of trust has been committed, is designated as stolen property, "whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India."‡ But, if such property

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[*] As to whipping for the offence defined in s. 411, see the Whipping Act (VI. of 1864), ss 2, 3; for the offence defined in s. 412 see *ib*; also (as to Burma) the Upper Burma Laws Act (XIII. of 1898), s. 4 (3) (*b*), and Sch II; for the offence defined in s. 413, see the Whipping Act (VI of 1864), ss 4, 6.

As to punishment for offences under ss. 411-414, enquired into by a Council of Elders in Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

† In s. 410, the words, "the offence of," have here been omitted: the word "the" being repealed by the Repealing and Amending Act (XII. of 1891), and the words "offence of," by the Indian Penal Code Amendment Act (VIII. of 1882), s. 9.

‡ In s. 410, the words quoted have been inserted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 9.

subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

MONEY obtained upon forged money-orders is not "stolen property" within definition thereof given in the Penal Code in s. 410. —QUEEN *v.* MONMOHUN ROY, 24 W. R. 33. [Birch and Lawford, JJ. July 26, 1875.]

A PERSON was convicted and sentenced under s. 411 of the Penal Code for dishonestly receiving a bull, knowing the same to have been criminally misappropriated. It was found that, at the time of the alleged misappropriation, the bull had been set at large by some Hindus, in accordance with Hindu religious usage, at the time of performing funeral ceremonies. *Held* that the bull was not, at the time of the alleged misappropriation, "property" within the meaning of the Penal Code, inasmuch as, not only was it not the subject of ownership by any person, but the original owner had surrendered all his rights as its proprietor, that it was therefore *nullius proprietas*, and incapable of larceny being committed in respect of it; and that the conviction must be set aside.—QUEEN-EMPRESS *v.* BANDHU, I. L. R. 8 All. 51. [Straight, J. Dec. 7, 1885.]

**411.** Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Dishonestly receiving stolen property.

Cr. of Sec., Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Warrant. Not bailable. Not comp.

A CHARGE of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.—CRIM. PRO. CODE (Act V of 1898), s. 180, ill. (*b*).

SEVERAL stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B, therefore, voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under ss. 411 and 414 of the Penal Code.—CRIM. PRO. CODE (Act V of 1898), s. 235, ill. (*f*).

THE offence of receiving or retaining stolen property under s. 411 of the Penal Code may be tried summarily by (1) the District Magistrate; (2) any Magistrate of the first class specially empowered in this behalf by the Local Government, and (3) any Bench of Magistrates invested with the powers of a Magistrate of the first class, and specially empowered in this behalf by the Local Government.—CRIM. PRO CODE (Act V of 1898), s. 260.

A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article. The fact that at the same time he was in possession of many other particular stolen articles, is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.—Evidence Act (I. of 1872), s. 14, ill. (*a*).

A is accused of receiving stolen goods knowing them to be stolen. He offers to prove that he refused to sell them below their value. A may prove these statements, *though they are admissions, because they are* explanatory of conduct influenced by facts in issue.—Evidence Act (I. of 1872), s. 21, ill. (*d*).

A is accused of receiving stolen property knowing it to have been stolen. It is proposed to prove that he denied the possession of the property. The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.—Evidence Act (I. of 1872), s. 130, ill. (*c*).

WHEN an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal of any *property or document* produced before it, *or in its custody*, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence. When a High Court or a Court of Session makes such order, and cannot, through its own officers, conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate. When an order is made under this section in a case in which an appeal lies, such order shall not (except when the property is livestock, or is subject to speedy and natural decay) be carried out until the period allowed for presenting such appeal has passed, or, when such appeal is presented within such period, until such appeal has been disposed of. *Explanation.*—In this section the term "property" includes, in the case of property regarding

which an offence appears to have been committed not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.—CRIM. PRO. CODE (Act V. of 1898), s 517.

To assist a Court in making a proper order for the disposal of property under s. 517 of the Criminal Procedure Code (Act V. of 1898), it has been thought necessary to reproduce s. 108 of the Contract Act (IX. of 1872), which runs as follows :—

Title conveyed by seller of goods to buyer.

108. No seller can give to the buyer of goods a better title to those goods than he has himself, except in the following cases:—

*Exception 1.*—When any person is, by the consent of the owner, in possession of any goods or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery or other document showing title to goods, he may transfer the ownership of the goods of which he is so in possession, or to which such documents relate, to any other person, and give such person a good title thereto notwithstanding any instructions of the owner to the contrary: Provided that the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods or documents has no right to sell the goods.

*Exception 2.*—If one of several joint-owners of goods has the sole possession of them by the permission of the co-owners, the ownership of the goods is transferred to any person who buys them of such joint-owner in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods has no right to sell them

*Exception 3.*—When a person has obtained possession of goods under a contract voidable at the option of the other party thereto the ownership of the goods is transferred to a third person who, before the contract is rescinded, buys them in good faith of the person in possession; unless the circumstances which rendered the contract voidable amounted to an offence committed by the person in possession or those whom he represents.

In this case the original seller is entitled to compensation from the original purchaser for any loss which the seller may have sustained by being prevented from rescinding the contract

*Illustrations.*

(*a.*) A buys from B, in good faith, a cow which B had stolen from C. The property in the cow is not transferred to A.

(*b.*) A, a merchant, entrusts B, his agent, with a bill of lading relating to certain goods, and instructs B not to sell the goods for less than a certain price, and not to give credit to D. B sells the goods to D for less than that price, and gives D three months' credit. The property in the goods passes to D.

(*c.*) A sells to B goods of which he has the bill of lading but the bill of lading is made out for delivery of the goods to C, and it has not been endorsed by C. The property is not transferred to B.

(*d.*) A, B, and C, are joint Hindu brothers, who own certain cattle in common. A is left by B and C in possession of a cow, which he sells to D. D purchases *bonâ fide*. The property in the cow is transferred to D.

(*e.*) A, by a misrepresentation not amounting to cheating, induces B to sell and deliver to him a horse. A sells the horse to C before B has rescinded the contract. The property in the horse is transferred to C; and B is entitled to compensation from A for any loss which B has sustained by being prevented from rescinding the contract

(*f*) A compels B by wrongful intimidation or induces him by cheating or forgery, to sell him a horse, and, before B rescinds the contract sells the horse to C. The property is not transferred to C.

ANNOTATIONS ON S. 108 OF THE CONTRACT ACT WITH REFERENCE TO STOLEN PROPERTY.

S. 108 was proposed by the Select Committee of the Legislative Council, and adopted by the Council in lieu of one prepared by the Indian Law Commissioners by which it was proposed to confer upon every possessor of moveable property the power of making a good title to a *bonâ-fide* purchaser. The following passage from the report of the Law Commissioners gives their reasons for this proposal :—

"With regards to goods sold by a person who has no right to sell them, the general rule of English law is that the owner of the goods retains the ownership notwithstanding his having lost the possession of them, and their having been sold to a third person. But from this rule there is an exception in the case of goods sold in open market, an expression which, by the custom of London, applies to every shop within the city.

ANNOTATIONS ON S. 108 OF THE CONTRACT ACT—*contd.*

"It cannot be denied that the subject is difficult. We have to consider, on the one hand, the hardship suffered by an innocent person who loses in this way his right to recover what was his undoubted property. But, on the other hand, still greater weight appears to us to be due to the hardship which a *bond-fide* purchaser would suffer were he to be deprived of what he bought. The former is very often justly chargeable with remissness or negligence in the custody of the property. The conduct of the latter has been blameless. The balance of equitable consideration is, therefore, on the side of a rule favourable to the purchaser, and we think that sound policy with respect to the interests of commerce points to the same conclusion.

"We have, therefore, provided that the ownership of goods may be acquired by buying them from any person who is in possession of them, if the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession has no right to sell them."

The reasons of the Select Committee of the Legislative Council for the opposite view were as follow:—

"The first question is whether the law ought to proceed upon the assumption that a person whose property had been stolen is negligent

"Thefts are commonly effected in one of three ways, by force, by fraud, or by a breach of confidence. It appears to us that, in each of these cases, it would be improper to speak of the person who lost the property as negligent.

"A man is stripped of all his property by robbers, and nearly murdered for defending himself. Is he negligent? A gang of thieves enter a house unperceived, by digging through the wall at night, and carry off the property contained in it. Are the owners of the house negligent? A servant steals plate under his charge. Cattle left by night on an open pasture, or crops not specially watched by night, are stolen. Are the owners in these cases negligent? These are typical instances of the commonest forms of theft; and it appeared to us that, in comparison with them, the cases in which an owner is really negligent—as, for instance, where a man leaves valuable property unwatched in a public place—are of very rare occurrence. We therefore regarded innocence on the part of the owner as the rule, and negligence as the exception.

"Assuming, then, that the common case is that in which both the owner and the purchaser of the stolen goods are innocent upon whom ought the loss to fall? We thought it ought to fall upon the purchaser for the following reasons:—

"*1st.* The only argument offered in support of the suggestion that it should fall upon the original owner, assumes that every man is negligent who depends upon the protection afforded by law to his property, even when it is in his personal custody, and can be taken from him only by personal violence. We thought, on the contrary, that people have a right to expect the law to protect them against superior force, and also against fraud so gross as to amount to crime. Against fraud which amounts only to a civil injury—as in the case of selling an article to which the vendor has no title—prudent men may be expected to protect themselves. The proposed section reverses this. It would protect a man who has been over-reached in a bargain, at the expense of another whom it regards as negligent, because he has been robbed on the highway.

"*2nd.* A person who has been robbed by force, or fraud, suffers a greater injury than a person who has been over-reached in a bargain. It follows that, if an innocent purchaser is obliged to return stolen goods, he will in most cases suffer less than the innocent owner would suffer if the purchaser were allowed to retain them.

"*3rd.* To give thieves the legal power of effecting a change in property against the will of the true owner recognizes and favours crime. We thought that no one should be permitted to derive any benefit from a crime even if he was mixed up with it innocently and accidentally, and that, when such a transaction was brought in any form under the notice of the law, things should be restored, as far as possible, to the condition in which they would have been, if the crime had not been committed. The *bond-fide* purchaser of stolen goods would derive an advantage from theft, if the suggestion of the Commissioners were adopted. Their proposal would enable a thief, whose object was revenge, to carry out his purpose by the express warrant of law.

"*4th.* The proposed change would favour receivers of stolen goods. Such persons are often in outward appearance respectable. Under the proposed section, the thief would not, indeed, be able to confer a good title upon the receiver, but the receiver would be able to confer a good title upon his customers.

ANNOTATIONS ON S. 108 OF THE CONTRACT ACT—*contd.*

"*5th.* If the *bona fides* of the purchaser is to be the test of the validity of the transfer, it will become necessary to decide, as a fact, in each particular case, whether the purchaser acted in good faith or not. We considered it undesirable to enter upon this inquiry.

"The Commissioners' draft left open the question whether, upon the principle that the law presumes innocence, the owner is to prove the purchaser's bad faith, or whether, upon the principle that a man is bound to prove facts within his knowledge, the purchaser is to prove his own good faith. The adoption of either branch of the alternative would, we thought, be mischievous.

"If the original owner was to prove the purchaser's bad faith, receivers of stolen goods would be practically secure. How could a man, whose goods had been stolen, prove the circumstances under which the thief sold them? How, except by accident, could he ever be able to prove matters connected with the sale which ought to have roused the buyer's suspicions? How, in short, could he give proof of what did actually pass, or even of what ought to have passed, *in another man's mind upon an occasion* as to which his information must be incomplete?

"If, on the other hand, the purchaser was put to prove his good faith, how was he to do so? The common case would be, that he knew nothing of the seller except that he offered the goods for sale at a moderate price. If this was enough every receiver of stolen goods would escape. If it was not enough honest purchasers would, in most cases, be regarded as receivers of stolen goods. They would have to return the property which it was the object of this section to secure to them, and, in doing so, they would lose their characters as well as their money.

"In short, it was essential to the proposed section that, for the purpose of proving a doubtful matter of fact, we should choose between two rules of evidence, of which one would discourage honesty, and the other favour crime. This difficulty might be altogether avoided by preferring the true owner, who must have a good title, to the purchaser, who might be an undetected receiver of stolen goods.

"*6th.* The proposed enactment would remove one of the greatest of the existing motives for the detection of crime. If a man, who had lost his property by theft, was not to recover it, unless he could prove bad faith on the part of the purchaser, he would not care to prosecute the thief. In many parts of India, cattle are the most important kind of property, and cattle-stealing is the commonest of offences. As matters now stand, stolen cattle are systematically tracked sometimes for hundreds of miles, and for weeks or months together. When discovered, the owner re-takes them. So well is this system established that there are persons who make it their profession to track stolen cattle, and that buyers take security from sellers to indemnify them if the cattle should have to be given up to their true owners. This constitutes a considerable security against cattle-thefts, but the whole system would come to an end if the owner could not recover his cattle without proving bad faith in the purchaser.

"*7th.* The universal practice of India is that the loss in case of theft should fall on the purchaser. This, the committee were informed, is the law of all the independent Native States, both within and on the border of our territories. If our law were different, British territory would become an asylum for cattle-stealers, and all the Native States would feel themselves deeply injured.

"*8th.* The effect of the section upon the position of bailees would be very singular, and we thought undesirable. It would invest every bailee, for whatever purpose, with the power of selling the goods bailed as he would be able to make a good title to them, and, if he offered to account for the price to the true owner it seemed to us very doubtful whether he would be punishable for criminal breach of trust. A lodger sells the furniture of his lodgings for an inadequate sum, and pays the money to the landlord. The landlord under the proposed section would lose his property absolutely, and have no remedy at all, unless the transaction were regarded as a 'dishonest misappropriation,' which seems rather an abuse of terms. The case was not perhaps likely to happen, but, if dishonest persons were once made aware of the existence of such a law, we feared that it would be extensively used for the perpetration of frauds, which it would be very difficult to detect."

*Illustration (a)* was held not similar to a case in which a Government currency-note was stolen from A, and cashed by B in good faith for C, and, on the conviction of C for theft, the Magistrate ordered the note to be returned to B.*

* *Empress* v. *Joggessur Mochi*, I. L. R., 3 Cal. 379.

ANNOTATIONS ON S. 108 OF THE CONTRACT ACT—*contd.*

The law as enacted in this section has virtually been adopted in the new Factors Act, 40 and 41 Vict., c. 39. The preamble recites: "Whereas doubts have arisen with respect to the true meaning of certain provisions of the Factors Act, and it is expedient to remove such doubts and otherwise to amend the said Acts for the better security of persons buying, or making advances on goods, or documents of title to goods, in the usual and ordinary course of mercantile business: be it enacted," &c.

S. 2 provides as follows with respect to secret revocation of entrustment or agency:—

"Where any agent or person has been entrusted with, and continues in the possession of, any goods, or documents of title to goods, within the meaning of the principal Acts as amended by this Act *any revocation of his entrustment or agency* shall *not* prejudice or affect the title or rights of any other person who, *without notice* of such revocation, purchases such goods, or makes advances upon the faith or security of such goods or documents."

S. 3 enacts as follows with respect to vendors permitted to retain documents of title to goods:—

"Where any goods have been sold, and the vendor or any person on his behalf continues or is in possession of the documents of title thereto, any sale, pledge, or other disposition of the goods or documents made by such vendor, or any person or agent entrusted by the vendor with the goods or documents within the meaning of the principal Acts as amended by this Act so continuing or being in possession, shall be as valid and effectual as if such vendor or person were an agent or person entrusted by the vendee with the goods or documents within the meaning of the principal Acts as amended by this Act, provided the person to whom the sale, pledge, or other disposition is made, has not notice that the goods have been previously sold."

S. 4 enacts as follows with respect to vendees permitted to have possession of documents of title to goods:—

"Where any goods have been sold or contracted to be sold, and the vendee, or any person on his behalf, obtains the possession of the documents of title thereto from the vendor or his agents, any sale pledge, or disposition of such goods or documents by such vendee so in possession, or by any other person or agent entrusted by the vendee with the documents within the meaning of the principal Acts as amended by this Act, shall be as valid and effectual as if such vendee or other person were an agent or person entrusted by the vendor with the documents within the meaning of the principal Acts as amended by this Act, provided the person to whom the sale, pledge, or other disposition is made has not notice of any lien or other right of the vendor in respect of the goods."

And s. 5 thus provides with respect to transfers of documents of title:—

"Where *any document of title to goods* has been lawfully endorsed or otherwise transferred to any person as a vendee or owner of the goods and such person transfers such document by indorsement (*or* by delivery where the document is by custom, or by its express terms, transferable by delivery), or makes the goods deliverable to the bearer, to a person who takes the same *bonâ fide* and for valuable consideration, the last-mentioned transfer shall have the same effect for defeating any vendor's lien or right of stoppage *in transitu* as the transfer of a bill of lading has for defeating the right of stoppage *in transitu*.

The possession which is meant by the first part of exep 1 of this section (108) is a possession which is unqualified, and not to be restricted otherwise than by the owner giving instructions to the person who has it. It is the kind of possession which a factor or agent has, where the owner of the goods, although he has parted with the possession, may give instructions to the person in possession what to do with the goods. It is such possession as an owner has, and in such a case the person selling contrary to his instructions gives a title to a buyer acting in good faith. The exception does not apply where there is only a qualified possession, such as a hirer of goods has, or where the possession is for a specific purpose. In such a case the owner has no right to give instructions. The nature of the possession and the power of the person having it are determined by the contract of hiring or the contract under which possession was taken; and is of a different nature from the unqualified possession above mentioned, where the owner has power to give instructions. The hirer has only a qualified possession. He acquires a right of possession only for the particular period or purpose stipulated. By the Roman law, the hirer acquired no property in the thing hired. By the English law, he has only a special property during the continuance of the contract, or for the purposes expressed or implied by it. By the sale of the thing, his right of possession and his special property are both determined, and thus his possession is of quite a different

ANNOTATIONS ON S. 103 OF THE CONTRACT ACT—*concld.*

character from the possession which was intended by this section, taking it as a whole.* Accordingly, where a piano had been hired from the plaintiff with an option of purchase, and the hirer sold the piano to the defendant before he had exercised that option, it was held that the defendant was liable in *trover* to the plaintiff, although it was found that he acted in perfect good faith, the possession which was acquired by the hirer of the piano not being such a possession as was contemplated by this section.†

In England, the purchaser of a chattel takes it, as a general rule, subject to what may turn out to be informalities in the title. By a purchase in market overt the title obtained is good against all the world. If not so purchased, though purchased *bonâ fide*, the title obtained may not be good against the real owner. Where the original owner has parted with the chattel to A upon a *de-facto* contract, though there may be circumstances which enable that owner to set aside that contract, the *bonâ-fide* purchaser from A will obtain an indefeasible title. The question, therefore, in many such cases will be, was there a contract between the original owner and the intermediate purchaser ?‡

Where goods are shipped under a bill of lading drawn in parts, to be delivered to the consignee "or his assigns, the one of which bills being accomplished, the others to stand void," the master or the ware-houseman, who has the custody of the goods, is justified in delivering to the consignee on production of one part, although there has been a prior indorsement for value to the holder of another part, provided the delivery be *bonâ-fide* and without notice or knowledge of such prior indorsement.§

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CHARGE.—That you, on or about the , at , dishonestly received , knowing or having reason to believe the same to be stolen property, and that you thereby committed an offence punishable under s. 411 of the Indian Penal Code, and within, &c.

A CHARGE, under s. 411 of the Penal Code, of dishonestly receiving stolen property, should state that the articles found in possession of the accused were the property of A B. the owner thereof.—REG. v. SIDDUBIN BALNATH, 1 Bom. H. C. R. 95. [Forbes, Erskine, and Westropp, JJ. Nov. 18, 1863.]

A PERSON convicted of, and sentenced for, dacoity, cannot also be convicted of and sentenced for, receiving or retaining the stolen property thereby acquired. [Loch, J., *dissentiente*.]—IN THE MATTER OF BHYRUB SEAL. W. R. Gap. 1864, 27. [Loch, Steer, and Glover, JJ. May 2, 1864.

WHEN stolen property is found in the possession of dacoits, the offence of "knowingly having in possession" is to be considered as included in the original one of dacoity, unless there are circumstances clearly separating the one crime from the other, *e.g.*, length of time or distance.—QUEEN v. ABDOOL HOSSEIN, 1 W. R. 48. [Kemp and Glover, JJ. Dec. 22, 1864.]

THE theft and the taking or retention of stolen goods form one and the same offence, and cannot be punished separately.—QUEEN v. SHEEMUNT ADUP, 2 W. R. 63. [Glover, J. April 19, 1865.]

WHEN persons are found within six hours of the commission of a dacoity with portions of the plundered property in their possession, the presumption of law is that they are participators in the dacoity, and not merely receivers.—QUEEN v. CASSY MUL, 3 W. R. 10. [Glover, J. May 6, 1865.]

WHEN a prisoner is apprehended eight days after a dacoity with part of the plunder in his possession, there is as good ground for charging him with the dacoity as with having received or retained with guilty knowledge, and he ought to be charged in the alternative form.—QUEEN v. MOTEE JOLAHA, 5 W. R. 66. [Jackson, J. April 9, 1866.]

THE prisoner, who, having received stolen property, concealed it in his house, could not be charged and convicted for two offences, *viz.*, of having dishonestly received stolen property under s. 411, and of assisting in the concealment of stolen property under s. 414, which applies to persons whose dealing with the stolen property is not of such a kind as to make them guilty of dishonestly receiving or retaining it.—GOVT. v. MUSSAM-

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* *Greenwood & Co.* v. *Holquette*, 20 W. R. 467; 12 B. L. R. 42.

† *Ibid.*

‡ *Cundy* v. *Lindsay*, L. R., 1 Q. B. D. 348; 2 Q. B. D. 96; 3 App. Cas. 459.

§ *Glyn Mills & Co.* v. *East & West India Dock Co.* L. R., 7 App. Cas. 591; 47 L. T. 309; 31 W. R. (Eng.) 201.

MAT NOWLIA, 1 Agra H. C. R. 9. [Pearson and Spankie, Offg. JJ. Aug. 1, 1866.]

EVIDENCE of guilty knowledge is necessary to a conviction on a charge of dishonestly retaining stolen property.—QUEEN *v.* DOYAL SHILYDAR, 6 W. R. 87. [Loch and Macpherson, JJ. Dec. 3, 1866.]

IN order to sustain a conviction under s. 412 of the Penal Code of receiving property stolen at a dacoity, it is necessary to prove that the prisoner knew, or had reason to believe, that dacoity had been committed, or that the persons from whom he acquired the property were dacoits.—QUEEN *v.* JOGESHUR BAGDEE, 7 W. R. 73. [Norman, Seton-Karr, and Hobhouse, JJ. May 28, 1867.]

RECOGNITION of things not before the eyes of deposing witnesses is not evidence against a person accused of having been in possession of those things.—QUEEN *v.* MUSSAMUT JOOMBEE, 8 W. R. 16. [Kemp and Glover, JJ. June 17, 1867.]

THE police may, without any formal complaint, apprehend any person found with stolen property. They have also the power of searching any house suspected of containing stolen property.—QUEEN *v.* GOWREE SINGH, 8 W. R. 28. [Loch, J. June 20, 1867.]

To support a conviction for receiving or possessing stolen property, there must be proof (1) that the property was of the description "stolen," and (2) that accused was in possession with a guilty knowledge.—CROWN *v.* ESHUR SINGH, Panj Rec., No 8 of 1867, and the same case Panj Rec., No. 13 of 1867.

WHERE loss is occasioned to a person whose property has been stolen, it is not illegal for the trying Magistrate to award a portion of the fine inflicted on the accused as amends to the owner of such property, although the stolen property is recovered and restored to the owner.—REG *v.* YESSAPPA BIN NINGAPPA, 5 Bom. H. C. R. 41. [Newton, Offg. C.J., and Tucker, J. May 20, 1868.]

ACCUSED was employed by the Panjab Bank as its treasurer at Multan. After serving for a few days in that capacity, he, with the consent of the Bank, put in one D as his agent or gomashta, himself removing to other employments at Amritsar, but continuing to receive pay from the Bank. D misappropriated certain moneys of the Bank, and finally absconded. The Sessions Court found that accused had received some of the misappropriated money from D, and had connived at D's defalcation; and convicted him of criminal breach of trust as a servant, and of abetting the same. In appeal it was contended for the accused, *inter alia*, that he was treasurer only in name, and had no dominion over the misappropriated property; consequently he was not a participator in reference to D's defalcation; and, as to the latter, he was the servant of the accused, not of the Bank, so that, whatever his offence, he had not committed breach of trust as a servant. *Found* by the Chief Court that both accused and D were servants of the Bank, that D had committed breach of trust as such, and that accused had received the misappropriated money from D with a guilty knowledge. On the question whether this amounted to abetment of D's offence, or to dishonest receiving under s. 411, it was held that although no act done by accused after D's offence was committed would make the former guilty as an abettor, yet as accused, who, as the Bank's treasurer, was bound to disclose the fact that he had irregularly received the Bank's money on the first defalcation, did not do so, he was guilty of an illegal omission, by which he voluntarily caused the safe abstraction and transmission to himself of the second sum, and had thereby abetted the breach of trust by a servant.—KALOO RAM *v.* CROWN, Panj. Rec., No 30 of 1868.

THE offence of dishonest retention of stolen property under s 411 of the Penal Code may be complete without any guilty knowledge at the time of receipt.—PRO., April 6, 1869, 4 Mad. H. C. R. Ap. 42.

WHERE property sufficiently identified to be the property of one person is found to be in the possession of another person without leave or license, or any legal permission of the owner, it is for the party in whose possession the property is found duly to account for its possession, and, unless he can do so, a jury might fairly infer in such circumstances that it was with a guilty knowledge that the prisoner took that which he knew to be not his own.—QUEEN *v.* SHRUFFODDEEN, 13 W. R. 26. [Bayley and Glover, JJ. Feb. 14, 1870.]

THE practice of dividing the facts which constitute the parts of one offence into several minor offences condemned. A person convicted of dacoity under s 395 cannot be convicted also of dishonestly receiving stolen property under s 411, or of receiving stolen property transferred by commission of dacoity under s. 412, when there is no evidence of the commission. Mode of treating the confession of prisoners as evidence in a case of receiving stolen property pointed out.—QUEEN *v.* SHAHABUT SHEIKH, 13 W. R. 42. [Norman, Offg. C.J., and Bayley, J. Mar. 8, 1870.]

IN a case in which the accused is charged with receiving stolen property, it must be clearly proved that he retained the property with a guilty knowledge.—IN THE MATTER

OF MEER YAR ALI, 13 W R. 70. [Bayley and Mitter, JJ. May 7, 1870.]

THERE being no evidence on the record to show that property, for the dishonestly receiving of which a prisoner had been convicted under s. 411 of the Penal Code, was actually stolen, the conviction and sentence under such section will be annulled.—QUEEN *v.* BULDEO PERSHAD, 2 N.-W. P. 187. [Spankie, J. May 13, 1870.]

A PRISONER cannot be convicted under s. 411 of the Penal Code for dishonestly receiving or retaining stolen property in respect of property which he himself has been convicted, under s. 409. Penal Code, of having obtained possession by committing criminal breach of trust.—QUEEN *v.* SHUNKER, 2 N.-W. P. 312. [Spankie, J. Aug. 5, 1870.]

A'S PROPERTY was stolen and pledged by the thief to B, who received it without guilty knowledge. The Chief Court ordered the property to be restored to A under s. 132B of Act VIII. of 1869.—BHARA MULL *v.* CROWN, Panj. Rec., No. 37 of 1870 But *see Crown v. Sawan*, Panj. Rec., No 21 of 1878, *infra*, p. 406.

MERE possession of stolen articles of trifling value does not warrant the presumption that the receiver knew them to have been the proceeds of a dacoity, or had acquired them from one whom he knew or believed to be a dacoit —QUEEN *v.* SAMIRUDDIN, 18 W. R 25. [Kemp and Glover, JJ. July 3, 1872.]

A CONVICTION of an offence under s. 411 of the Penal Code was set aside in the absence of evidence on the record that the property was Government property, that it was stolen property, or that the accused knew, or had reason to believe, it was stolen —QUEEN *v.* DUSSORUT DASS, 18 W. R 63. [Kemp and Pontifex, JJ. Nov 18, 1872.

UNLESS the sale take place in market overt (as explained in s. 13, para. 7, Panjab Civil Code), a *bonâ-fide* purchaser of stolen property acquires no title to it. He must restore the property to the original owner, looking to the seller for his remedy.—CROWN *v.* GURDIT SINGH, Panj. Rec., No 7 of 1872

WHERE a person was charged under s. 411 of the Penal Code with having received stolen property (rubber, the produce of the Government forests at Cachar), and it was not proved that the rubber came from the Government forests, or that it was stolen property, and that the prisoner knew that it was stolen property, it was held that the conviction under s. 411 was bad, and that he could not be convicted of smuggling, smuggling Indian rubber not being an offence under the Penal Code.—QUEEN *v.* BAJO HURI, 19 W. R. 37 [Couch, C.J., and Glover, J. Feb. 20, 1873.]

THE only evidence of the receipt of stolen property by a wife was the fact that the property was found in the house where she lived with her husband. *Held* that that constituted the possession of the husband rather than that of the wife.—QUEEN *v.* DESILVA, 5 N.-W. P. 120. [Jardine, J. April 19, 1873.]

IN a case in which the accused was charged with having stolen a pony, the Magistrate sentenced the accused to imprisonment, and awarded a fine of Rs. 25, which he ordered should, if realized, be paid over to the complainant, directing at the same time that the pony should be restored to a third party, by whom it had been purchased *bonâ fide* at a public sale, the Magistrate relying on s. 418, Code of Criminal Procedure (Act X. of 1872), and on the rule of English law protecting a *bonâ-fide* purchaser in market overt. The Sessions Judge considered that s. 418 of the Code of 1872 (or s. 517 of the Code of 1882) was not intended to supersede s. 108,* Act IX. of 1872, and that, as under the latter law the property in the pony did not pass to the third party (purchaser), the pony should have been restored to the prosecutor. *Held* that the fine of Rs 25 imposed upon the prisoner could not be paid over to the complainant, either under s. 418 of the Code of 1872 (*i. e.*, s 517 of the Code of 1882), or under any supposed rule of law relating to sales in market overt, and that, if any such order could be made, it would be under s. 308 of the Code of 1872 (or s. 545 of the Code of 1882). The order, so far as it directed that the fine be paid to the complainant, was accordingly set aside.—NOBOKRISTO ACHARJEE *v.* LALL CHAND SHEIKH, 20 W. R. 38. [Markby and Birch, JJ. June 19, 1873.]

PROPERTY suspected of being stolen may be confiscated under s 418 of Act X. of 1872, although the person charged with stealing it is discharged.—PHULLA SINGH *v* RAM SINGH, Panj. Rec, No. 20 of 1873.

THE accused were found in possession of stolen property, the produce of several separate thefts *Held* that they could not be convicted of several separate acts of receiving unless there was evidence that they did not receive all the property at one and the same time.—CROWN *v* RAMPERSHAD, Panj. Rec., No. 5 of 1874

* For s. 108, Act IX. of 1872 (Contract Act), and annotations thereon, see *supra*, p. 498.

POSSESSION of property which has been stolen from the owner is generally at best only evidence of theft when the date of the theft is so recent as to make it reasonable to presume in the absence of explanation that the person in whose possession the property is found must have obtained the possession by stealing.—QUEEN *v.* POROMESHUR AHEER, 23 W. R. 16. [Phear and Morris, JJ. Jan. 8, 1875.]

MONEY obtained upon forged money-orders is not "stolen property" within the definition thereof given in the Penal Code, s. 410.—QUEEN *v.* MON MOHUN ROY, 24 W. R. 33. [Birch and Lawford, JJ. July 26, 1875.]

THE goods received must be the identical goods which were stolen, and not something for which they had been sold or exchanged. Where A stole six notes for £100 and changed them into notes for £20, some of which he gave to B, it was ruled that B could not be convicted of receiving, as he had not received the notes which were stolen.—R. *v.* WALKLEY, 4 C. & P. 132. Arch., 20th ed., p. 496.

NOT only must it be shown that the property was originally stolen property, but also that it continued in that state at the time of the receipt. In one case goods had been stolen, and, when the thief was detected, they were taken from him, and then restored by the owner's consent that he might sell them to a person who had been in the habit of buying his booty. When the latter was indicted as a receiver, it was held that he could not be convicted, inasmuch as at the time of the receipt the goods were not *stolen* goods.—REG. *v.* DOLAN, 24 L. J. M. C. 50; Dears. 436; See *Reg. v. Schmidt*, 1 L. R. C. C. 15.

WHERE stolen property is found with a person who admits having received it, it may be fairly presumed that the receipt was a dishonest one, unless the receiver's conduct is satisfactorily explained.—IN THE MATTER OF RAMJOY KURMOKAR, 25 W. R. 10. [Macpherson, Glover, and Mitter, JJ. Jan. 6, 1870.]

ALTHOUGH a person who is convicted of theft cannot, in respect of the same property, be convicted at the same time of receiving stolen property, yet a person who is acquitted of the theft of any property, or who is not charged with stealing it, may, in respect of the identical property, be charged with, and convicted of, receiving it, knowing it to stolen; so that the mere fact of a person's having once been acquitted of the charge of stealing any property does not of itself prevent his trial at any future time on the charge of receiving the same property knowing it to be stolen.—QUEEN *v.* NYAZ ALI, 25 W. R. 47. [Kemp and Glover, JJ. May 25, 1876.]

A MAGISTRATE has jurisdiction under s. 418, Act X. of 1872 to deal with property stolen in British territory, notwithstanding that it may be seized in foreign territory, and brought into British territory by the police.—MUSSAMMAT KISHEN KOUR *v.* CROWN, Panj. Rec., No. 20 of 1878.

IN a summary proceeding under s. 418 of the Criminal Procedure Code, where stolen property is in the possession of a *bond-fide* purchaser, the proper order for a Magistrate to pass is to leave the property in the purchaser's possession, leaving the complainant to take such steps as he may think proper to establish his title as owner, and recover possession from the purchaser.—CROWN *v.* SAWAN, Panj. Rec., No. 21 of 1878.

THE mere being in possession of stolen property dishonestly without a guilty knowledge is not a substantive offence. It is an offence under s. 411 to dishonestly *receive* stolen property knowing or having reason to know the same to be stolen property, or to dishonestly *retain* it with the like knowledge. To support a conviction of dishonestly retaining stolen property, it ought to be shown that the accused, being in innocent possession of the property, acquired the knowledge that it was stolen, and thereafter retained it dishonestly. When a person is shown to stand in such a relation to stolen property as falls short of possession by him of such property, his manner of dealing with the property may warrant a charge of assisting in concealing or disposing of or making away with the property with a guilty knowledge, that is, a charge of an offence under s. 414.—KHONA *v.* EMPRESS, Panj. Rec., No. 31 of 1879.

A HINDU, intending to separate himself from his family, emigrated to Demerara as a coolie. After an absence of thirty years he returned to his family, bringing with him money and other moveable property which he had acquired in Demerara by manual labour as a coolie. On his return to his family, he lived in commensality with it, but he did not treat such property as joint family-property, but as his own property. *Held* that such property was his sole property, and his brother was not a joint-owner of it, and could properly be convicted of theft in respect of it. It is irregular to convict and punish a person for abetment of theft, and at the same time to convict and punish him for receiving the stolen property.—EMPRESS *v.* SITA RAM RAI, I. L. R., 3 All. 181. [Straight, J. Aug. 16, 1880.]

THE word "believe" in s. 414 of the Penal Code is much stronger than the word "suspect," and involves the necessity of showing that the circumstances were such that a

reasonable man must have felt convinced in his mind that the property with which he was dealing was stolen property. It is not sufficient in such a case to show that the accused person was careless, or that he had reason to suspect that the property was stolen, or that he did not make sufficient inquiry to ascertain whether it had been honestly acquired—EMPRESS v. RANGO TIMAJI, I. L. R., 6 Bom 402. [Melvill and Nanabhai Haridas, JJ Dec. 21, 1880.] A full report of this case is reproduced under s. 414, *infra*.

WHERE the accused, a foreigner, was found in foreign territory in possession of stolen property, but it is not shown that he was one of those who had committed the theft, or that he had possession of the property in British territory, *held* that a conviction under s. 411 was not sustainable. *Mussammat Kishen Kour* v. *Crown* (Panj. Rec., No 20 of 1870) cited and followed—HAZAR MIR v. EMPRESS, Panj. Rec., No 16 of 1880.

THE prisoner was tried at Bombay under s. 411 of the Penal Code, on a charge of having dishonestly received and retained stolen property, knowing or having reason to believe the same to be stolen property. He was also charged under ss 108 (expl 3) and 109, with having abetted that offence. It appeared at the trial that the prisoner was a clerk in the employment of a mercantile firm at Port Louis, in the island of Mauritius. On the 29th October and the 1st November 1879, certain letters addressed by the firm to their commission-agent at Bombay were abstracted from the post-office at Port Louis. The letters contained six bills of exchange belonging to the firm for an aggregate amount of Rs 26,550. On the 1st November 1879, the prisoner sent all six bills of exchange in a letter to the manager of a bank at Bombay, requesting that the several amounts might be collected on the prisoner's own account and remitted to him by bills on Mauritius. The sums were accordingly realized by the bank and duly remitted to the prisoner. It was not denied that the prisoner obtained possession of the money, and used it as his own. His defence was that the bills had been given to him in payment of a debt. The prisoner was convicted on all the charges, but the jurisdiction of the Court having been challenged on his behalf, the question was reserved. *Held per* Sargent and Melvill JJ. (West, J., *dissentiente*), "that the bills of exchange, having been stolen at Mauritius, in which island the Penal Code is not in force, could not be regarded as 'stolen property' within the provisions of s. 410, so as to render the person receiving them at Bombay liable under s. 411; that the High Court of Bombay had, therefore, no jurisdiction, and that the conviction must be quashed." Previously to the trial at the Sessions the prisoner had applied to the Court for commissions to Pondicherry and Mauritius to take evidence on his behalf. The application was refused, on the ground that the High Court had no authority to issue a commission in such a case but the learned Judge (West, J.) reserved the question for the Full Court. *Held* that the High Court had no power to issue a commission out of the jurisdiction in a criminal case on an application by the accused.—EMPRESS v. S. MOORGA CHETTY, I. L. R., 5 Bom. 338. (Sargent, Melvill, and West, JJ. April 28 & May 3, 1881.)

A PRISONER cannot be tried at the same trial for receiving or retaining (s. 411, Penal Code), and habitually receiving or dealing in (s. 413) stolen property. The proper course is to try the accused first for the offences under s. 411, and, if he is convicted, to try him under s. 413, putting in evidence the previous convictions under s. 411, and proving the finding of the rest of the property in respect of which no separate charge under s. 411 could be made or tried by reason of the provisions of s. 453 of the Criminal Procedure Code Act X of 1872.—IN THE MATTER OF UTTOM KOONDOO. EMPRESS v. UTTOM KOONDOO, I. L. R. 8 Cal 634, 10 C. L. R. 466. (McDonell and Field, JJ. Mar. 31 1882.)

IN considering whether the possession of stolen goods raises a presumption of dishonest receipt of stolen property, the attention of the jury should be drawn to the necessity of satisfying themselves that the possession is clearly traced to the accused. The fact of stolen property being found concealed in a man's house would be sufficient to raise a presumption that he knew the property to be stolen property, but it would not be sufficient to show that it had been acquired by dacoity.—EMPRESS v. MATHARI, I. L. R., 7 Bom 731. (Melvill and Parsey, JJ. Oct. 11, 1882.)

THE fact that a child has been tried for theft and discharged under s. 215 of the Code of Criminal Procedure, 1872, on the ground of want of understanding within the meaning of s. 82 of the Penal Code, is no bar to the conviction of a person charged under s. 411 of the Penal Code with receiving the property alleged to have been stolen.—QUEEN v. KRISHNA, I. L. R., 6 Mad. 373. (Kernan and Muttusami Ayyar, JJ. April 24 1883.)

WHERE a person is accused of an offence under s. 411 of the Penal Code, he cannot, where the circumstances do not raise the presumption that he received the property knowing it to be stolen, be convicted of that offence merely because he is in possession of

the property, and does not account for his possession. The prosecution must prove both that the property was stolen, and that the accused received it dishonestly. At the trial of a person for an offence under s. 411 of the Penal Code, the Court of Session, under s. 33 of the Evidence Act, 1872, used against the accused the evidence of the owner of the property in respect of which the accused was charged and of his wife taken by commission during the inquiry, and the evidence of the servant of those persons taken at the inquiry and also the evidence of the owner of the property taken during the trial under a commission issued by the Sessions Judge under s. 503 of the Criminal Procedure Code. The grounds upon which the Sessions Judge admitted the evidence taken during the inquiry were, that the attendance of the witnesses could not be procured without an expense of Rs. 500, an amount which he considered unreasonable, that the witnesses would be inconvenienced, and that their evidence did not concern the accused personally, having reference only to the identification of the property in respect of which the accused was charged. *Held* that the Sessions Judge had improperly admitted such evidence. Inconvenience to witnesses is no ground allowed under s. 33 of the Evidence Act, and the question of identification was a most material one and the evidence of the witnesses in question was of the utmost moment, the whole case resting on it, and, as regards the ground of expense, it was impossible to consider the amount unreasonable, considering that the entire case rested on the evidence of those witnesses, and that the accused had not cross-examined those whose evidence had been taken by commission, nor, looking at his position, could be arrange for their cross-examination. *Held* also that on similar grounds the Sessions Judge was not justified in issuing a commission under s. 503 of the Criminal Procedure Code.—EMPRESS v. BURKE (T), I. L. R., 6 All. 224. Oldfield J. Feb. 16, 1884.

A SESSIONS JUDGE cannot tender a pardon to an accused under s. 338 of the Code of Criminal Procedure (Act X. of 1882), where the offence for which he has been committed is not triable exclusively by the Court of Session, such as an offence under s. 411 of the Penal Code.—EMPRESS v. SADHEE KASAL, I. L. R., 10 Cal. 936. Prinsep and Macpherson, JJ. July 1, 1884.

A COMMON brass drinking cup was stolen in October 1883, and was discovered in the possession of the accused in September 1884. *Held*, in a case in which the accused was tried for receiving stolen property, that his possession of the stolen property, coupled with the fact that he had failed to give an account as to how he became possessed of the property would, under ordinary circumstances, raise a probable presumption of his guilt, but where, as in this case, such possession was not a recent possession, but one eleven months subsequent to the act of theft, the presumption against him was so slight that, taken by itself, he ought not to be called upon to explain how his possession was acquired. The question of what is or is not a recent possession of stolen property is to be considered with reference to the nature of the article stolen. *Rex* v. *Adam* (3 C. & P. 600), *Rex* v. *Cooper* (3 C. & P. 318), *Rex* v. *Partridge* (7 C. & P. 551), followed.—INA SHEIKH v. QUEEN-EMPRESS, I. L. R., 11 Cal. 160. Mitter and Norris, JJ. Jan. 7, 1885.]

THE civil station at Rajkot is not part of British India within the meaning of Stat. 21 and 22 Vict. c. 106. Where the accused, a subject of a Native State, committed theft at Rajkot Civil Station, and was found in possession of the stolen property at Thana, *held* that, as the offence was not committed in British India, and as the accused was the subject of a Native State, the Sessions Court at Thana had no jurisdiction to try the accused for theft under s. 381 of the Penal Code. But it was competent to try him for dishonest retention of stolen property under s. 410 of the Penal Code as amended by Act VIII. of 1882.—QUEEN-EMPRESS v. ABDUL LATIB *alias* ABDUL RAHIMAN, I. L. R., 10 Bom. 180. Birdwood and Jardine, JJ. Nov. 24, 1885.

A PERSON was convicted and sentenced under s. 411 of the Penal Code for dishonestly receiving a bull, knowing the same to have been criminally misappropriated. It was found that, at the time of the alleged misappropriation, the bull had been set at large by some Hindus, in accordance with Hindu religious usage, at the time of performing funeral ceremonies. *Held* that the bull was not, at the time of the alleged misappropriation, 'property' within the meaning of the Penal Code, inasmuch as, not only was it not the subject of ownership by any person, but the original owner had surrendered all his rights as its proprietor: that it was therefore *nullius proprietas* and incapable of larceny being committed in respect of it; and that the conviction must be set aside.—QUEEN-EMPRESS v. BANDHU, I. L. R., 8 All. 51. [Straight, J. Dec. 7, 1885.] Referred to in *Queen-Empress* v. *Nihal*, I. L. R., 9 All. 348, *infra*.

A HINDU who, upon the death of a relative dedicates or lets loose a bull, in accordance with Hindu religious usage, as a pious act for the benefit of the soul of the deceased, thereby surrenders and abandons all proprie-

tary rights in the animal, which thereafter is not "property" which is capable of being made the subject of dishonest receipt or possession within the meaning of ss. 410 and 411 of the Penal Code. *Queen-Empress* v. *Bandhu* (I. L. R., 8 All. 51) and *Queen-Empress* v. *Jamura* (Weekly Notes, 1884, p. 87) referred to.—QUEEN-EMPRESS *v.* NIHAL, I. L. R., 9 All. 348. [Straight, J. Jan. 7, 1887.]

A PERSON convicted under ss. 411 75 of the Penal Code is not convicted of "distinct offences" within the meaning of s. 35 of the Criminal Procedure Code. *Queen Empress* v. *Zor Singh* (I. L. R., 10 All 146) explained. Where an offence under s. 411 read with s. 75 of the Penal Code appears to be deserving of a greater punishment than the Magistrate trying it can award, the best course for him to adopt is to commit the accused for trial to the Court of Session.—QUEEN-EMPRESS *v.* KHALAK, I. L. R., 11 All 393. [Brodhurst, J. May 3, 1889.]

To constitute the offence of receiving stolen property, there must be some proof that some person other than the accused had possession of the property before the accused got possession of it. The judgment of the Court (Prinsep and Pigott, JJ.) was as follows: "The prisoners are convicted of dishonestly receiving stolen property, first, under s. 411 in respect of the goods belonging to one person, and, second, in respect of goods belonging to another. They were separately tried, and sentenced on each of these charges. There is no proof against them save the fact that the goods found in their possession were stolen from different persons, and were found in their possession under such circumstances as to prove a guilty knowledge on their part. There is no proof as to their receipt of the goods, nothing to show that they received them at different times or from different persons. All the goods in the possession of each prisoner may have been stolen by the same thief, and may have been by him delivered to that prisoner at the same time, although stolen on different occasions. If each prisoner received the goods found in his possession together at the same time, that would constitute only one offence. There is nothing in the fact that the goods were stolen at different times to constitute by itself proof that they were received at different times, or under such circumstances as to show that more than one offence was committed in receiving them. It need not be considered whether, if a thief brought to a receiver, say, a coat and a ring, stolen from different persons, and on the same occasion gave them to the receiver if he said, 'Here is a coat stolen from H; take this,' and the receiver took it; and also 'Here is a ring stolen from B; take this,' and the receiver took it, these acts would or would not constitute different offences, because there is nothing to show that such a case existed here. Here there is nothing but possession of stolen property found concealed established; and this is consistent with only one offence having been committed, so far as receiving is concerned; but, in truth, the offence proved is only the retaining of stolen goods. In this case, as observed, there is no proof of actual receiving; and it has been held in England (2 Russell on Crimes citing *R.* v. *Cordy*) that to constitute the offence of receiving there must be *some* proof that some person other than the prisoner had possession of the goods before the prisoner got possession of them, otherwise possession of them is only proof of the stealing, which is not found here.* If this rule prevails under the Penal Code (and we see no reason why it should not), the prisoners should have been convicted of the retention of stolen goods, knowing, or having reason to believe, that they were stolen, of the existence of which knowledge their concealment of the goods was evidence. We therefore set aside the conviction in the second trial. The first conviction in the first case we also set aside, and, in lieu thereof, we convict the prisoners under the same section (411) of dishonestly retaining stolen property, and sentence the prisoners on the findings in the first case, Ishan to four years, Ananda to six years, and Cushte to two years, all in rigorous imprisonment"—ISHAN MUCHI *v.* QUEEN-EMPRESS, I. L. R., 15 Cal. 511 [Prinsep and Pigott, JJ. Feb. 21, 1888.] Approved in *Queen-Empress* v. *Mukhan*, I. L. R., 15 All. 317, *infra*.

THE accused were charged with retaining stolen property under s. 411 of the Penal Code (Act XLV. of 1860). The Sessions Judge, in his charge to the jury, merely directed them to find whether the property was stolen, and whether it was retained by the accused. *Held* that the charge was defective, and amounted to a misdirection. The Sessions Judge should have directed the jury to find (1) whether the property was stolen; (2) whether it was dishonestly retained; and (3) whether the accused knew, or had reason to believe, the same to be stolen property. Unless these questions were found by the jury in the affirmative, the accused could not legally be convicted of an offence under s. 411 of the Penal Code.—QUEEN-EMPRESS *v.* BALYA SO-

* See the case of *Empress* v. *Uttom Koondoo*, I. L. R., 8 Cal. 634, where, however, the point does not seem to have been taken.—ED. See *supra* at p. 506.

MYA, I. L. R., 15 Bom. 369. [Birdwood and Parsons, JJ. Oct. 9, 1890.]

A PERSON cannot be said to be an habitual receiver of stolen goods who may receive the proceeds of a number of different robberies from a number of different thieves on the same day. In order to support a conviction under s. 413 of the Penal Code of being an habitual receiver of stolen property, it must be shown that the property was received on different occasions and on different dates.—QUEEN-EMPRESS v. BABURAM KANSARI, I. L. R., 19 Cal. 190. [Norris and Beverley, JJ. Nov. 12, 1891.]

WHERE a person was found in possession of stolen property identified as belonging to different owners, but it did not appear that he had received such property at different times, *held* that such person could not properly be tried and convicted under s. 411 of the Penal Code separately in respect of the property identified by each owner. *Ishan Muchi* v. *The Queen-Empress* (I. L. R., 15 Cal. 511) approved.—QUEEN-EMPRESS v. MAKHAN, I. L. R., 15 All. 317. [Aikman, J. April 29, 1893.]

WHERE a document, purporting to be a Collectorate notice forming part of a record, and found by the Court to be genuine, was discovered to be in the possession of persons charged with retaining stolen property, it was held that, in a matter of this kind, it was right to raise legal presumptions arising out of the ordinary course of business, and to dispense with direct evidence of the document having been actually on the record or stolen from it. Though it be true that, before a man can be convicted of receiving stolen property knowing it to be stolen, it must be shown that property has been stolen, *held* that the disappearance of the document from the record, *plus* the substitution of an imitation of it in its place, showed that it must have been taken with a dishonest object.—ISHAN CHUNDRA CHANDRA v. QUEEN-EMPRESS, I. L. R., 21 Cal. 328. [Trevelyan and Rampini, JJ. Nov. 22, 1893.]

WHERE the sole evidence against a person charged with an offence under s. 411 of the Penal Code consisted of the fact that the accused had pointed out the place where some of the stolen property was concealed in the field of another person, *held* that this was not in itself sufficient evidence to support a conviction under the above-mentioned section.—QUEEN-EMPRESS v. GOBINDA, I. L. R., 17 All. 576 [Edge, C.J., and Banerji, J. May 31, 1895.]

M AND K were convicted at the same trial of receiving stolen property, namely, currency notes, as well as of assisting in concealing or disposing of such notes which they knew or had reason to believe were stolen property. Each of them were charged with the same offences only in respect of a currency note of Rs. 500, but in respect of the charges on two other notes of Rs. 100 each, the charges against each of them related only to one of these notes. *Held* that there had been a misjoinder of parties, the transactions being altogether separate and distinct against each of them. *Held* further that the Sessions Judge in discharging one of the accused on the ground of misjoinder of parties had power to add to that order a direction that the accused should be re-tried. It was not obligatory on him to leave to the discretion of the Magistrate the course which should be taken in such a matter, and it was not intended by the order of discharge in the case of *Queen-Empress* v. *Chandi Singh* (I. L. R., 14 Cal. 395), to free the accused in that case from the consequences of his acts or to declare that no order for re-trial could be passed in such a case. *Queen-Empress* v. *Fakirapa* (I. L. R., 15 Bom. 491), and *Empress of India* v. *Murari* (I. L. R., 4 All. 147), referred to.—KUMUDINI KANTA GUHA v. THE QUEEN-EMPRESS, I. L. R., 28 Cal. 104. [Prinsep and Handley, JJ. June 28, 1900.]

K S, K P, and K M were tried jointly and convicted: K S under s. 407 of the Penal Code, K P and K M under s. 411 of that Code. No objection to the joint trial was taken either before the trying Magistrate or before the Appellate Court. *Held*, in revision (upon objection being taken to the joint trial of K S with K P and K M) that a misjoinder of parties is not fatal to the proceedings, but is an irregularity which requires that the Court should consider under the terms of s. 537 of the Code of Criminal Procedure whether it has in fact occasioned a failure of justice. *In the Matter of Abdur Rahman* (I. L. R., 27 Cal. 839) followed. *Held* further that having regard to the explanation to s. 537 of the Code of Criminal Procedure the objection was not one which could be properly taken in revision; that the objection should have been raised at an earlier stage of the proceedings; and that therefore it might be taken that not having been so raised it had not in fact occasioned a failure of justice.—KALI PROSAD MAHISAL *v.* QUEEN-EMPRESS, I. L. R., 28 Cal. 7. [Prinsep and Handley, JJ. July 2, 1900.] Followed in *Karu Kalal* v. *Ram Charan Pal*, I. L. R., 28 Cal. 10, *infra*.

L K and J were tried jointly and convicted, L under s. 381 of the Penal Code of stealing tea in the possession of his master, K and J under s. 411 of the Penal Code of dis-

honestly retaining some stolen tea which they had received from L. It was contended that the joint trial of a person charged under s. 411 of the Penal Code with a person charged under s. 381 of the Penal Code was necessarily void and the conviction bad. *Held* that a misjoinder of parties is not fatal to the proceedings, but is an irregularity which requires that the Court should consider whether, under the terms of s. 537 of the Code of Criminal Procedure, it has in fact occasioned a failure of justice. *Bishnu Banwar* v. *Empress* (1 C. W. N. 35) referred to. *In the Matter of Abdur Rahman* (I. L. R., 27 Cal. 839), and *Kali Prosad Mahisal* v *Queen-Empress* (I. L. R., 28 Cal. 7) followed.—KARU KALAL *v.* RAM CHARAN PAL, I. L. R., 28 Cal. 10. [Pratt and Brett, JJ. Nov. 12, 1900.]

S. 411 of the Indian Penal Code does not apply to the person who is the actual thief. Where, therefore, a person whose bullock had been stolen in his absence traced it to the house of the thief, and there and then arrested him, and made him over to a chaukidar, from whose custody he escaped, it was *held* that this was not an escape from lawful custody within the meaning of s. 224 of the Code. *Semble* that if the owner of the bullock had himself been entitled to make the arrest, the subsequent custody of the prisoner by the chaukidar would have been a lawful custody. *Queen-Empress* v. *Potadu* (I. L. R., 11 Mad. 480) referred to.—KING-EMPEROR *v.* JOHRI, I. L. R., 23 All. 266. [Blair and Aikman, JJ. Mar. 14, 1901.]

DURING the trial of a case the accused obtained a process for the attendance of a witness. Before the witness appeared the accused asked the Court to countermand the order for his attendance, but the Court refused to do so. When the witness attended the accused declined to examine him. He was thereupon examined by the Court, and upon the accused claiming the right to cross-examine the witness, the Court refused to allow him to do so. *Held*, that under the circumstances the witness could not be regarded as a witness for the defence, and that the accused should have been given an opportunity to cross-examine him. *Held*, also, that offences under ss 411 and 489 (*c*) of the Penal Code are distinct offences, and should be tried separately. — MOHENDRO NATH DAS GUPTA *v.* EMPEROR, I. L. R., 29 Cal. 387. Prinsep and Stephen, JJ. Feb. 7, 1902.]

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

**412.** Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person whom he knows or has reason to believe to belong, or to have belonged, to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Dishonestly receiving property stolen in the commission of a dacoity.

CHARGE.—That you, on or about the , at , dishonestly received stolen property, the possession of which you knew, or had reason to know, had been transferred by the commission of dacoity, and that you thereby committed an offence, &c.—2 W. R. Cr. L. 23, No. 352 of 1865.

A SENTENCE of transportation under ss. 412 and 59 of the Penal Code cannot exceed ten years.—QUEEN *v.* MOHANUNDO BHUNDARY, 5 W. R. 16. [Seton-Karr and Macpherson, JJ. Jan. 20, 1866.]

IT must be proved that the prisoner received or retained plundered property, knowing it to be plundered property, before he can be convicted under s 412 of the Penal Code.—IN THE MATTER OF BISHOO MANJEE, 9 W. R. 16. [Jackson and Mitter JJ. Feb. 12, 1868.]

THE practice of dividing the facts which constitute the parts of one offence into several minor offences condemned. A person convicted of dacoity under s. 395, Penal Code, cannot be convicted also of dishonestly receiving stolen property under s. 411, or of receiving property transferred by commission of dacoity under s 412, when there is no evidence of the commission of more than one offence Mode of treating the confession of prisoners as evidence in a case of receiving stolen property pointed out.—QUEEN *v* SHAHABUT SHEIKH, 13 W. R. 42. [Norman, Offg. C. J., and Bayley, J. Mar. 8, 1870.]

MERELY being seen getting on board a boat with four persons, who have, on their own admissions, been convicted of belonging to a gang of dacoits, is not sufficient evidence against those so seen. To make an admission of guilty knowledge of the means by which money, supposed to have been acquired by dacoity, was obtained, evidence

under s: 150 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 26 of the Evidence Act (I. of 1872), it must be shown that the admission was antecedent to the discovery of the money—QUEEN v. KAMAL FUKEER, 17 W. R. 50. [Couch, C.J., and Ainslie, J. April 15. 1872.]

A AND B were committed for trial, the former for dacoity under s. 395 of the Penal Code, and the latter under s. 412 for receiving stolen property, knowing it to be such. A made two confessions, and in both he stated he had handed over to B some pieces of gold and silver stolen at the dacoity. When B was arrested, a gold ring and a silver wristlet were found in his possession. At the trial A pleaded guilty, and B claimed to be tried. A goldsmith deposed that he had made the ring and wristlet found with B out of pieces of gold and silver given to him for the purpose by B. On this evidence, and on the confessions made by A, the Sessions Judge convicted B. On appeal to the High Court, *held* that, A and B not having been tried jointly for the same offence, the confession of A was inadmissible as evidence against B. There was, therefore, no evidence of the identity of the goods stolen at the dacoity with those found in B's possession, and the case against him failed. Conviction quashed.—EMPRESS v. BALA PATEL, I. L. R., 5 Bom. 63. [Westropp, C.J., and Melvill, J. April 7, 1880.]

IN considering whether the possession of stolen goods raises a presumption of dishonest receipt of stolen property, the attention of the jury should be drawn to the necessity of satisfying themselves that the possession is clearly traced to the accused. The fact of stolen property being found concealed in a man's house would be sufficient to raise a presumption that he knew the property to be stolen property, but it would not be sufficient to show that it had been acquired by dacoity—EMPRESS v. MALHARI, I. L. R., 7 Bom 731. [Melvill and Pinhey, JJ. Oct. 11, 1882.]

CERTAIN persons, who were not proved to be British subjects, were found in possession, in a native state, of property, the subject of a dacoity committed in British India. They were not proved to have taken part in the dacoity, and there was no evidence that they had received or retained any stolen property in British India. They were convicted of offences punishable under s. 412 of the Penal Code. *Held* that no offence was proved to have been committed within the jurisdiction of a British Court.—QUEEN-EMPRESS v. KIRPAL SINGH, I. L. R., 9 All. 523. [Edge, C.J., and Brodhurst, J. April 25, 1887.]

TEN persons were committed to a Sessions Court charged with offences under the Penal Code, ss. 395, 396; and some of them were also charged with offences under s. 412. One of the accused had made a confessional statement before the Magistrate, who recorded it, but did not make on it a memorandum to the effect stated in the Criminal Procedure Code, s. 164, and did not admit it in evidence for the reasons that the accused was produced from the custody of the police in which he had been detained for five days, and there was a proposal on the part of the police to treat him as an approver. It appeared that a perusal of the preliminary register would have shown that the accused were either guilty under s. 396, or not guilty under s. 395 at all. The accused were tried by the Sessions Judge with a jury. The confessional statement was not admitted in evidence. The jury found the accused not guilty of dacoity, but the Judge, disagreeing with the verdict, referred the case to the High Court under the Criminal Procedure Code, s. 307. *Held* (1) that the procedure adopted by the Judge was wrong, and that he should have tried the accused with the aid of assessors under the Penal Code, s. 396; (2) that the Judge should have enquired, under the Criminal Procedure Code, s. 533, whether the confessional statement had been duly made; and (3) that, under the circumstances, the High Court should determine on the evidence on record, after giving due weight to the opinions of the Judge and the jury, whether the accused were guilty under s. 395.—QUEEN-EMPRESS v. ANGA VALAYAN, I. L. R., 22 Mad. 15. [Collins, C.J., and Benson, J. Mar 31, April 14, 1898.]

**418.** Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Habitually dealing in stolen property.**

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

A PRISONER cannot be tried at the same trial for receiving or retaining (s. 411, Penal Code), and habitually receiving or dealing in (s. 413), stolen property. The proper course is to try the accused, first, for the offences under s. 411, and if he is convicted, to try him under s 413, putting in evidence the previous convictions under s. 411, and proving

the finding of the rest of the property in respect of which no separate charge under s. 411 could be made or tried by reason of the provisions of s. 453 of the Criminal Procedure Code (Act X. of 1872).—IN THE MATTER OF UTTOM KOONDOO: EMPRESS *v.* UTTOM KOONDOO, I. L. R., 8 Cal. 634; 10 C. L. R. 456. [McDonell and Field, JJ. Mar. 31, 1882.]

A PERSON cannot be said to be an habitual receiver of stolen goods who may receive the proceeds of a number of different robberies from a number of different thieves on the same day. In order to support a conviction under s. 413 of the Penal Code of being an habitual receiver of stolen property, it must be shown that the property was received on different occasions and on different dates.—QUEEN-EMPRESS *v.* BABURAM KANSARI, I. L. R., 19 Cal. 190. [Norris and Beverley, JJ. Nov 12, 1891.]

Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Warrant. Not bailable. Not comp.

**414.** Whoever voluntarily assists in concealing or disposing of, or making away with, property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Assisting in concealment of stolen property.

SEVERAL stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B therefore voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under ss. 411 and 414 of the Penal Code.—CRIM. PRO. CODE (Act V. of 1898), s. 235, ill (*f*).

WHERE persons are charged with assisting in concealing or disposing of property which they know or have reason to believe to be stolen, the nature of the property, as well as the circumstances under which it was being made away with, must be taken into consideration.—REG. *v.* HARISHANKAR FAKIRBHAT, 2 Bom. H. C. R 130. [Couch and Warden, JJ. Mar. 16, 1865.]

A PRISONER, who, having received stolen property, concealed it in his house, could not be charged and convicted for two offences, *viz.*, of having dishonestly received stolen property under s. 411 of the Penal Code, and of assisting in the concealment of stolen property under s. 414, which applies to persons whose dealing with the stolen property is not of such a kind as to make them guilty of dishonestly receiving or retaining it.—GOVT. *v.* MUSST. NOWLIA, 1 Agra H. C. R 9. [Pearson and Spankie, Offg. JJ. Aug 1, 1866.]

WHERE the petitioner was convicted of having voluntarily assisted in concealing stolen railway pins in a certain person's house and field with a view to having such innocent person punished as an offender, *held* that the Magistrate was right in convicting and punishing the petitioner for the two separate offences of fabricating false evidence for use in a stage of a judicial proceeding under s. 193 of the Penal Code, and of voluntarily assisting in concealing stolen property under s. 414, Penal Code.—EMPRESS *v.* RAMESHAR RAI, I. L. R., 1 All. 379. [Spankie, J. April 23, 1877.]

THE mere being in possession of stolen property dishonestly without a guilty knowledge is not a substantive offence. *It is an offence* under s. 411 to dishonestly receive stolen property, knowing or having reason to know the same to be stolen property, or to dishonestly *retain* it with the like knowledge. To support a conviction of dishonestly retaining stolen property, it ought to be shown that the accused, being in innocent possession of the property, acquired the knowledge that it was stolen, and thereafter retained it dishonestly. When a person is shown to stand in such a relation to stolen property as falls short of possession by him of such property, his manner of dealing with the property may warrant a charge of assisting in concealing or disposing of, or making away with, the property with a guilty knowledge, that is, a charge of an offence under s. 414.—KHONA *v.* EMPRESS, Panj. Rec., No. 31 of 1879.

THE word "believe" in s. 414 is much stronger than the word, "suspect," and involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing was stolen property. It is not sufficient in such a case to show that the accused person was careless, or that he had reason to suspect that the property was stolen, or that he did not make sufficient inquiry to ascertain whether it has been honestly acquired.—EMPRESS *v.* RANGO TIMAJI, I. L. R., 6 Bom. 402. [Melvill and Nanabhai Haridas, JJ. Dec. 21, 1880.] The following is a full report of the case:—

"This was a criminal application under the extraordinary jurisdiction of the High Court.

"On the 4th August 1880, the accused was convicted by C. Wiltshire, First-class Magistrate of Dharwar, of the offence of having voluntarily assisted in the disposal of stolen property under s. 414, and sentenced to suffer rigorous imprisonment for one year, and to pay a fine of Rs. 100, or, in default, to suffer imprisonment for six months more.

"On the 12th October 1878, a bullock was sold by one Rango, and purchased by Basalingapa, on the guarantee of the accused that it was the property of Rango. It was in evidence that the bullock belonged to one Maharudrapa, and that it had been stolen from him. In his examination before the Magistrate, the accused stated that he knew Rango, who had left his village some time ago during the famine, and gone to some other place to earn his livelihood; that Rango had told him (the accused) that he (Rango) had purchased the bullock for Rs. 16. From that statement of the accused, the Magistrate came to the conclusion that the accused knew, or had reason to believe, the bullock to be stolen property, inasmuch as he knew Rango to be so poor that the latter was obliged to leave his village in order to earn the means of his livelihood in some other place. The Magistrate accordingly convicted the accused of the offence charged. On appeal, the conviction and sentence were upheld by the Sessions Judge (A. C. Watt) of Dharwar on the 4th September 1880.

"The accused thereupon made an application to the High Court for the exercise of its extraordinary jurisdiction.

"The High Court (Melvill and West, JJ.) sent for the record and proceedings of the case.

"On the receipt of the record and papers, the application was heard by Melvill and Nanabhai Haridas, JJ.

"*Manekshah Jehangirshah* for the accused.—There is no evidence in the case to show that the accused knew or had reason to believe that the bullock was stolen property. There were no circumstances connected with the sale of the bullock which would induce any reasonable man to believe that it had been stolen. The lower Courts were wrong in inferring, from the acquaintance of the accused with Rango and his statement in his examination, any knowledge or belief on the part of the accused that the bullock was stolen property. The facts proved in the case do not constitute the offence of which the accused has been held guilty.

"The Hon. Rao Saheb *V. N. Mandlik* (Acting Government Pleader) appeared on behalf of the Crown.

"The following is the judgment of the Court delivered by—

"Melvill, J.—It lay upon the prosecution in this case to prove that the accused person knew or had reason to believe that the bullock was stolen property. It was not sufficient to show that the accused was careless, or that he had reason to suspect that the property was stolen, or that he did not make sufficient inquiry to ascertain whether it had been honestly acquired. The word 'believe' in s. 414, Indian Penal Code, is a very much stronger word than 'suspect,' and it involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing must be stolen property. The only circumstance alleged in the present case is that Rango, whose honesty the accused guaranteed, had left his village during the famine to earn a livelihood elsewhere. The Court find it impossible to hold that it is a legal inference from this single circumstance that the accused had reason to believe, or, in other words, that he had sufficient reason to feel convinced, that Rango could not, during so long an interval, have acquired sufficient means to purchase a bullock of the value of Rs. 16.

"On the ground, therefore, that there is no evidence on which a conviction could legally be based, the Court reversed the conviction and sentence, and ordered the fine, if paid, to be refunded."

B AND R, accused of offences under s. 414 of the Penal Code, gave information to the police which led to the discovery of the stolen property. This information was to the effect that the accused had stolen a cow and calf, and sold them to a particular person at a particular place. *Held* by the Full Bench (Mahmood, J., dissenting) that s. 27 of the Evidence Act is a proviso, not only to s. 26, but also to s. 25, and that, therefore, so much of the information given by the accused to the police-officer, whether amounting to a confession or not, as related distinctly to the facts thereby discovered, might be proved. *Empress* v. *Kaurpala* (Weekly Notes, 1882, p. 225) dissented from. *Per* Mahmood, J., that s. 27 of the Indian Evidence Act is not a proviso to s. 25, but only to s. 26, and that, therefore, the statements in question were wholly inadmissible in evidence. *Empress* v. *Pancham* (I. L. R., 4 All. 198) referred to by Straight, Offg. C.J., and Mahmood, J. *Per* Straight, Offg. C.J., that, where a statement is being detailed by a constable as having been made by an accused, in consequence of which he discovered a certain fact or certain facts, the strictest precision should be enjoined on the witness, so that there may be no room for mistake or misunderstanding. Observations by Straight, Offg. C.J., as to the

mode in which the testimony of witnesses should be recorded in cases where two persons are being tried. Observations by Straight, Offg. C.J., and Duthoit, J., upon the nature of confessions by accused persons in India, and the circumstances in which such confessions are made.—EMPRESS v. BABU LAL, I. L. R., 6 All 509. [Straight, Offg. C.J., and Oldfield, Brodhurst, Mahmood, and Duthoit, JJ. June 30, 1884.]

*Of Cheating.*

**415.** Whoever, by deceiving any person, fraudulently or dishonestly, induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes, or is likely to cause, damage or harm to that person in body, mind, reputation, or property, is said to "cheat."

Cheating.

*Explanation.*—A dishonest concealment of facts is a deception within the meaning of this section.

*Illustrations.*

(*a*.) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats

(*b*.) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(*c*.) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(*d*) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(*e*.) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(*f*) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him, and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats

(*g*.) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo-plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats. But, if A, at the time of obtaining the money intends to deliver the indigo-plant, and afterwards breaks his contract, and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(*h*.) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(*i*.) A sells and conveys an estate to B. A, knowing that, in consequence of such sale, he has no right to the property, sells or mortgages the same to Z without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage-money from Z. A cheats.

A PERSON attempted to obtain his recruitment in the police of a district by giving certain information which he knew to be false to the District Superintendent of Police. *Held* that such person had not thereby committed an offence punishable under s. 177 or s. 188 of the Penal Code, of the offence of attempting to "cheat" within the meaning of s. 415 of the Code—EMPRESS v. DWARKA PRASAD, I. L. R., 6 All. 67. [Tyrrell, J. Sep. 25, 1884.]

A FALSELY represented himself to be B at a university examination, got a hall-ticket under B's name, and headed and signed answer-papers to questions with B's name. *Held* that A committed the offences of forgery and cheating by personation.—QUEEN-EMPRESS *v.* APPASAMI, I. L. R., 12 Mad. 151. [Collins, C.J., and Parker, J. Jan. 18, 1889.]

TO constitute the offence of cheating under s. 415 of the Indian Penal Code, the damage or harm caused or likely to be caused to the person deceived in mind, body, reputation, or property, must be the necessary consequence of the act done by reason of the deceit practised, or must be necessarily likely to follow therefrom. Where, therefore, certain persons were charged under s. 419 of the Indian Penal Code, one with personating another person before a Registrar, and the others with abetting such personation, and causing the Registrar to register a divorce, under the provisions of Bengal Act I. of 1876, with the wife of the personated person, and where the lower Courts convicted the accused under that section, holding that, as such registrations were voluntary and a source of gain to the Registrar, harm was caused to the Registrar in mind and reputation by registering false divorces, as well as by losing his fees in the future through persons being less likely to avail themselves of his services, and that, therefore, an offence under the section had been committed. *Held* that the possibilities contemplated by the lower Courts were too remote, that the facts did not constitute an offence under the section; and that the conviction must therefore be set aside.—MOJEY *v.* QUEEN-EMPRESS, I. L. R., 17 Cal. 606. [Norris and Macpherson, JJ. Mar. 18, 1890.]

IN construing ss. 24 and 25 of the Penal Code, the primary and not the more remote intention of the accused must be looked at. *Queen-Empress* v. *Girdhari Lal* (I. L. R., 8 All. 653) cited. Under the rules of the Calcutta University a private student desiring to appear at the Entrance Examination is required to forward to the Registrar, with his application for permission to appear, a certificate to the effect, *inter alia*, that he is of good moral character, and has submitted himself to a test examination by, and furnished exercise to, the person signing the certificate sufficient in that person's opinion to show that his qualifications give a reasonable probability of his passing the examination. Such certificate has to be signed by one or other of the persons mentioned in the rules, amongst them being the head-master of a high school under public management. On such certificate being sent to the Registrar and the prescribed fee paid, that officer forwards a receipt to the candidate with his roll-number thereon, which is also an authority for him to appear at the examination, and enter the examination hall. A private student forwarded to the Registrar, with his application for permission to appear, a certificate in the prescribed form, purporting to be signed by the head-master of a high school, such signature, however, being, as the applicant well knew, a forgery. The Registrar, knowing at the time that the signature of the head-master was not genuine, sent to the applicant the receipt for his fee and the necessary authority allowing him to appear at the examination, and in due course the applicant appeared, took his seat in the hall at the desk allotted to him, and commenced the examination. Upon charges being preferred against the applicant of using as genuine a forged document (s. 471), and attempting to cheat (ss. 415 and 511), *held* that his primary object or intention was, by falsely inducing the Registrar to believe that the certificate was signed by the head-master of a Government school under public management, to be permitted to sit for the Entrance Examination, and that such intention could not be held to be "fraudulent" or "dishonest" within the meaning of ss. 25 and 24 of the Penal Code. *Held*, consequently, that the use of the forged document, though with the knowledge or belief that it was forged, was not fraudulent or dishonest, and that, as these are essential elements to offences under ss. 471 and 415 of the Penal Code, the accused had not committed either of the offences charged. *Held*, further, that the accused had not committed any offence under the Penal Code. *Jan Mahomed* v *Queen-Empress* (I. L. R., 10 Cal. 584) cited. In a reference by a Presidency Magistrate to the High Court, under s. 432 of the Code of Criminal Procedure, as to whether, on the facts stated, any offence has been committed by an accused person, it lies on the prosecution to make out that an offence has been committed, and under the circumstances the prosecution must begin.—QUEEN-EMPRESS *v.* HARADHAN *alias* RAKHAL DASS GHOSH, I. L. R., 19 Cal. 380. [Norris and Beverley, JJ. April 20, 1892.]

**416.** A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Cheating by personation.

*Explanation.*—The offence is committed whether the individual personated is a real or imaginary person.

*Illustrations.*

(*a*.) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(*b*.) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

WHERE a person represented a girl to be the daughter of one woman, when she was within his knowledge the daughter of another woman, *held* that he was guilty of cheating by personation under s. 416 of the Penal Code, and that it was unnecessary to bring in s. 109 relating to abetment.—QUEEN *v.* DHANPUT OJHAH, 7 W. R. 51. [Glover, J. April 5, 1867.]

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Not comp.

**417.** Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Punishment for cheating.

CHARGE.—That you, on or about the , at , cheated the complainant by falsely pretending that a certain ornament was made of gold, and thereby deceived him, and dishonestly induced him to deliver to you the sum of Rs. 100 as the price of the said ornament, whereas the said ornament was not made of gold; and that you thereby committed an offence punishable under, &c.

AN indictment for cheating under ss 415 and 420 of the Penal Code should state that the property obtained was the property of the person defrauded. But an indictment defective in this respect is defective for uncertainty, and must be objected to, if at all, before the jury is sworn.—REG. *v.* WILLANS, 1 Mad. H. C. R. 31; 1 Ind. Jur. O. S. 94. [Scotland, C.J., and Bittleston, J. Oct. 30, 1862.]

A PASSENGER by railway travelling in a carriage of a higher class than that for which he has paid fare is not guilty of cheating under s. 417 of the Penal Code, but is indictable under the Railway Act (XVIII. of 1854).—REG. *v.* DAYABHAI PARJARAM, 1 Bom. H. C. R. 140. [Couch and Tucker, JJ. Jan. 15, 1864.]

To induce a son to pay his father's debts, by acting merely on his fear of consequences to his father, is not cheating. To describe those consequences to be more serious than in fact they were likely to be may be to deceive, but is not cheating if done without any fraudulent or dishonest intention.—QUEEN *v.* RAJ COOMAR BANERJEE, W. R. Gap., 1864. 25. [Loch and Steer, JJ. April 29, 1864.]

THE prisoner having passed himself off as a police-officer, and cheated several villagers out of money, was held guilty of cheating, and falsely personating a public servant.—QUEEN *v.* SADANUND DOSS *alias* SONA BISWAS, 2 W. R. 29. [Kemp, J. Jan. 30, 1865.]

A CHAUKIDAR, who obtains money from another, either by fraudulent inducement or dishonestly, or by putting that person in fear of injury, is punishable under s. 417 of the Penal Code (cheating), or ss. 383, 384 (extortion), but not for criminal misappropriation of public money entrusted to him as a public servant.—QUEEN *v.* RAMNARAIN CHAUKIDAR, 3 W. R. 32. [Loch and Seton-Karr, JJ. June 21, 1865.]

THE mere issue of a hukumnama (to collect statistical information) by a police-officer is no legal ground for a conviction of abetment of cheating or of extortion.—QUEEN *v.* MEAJAN, 4 W. R. 5. [Kemp and Seton-Karr, JJ. Sep. 9, 1865.]

IN a case of cheating, the prisoner was sentenced to six months' rigorous imprisonment and a fine of Rs. 300, two hundred of which was ordered to be paid to the prosecutor as compensation. The Sessions Judge, on appeal, confirmed the conviction. On receiving a petition from the prisoner, the High Court directed the Sessions Judge to submit the records of the case. Kemp, J., observed: "I find, on reading the evidence, that the petitioner and others held a joint-decree against the prosecutor for Rs. 194-10. Execution was sued out; the property of the prosecutor attached; and its sale was imminent, when prosecutor is said to have entered into an amicable arrangement with the petitioner, agreeing to pay Rs. 154, provided a petition was filed in Court, and the sale was stayed. The petitioner did not fulfil this promise. The sale took place, and a portion of the property was purchased by the petitioner's vakil. I hold that this is a simple breach of con-

tract, for which the prosecutor, if so advised, has his civil remedy in a suit for damages. The prosecutor may have been led to expect that the petitioner would take measures to withdraw the execution-process, and to stay the sale; but there is no evidence whatever that, at the time the petitioner agreed to settle matters for Rs. 154, it was then his intention not to do what he led the prosecutor to expect that he would do. The main element which constitutes the offence of cheating is therefore wanting—namely, there was no intention then present to deceive, and thereby to induce the prosecutor to make conditional arrangements for an amicable adjustment of the decree. I would quash the conviction of the prisoner and direct his release."—IN THE MATTER OF SADOO CHURN PAL, 4 W. R. 13. [Loch, Kemp, and Seton-Karr, JJ. Sep. 18, 1865.]

THE mere taking money one day, and dishonestly running away without paying the next day, is not necessarily cheating. There must be an intention to deceive and defraud at the time of taking the money, and the subsequent conduct of the prisoner would only be evidence to show the previous dishonest intention.—QUEEN *v.* HEERAMUN HULWAYE, 5 W. R. 5; 1 Ind. Jur. N. S. 97. [Campbell, J. Jan. 15, 1866.]

WHERE the prisoner was convicted of cheating by inducing a man to part with his money, and contract marriage with a girl under the false impression that she was a Brahmini, the conviction was upheld.—QUEEN *v.* PUDDOMONIE BOISTOBEE, 5 W. R. 98. [Glover, J. May 28, 1866.]

WHERE two girls were bought by the prisoners on speculation, taken to a foreign and distant district, palmed off as women of a much higher caste than they really were, and married to two Rajputs, after receiving the usual bonus, *held* that the prisoners could not be convicted under s. 373 of the Penal Code, but of cheating and false personation under ss. 415 and 416.—QUEEN *v.* DABEE SINGH, 7 W. R. 55. [Kemp and Seton-Karr, JJ. April 8, 1867.]

ACCUSED was found guilty of having endeavoured to evade payment of a railway-fare, by the production of an old pass, altered as to date and number of persons. *Held* that, although Act XVIII. of 1854 provides for the punishment of any attempt to evade payment of fare, the accused was, in the present instance, rightly convicted, not under that Act, but under the Penal Code, of an attempt to cheat, because there were distinct acts constituting cheating which accompanied such evasion. — CROWN *v.* GUNPUT, Panj. Rec., No. 6 of 1868.

WHERE the accused secretly entered an exhibition-building without having purchased a ticket, and was there apprehended, it was held that such act did not amount to the offence of cheating under s. 415 of the Penal Code. Such entry, when unaccompanied by any of the intents specified in s. 441 of the Penal Code, does not amount to criminal trespass or any other criminal offence.—REG. *v.* MEHERVANJI BEJANJI, 6 Bom. H. C. R. 6. [Tucker and Warden, JJ. Feb. 11, 1869.]

THE defendant was convicted of cheating. He applied to the tahsildar for a specified quantity of land on cowle tenure free of tax for five years, and falsely represented that the land was waste land. *Held* a good conviction.—PRO., Jan. 6, 1871, 6 Mad. H. C. R. 63, Ap. 12.

A PERSON hiring certain property for use at a wedding, paying a portion of the hire, and giving a written promise to pay the balance of the hire, and to restore the property after the wedding, he being well aware that there was to be no wedding, and intending, when he got the property, to apply for its attachment in a civil suit in respect of an alleged claim, is guilty of cheating.—QUEEN *v.* KADIR BUX, 3 N.-W. P. 16. [Spankie, J. Jan. 13, 1871.]

THE prisoners received a Government promissory note, promising to return certain jewels pledged to them, but not intending to do so; and they subsequently claimed to retain the note for another debt alleged to be due to them by the sender. *Held* that they were guilty of cheating.—QUEEN *v.* SHEODURSHUN DASS, 3 N.-W. P. 17. [Turner and Spankie, JJ. Jan. 13, 1871.]

WHERE the High Court was of opinion (in a case in which no appeal lay to it) that the facts found by the Court that tried the prisoners, and the Court of appeal from such Court, did not constitute the offence of cheating, of which the prisoners had been convicted, the High Court, in the exercise of its extraordinary jurisdiction, reversed the conviction and sentence. To justify a conviction for the offence of cheating, there must be some evidence of an intention to cheat at the time when the promise (the omission to perform which completes the offence of cheating) is made.—REG. *v.* HARGOVANDAS AND HARKISSANDAS, 9 Bom. H. C. R. 448. [Cibbs and Melvill, JJ. Jan. 25, 1872.]

WHERE the accused were convicted of cheating under s. 415, Penal Code—the one of selling watered milk, and the other an inferior sort of sweetmeats—they were acquitted; the former, because the purchaser knew, and was told, the milk was watered, and so there was no deception; and the latter, on the

ground that the purchaser might have tasted the sweetmeats before buying, and the sweetmeats were not composed of any material injurious to health.—QUEEN *v.* KALEE MODOCK, 18 W. R. 61. [Glover and Pontifex, JJ. Nov. 8, 1872.]

A MISREPRESENTATION by false description of one's position in life falls under the heading of cheating, and not under that of forgery. Where, therefore, a document purported to have been signed by "G L, patwari," and it was said that it was signed by G L, but at a time when G L was not a patwari, it was held that the document was not a forgery within s. 464 of the Penal Code.—JOY KURN SINGH *v.* MAN PATUCK, 21 W. R. 41. [Kemp and Ainslie, JJ. Feb. 17, 1874.]

A PERSON who purchased rice from a famine relief officer at a certain rate (16 seers to the rupee), on condition that he should sell it at a seer the rupee less, was convicted of cheating under s. 420, Penal Code, because he did not sell it at the rate agreed on, but at 12 seers to the rupee. *Held* that as, within the meaning of ss. 23 and 24, Penal Code, there had been no wrongful gain or wrongful loss to any one, no offence had been committed under s. 415, Penal Code. —REG. *v.* LAL MAHOMED, 22 W. R 82. [Couch, C.J., and Ainslie, J. Sep. 15, 1874.]

ACCORDING to an unreported ruling of the Bombay High Court, it was held that, where the result of cheating is the delivery of property, the offence falls under s. 420, not under s 417.—REG. *v.* BAWAJI KALIDAS, Bom. H. C. Rulings. [Sep. 25, 1875]

THE accused purchased an agreement-stamp from a licensed vendor, representing himself to be one Hema. The vendor entered Hema's name in the register as purchaser *Held* that a charge of cheating could not be sustained. *Per* Plowden, J.—Though the accused, by personating Hema, deceived the stamp-vendor, and induced him to make an incorrect entry in his register, which act was likely to cause damage to the stamp-vendor, it was not shown that the accused had any fraudulent design upon the vendor, and it was not enough if his intention was to use the stamp to the injury of Hema. *Per* Lindsay, J.—There was a deception within s. 415, but the act of selling a stamp to one personating another could not possibly cause damage to a *bond-fide* vendor in any way, and the mere fact of the accused personating Hema did not induce the vendor to sell the stamp.—GIRDHAREE *v.* CROWN, Panj. Rec., No. 16 of 1876.

IN a prosecution for an attempt to cheat, under ss. 417-511 of the Penal Code, the accused was charged and convicted of having, at the central octroi-office, made false representations as to the contents of certain kuppas (skin vessels), the object of which was to obtain a certificate, entitling him to obtain a refund of octroi-duty. Prior to granting him the certificate, the octroi-officers examined the contents of the kuppas, and found that the representations of the accused regarding them were untrue. In consequence of this discovery no certificate was given to him, and he was charged and convicted as above mentioned. The procedure necessary for obtaining a refund of octroi-duty was that the central office, on satisfying itself that the articles produced were of the nature stated, would grant a certificate, which certificate would have to be indorsed by the outpost clerk, when he passed the goods (on which refund was claimed) out of the town, and the owner would have to take back the certificate so indorsed to the central office, and present it to be cashed. *Held* that, even assuming the accused to have falsely represented the contents of the kuppas as alleged, he had not completed an attempt to cheat, but had only made preparation for cheating, and that the conviction must therefore be set aside.—QUEEN-EMPRESS *v.* DHUNDI, I. L. R., 8 All. 304 [Brodhurst, J. May 8, 1886]

A PERSON who induced a farmer to ferry him over the river by promise of payment, and then refused to pay the toll, was held to be guilty of cheating under s. 417.—GOVT. *v.* LUCHMEE NARAIN SINGH, 2 N. A., N.-W. P., Pt. IV., 431.

WHERE a person is charged with abetting the offence of cheating, it must be proved that the acts of the alleged abettor were intentionally done in concert with, and in furtherance of, the agents in the fraud.—GOVT. *v.* GIRDHAREE, 3 N. A., N.-W. P., Pt. I. 47.

THE offence of cheating must, like that of extortion, be committed by the wrongful obtaining of a consent The difference is, that the extortioner obtains the consent by intimidation, and the cheat by deception.—INDIAN LAW COMMISSIONERS' REPORT, Note N, 112.

PRISONER was requested to make an entry in a book of account belonging to the complainant to the effect that he was indebted to the complainant in a certain sum found due on a settlement of accounts; instead of making this entry as requested, prisoner entered in a language not known to complainant that this sum had been paid to complainant. He was convicted of forgery under s. 465 of the Penal Code. *Held* that the offence was not forgery, but an attempt to cheat.—QUEEN-EMPRESS *v.* KUNJU NAYAR, I. L. R., 12 Mad. 114. [Muttusami Ayyar and Shephard, JJ. Sep. 9, 20, 1888.]

A MAN may be guilty of an attempt to cheat, although the person he attempts to cheat is forewarned, and is, therefore, not cheated. *R.* v. *Hensler* (11 Cox C. C. 570) referred to. M wrote a letter to the Currency Office at Calcutta, enclosing the halves of two Government currency-notes, stating that the other halves were lost, and inquiring what steps should be taken for the recovery of the value of the notes. The Currency Office having, upon inquiry, discovered that the amount of the notes had been paid to the holder of the other halves, and that the notes had been withdrawn from circulation and cancelled, sent M the usual form of claim to be filled up and returned to it. It appeared from the evidence that the Currency Office never contemplated paying M in respect of the notes. The form was filled up and signed by M, and returned by him to the Currency Office *Held* that, although there was no intention on the part of the Currency Office to pay the amount of the notes, M was guilty of an attempt to cheat.—GOVT. OF BENGAL *v.* UMESH CHUNDER MITTER, I. L. R., 16 Cal. 310 [Macpherson and Trevelyan, JJ. Nov. 6, 1888.]

THE following important judgment was delivered by the High Court, Calcutta, in a case of cheating, in which a Bench of Honorary Magistrates, Calcutta, convicted the accused :—

"The petitioner has been convicted under s. 420 of the Indian Penal Code, and sentenced to rigorous imprisonment for one month by a Bench of Presidency Magistrates in Calcutta The charge against him was that he falsely represented to Munraj that he would pay the value of three tins of ghee when they would be taken to his house, and thereby he fraudulently induced the said Munraj to deliver to him the said three tins; that Munraj would not have agreed to part with the said tins had he not been deceived in the way mentioned above.

2. The evidence given in this case shows that the petitioner called at the shop of Munraj, and settled the price of three tins of ghee. He then told Munraj, to send the three tins of ghee to his house, promising to pay the price thereof to a servant of the shop, if he would accompany him Munraj agreed to this, and the tins were sent through a cooly to the house of the petitioner, and he instructed his brother, an employè in the shop, to go with the petitioner to receive the promised payment The employè of the shop, on arriving at the petitioner's house, was told to wait for an hour. After that space of time had elapsed, the petitioner told him to come again in the night, when he would be paid. This servant of the shop called again at the petitioner's house in the night, but did not find him at home. The owner and this servant went again to that house in the same night, but did not find the petitioner there. Thereupon a complaint was lodged in the local thana.

3. An application was made to this Court by the petitioner for revision of the finding and the sentence substantially on two grounds: First, that the Bench of Magistrates exercised their discretion improperly in refusing to adjourn the case to enable the petitioner to adduce evidence in support of his defence. Secondly, that neither is there a finding in the judgment of the Bench of Magistrates that he deceived Munraj by making any false representation, nor is the evidence sufficient to support such conclusion.

4 As regards the first ground, we are of opinion, after perusing the affidavit filed by the petitioner, and the letter (4) of explanation submitted by the Bench of Magistrates, that there was no improper exercise of discretion on their part in refusing the application for adjournment. But, considering the reasons recorded by the Bench of Magistrates in their judgment, which they were bound to record under clause (*i*) of s. 370, C. P Code, we think that they are not sufficient to support a conviction under s. 420. The bare fact of a person taking delivery of goods, promising to pay cash, and ultimately failing to keep his promise, would not amount to cheating. It must be shown, in the first place, that the representation that the representer would pay the value of goods sold to him in cash was made falsely, *i e.*, the representer knew that either he *did not mean to pay in cash*, or that he would not be able to pay in cash. This fact must be established in order to show that the representation is false In the next place, it must be shown in the evidence that the seller was deceived by the false representation, that is to say, that he would not have delivered the goods if he disbelieved the representation in question

5. These two important facts are not found in the judgment of the Bench of Magistrates; and, as we, upon the evidence adduced in this case, are unable to say that, without any reasonable doubt, these two facts are true, the omission of the Bench of Magistrates referred to above warrants us in setting aside the conviction. We accordingly set it aside. As the petitioner was enlarged on bail pending the hearing of this rule, the only further order necessary is that the bail-bond be declared as discharged.—JATHARAM *v.* MUNRAJ (unreported). [Mitter and Trevelyan, JJ. Feb. 26, 1889.]

ON the 5th May 1894 C applied in writing, under the provisions of s. 133 of Act III. of 1884, to a municipality for a license to be granted to him in respect of two carriages and six ponies, and filled up and signed the usual statement required by the section. The sum payable in respect of the license was received, and the license asked for by C was granted to him, and at the same time the statement was sent to an overseer of the municipality for verification. On the 7th May the overseer reported that C had in his possession eight ponies and one horse. On the 8th May the chairman of the municipality passed an order directing C to be prosecuted for making a false statement in the schedule to his statement regarding the number of animals in respect of which he applied for the license. On the 9th May C presented a petition asking that the tax on the three animals might be received, and stating that he did not think he was liable to take out a license for them, as they were old and diseased, and unfit for work. On the 13th May the chairman passed an order on this application that he had no power to interfere, as the prosecution of C had already been ordered. Meanwhile, on the 9th May, a paper was sent to the Magistrate headed "List of municipal cases under Act III of 1884," in which C appeared as charged with an offence under s. 199 of the Penal Code for "filing a false statement, that is to say, putting down in the schedule six ponies only instead of eight ponies and one horse." On the 12th May the Deputy Magistrate directed a summons to issue to C, returnable on the 23rd. On the 18th May the District Magistrate passed an order to the effect that the municipality could not institute a prosecution under the Penal Code, but that the Deputy Magistrate had power to do so, and that he should consider the provisions of ss. 182 and 417, read with 511 of the Penal Code, as applicable to the facts of the case. On the 19th May the summons was issued, and the case was heard on the 23rd and 24th May and 19th June, on which date formal charges under ss. 199, 182, and 417-51 of the Penal Code were framed. Thereafter the hearing proceeded till the 16th July, when, on an application to the High Court, the proceedings were stayed, and a rule issued to show cause why they should not be quashed. It was contended at the hearing of the rule that the High Court should not interfere at that stage of the proceedings under its revisional jurisdiction. *Held* that the High Court has power to interfere at any stage of a case, and that, when it is brought to its notice that a person has been subjected as in this case, for over two months, to the harassment of an illegal prosecution, it is its bounden duty to interfere. *Held*, further, that it was quite clear that the municipality had no power to institute the proceedings, and that, having regard to the provisions of s. 191 of the Code of Criminal Procedure, it did not appear that the Deputy Magistrate, having no private complainant before him, had power of his own motion to institute them, but that, whether he had such power or not, the admitted facts of the case did not in law constitute any of the offences with which C was charged, and that the whole proceedings must be quashed. The Municipal Act is intended to be complete in itself as regards offences committed against the Municipal Commissioners, and there is no indication of any intention to render a delinquent also liable to punishment under the Penal Code. There is no penalty in the Act attached to the omission to make a return under s. 133, and no words in the Act constituting the making a false return a penal offence, and, as there are no such words in the Act as are necessary to make the provisions of the Penal Code applicable, the Court has no power to import them. The Municipal Commissioners in such a case have the remedy provided by the Act itself.—CHANDI PERSHAD *v.* ABDUR RAHMAN, I. L. R., 22 Cal 131. [Petheram, C.J., and Beverley, J. Aug. 13, 1894.]

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WHEREVER a person fraudulently represents as an *existing fact* that which is not an existing fact, and so gets money, &c., that is an offence within the Act.—R. *v.* WOOLLEY, 1 Den. 559; 3 C. and K. 98; 19 L. J. (M. C.) 165.

WHERE a carrier, falsely pretending that he had carried certain goods to A B, demanded, and thereupon obtained from the consignor, sixteen shillings for the carriage of them, it was holden to be within the Statute.—R. *v.* COLEMAN, 2 East, P. C. 672. See *R. v. Airey*, 2 East, 30.

A FOREMAN represented to his master that a certain sum was due to the workmen under him, and obtained a cheque for the amount stated to be due. The amount of the cheque exceeded by seven shillings the amount really due to the workmen. The foreman paid the workmen, but kept the surplus seven shillings to himself. He was held to have been guilty of obtaining the cheque under

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false pretences.—R. *v.* LEONARD, 1 Den. 303; 2 C. and K. 514.

THE essence of the offence of cheating is deceit. Thus, where a workman stated that he had done more work than he really had, and requested payment for the work he stated he had done, and his master, knowing that it was a false over-charge, and wishing to entrap him, paid him the amount demanded, it was held that the workman could not be indicted for obtaining money under false pretences, as it was not the falsehood which induced his master to part with the money. —R. *v.* MILLS, Dears. and B. 205, 20 L. J. (M. C.) 79.

THE defendant, on entering the service of a railway company, signed a book of rules, a copy of which was given to him. One of the rules was: "No servant of the Company shall be entitled to claim payment of any wages due to him on leaving the Company's service until he shall have delivered up his uniform clothing.' On leaving the service, the defendant knowingly and fraudulently delivered up to an officer of the Company, as part of his own uniform, a great-coat belonging to a fellow servant, and so obtained the wages due to him. It was held that he was properly convicted of obtaining by false pretences the money so paid to him as wages. —REG. *v.* BULL, 13 Cox. 608 (C. C. R).

WHERE the defendant falsely pretended to J N that he was entrusted by the Duke de Lauzan to take some horses from Ireland to London for him, and that he had been detained so long by contrary winds that his money was all spent, by means of which representation he induced J N to advance him money, this was holden to be within the Act. —R. *v.* VILLENEUVE, 2 East. P. C. 830.

So, where the defendant, who had actually taken premises, and was doing a small business in coal, obtained forty coal-bags on credit from the prosecutor by falsely pretending that he had a lot of trucks of coal at a railway-station on demurrage, and that he required forty coal-bags, this was held to be a false pretence within the Statute.—R. *v.* WILLOT, 12 Cox. 68 (C. C. R).

So, where the defendants, falsely pretending that they had made a bet with A B that one of them should run ten miles within an hour, prevailed upon J N to join them in the bet, and obtained from him twenty guineas as his share in it, the Judges held this to be within the Statute, notwithstanding the pretence was probably one against which common prudence might have guarded.—YOUNG *v.* R., 3 T. R. 98.

WHERE an attorney, who had appeared for J S, who was fined 2*l.* on a summary conviction, called on the wife of J S, and told her that he had been with J N, who was fined 2*l.* for a like offence, to Mr. B and Mr. L, and that he had prevailed on Mr. B and Mr. L to take 1*l.* instead of 2*l.*, and that, if she would give him 1*l.*, he would go and do the same for her; and she thereupon gave him a sovereign, and afterwards paid him for his trouble; and it was proved that the attorney never applied to Mr. B or Mr. L respecting either of the fines, and that both were afterwards paid in full: it was held that the attorney was guilty of obtaining money by false pretences.—R. *v.* ASTERLEY, 7 C. and P. 191.

WHEN a servant, who had authority to buy goods, and was to be repaid on producing a ticket containing a statement of the purchase, produced such a ticket, and obtained the amount stated therein, no purchase having, in fact, been made, this was held to be not larceny, but obtaining money by false pretences.—R. *v.* BARNES, 2 Din. 59; 20 L. J. (M.C) 34. And see *R.* v. *Prince*, 38 L. J. (M.C.) 8; L. R., 1 C. C. R. 150.

WHERE the foreman of a manufacturer, who was in the habit of receiving from his master money to pay the workmen, obtained from him, by means of false written accounts of the wages earned by the men, more than the men had earned or he had paid them, the Judges held it to be within the Act; they said that all cases where the false pretence creates the credit are within the Statute; and here the defendant would not have obtained the excess above what was really due to the workmen were it not for the false account he had delivered to his master.—R. *v.* WITCHELL, 2 East, P. C. 830.

IT was the prisoner's duty to ascertain daily the amount of dock-dues payable by his master, and, having ascertained it, to apply to his master's cashier for the amount, and then to pay it in discharge of the dues. On one occasion, by representing falsely to the cashier that the amount was larger than it really was, as he knew, the prisoner obtained from the cashier the sum he stated to be, and then paid the real amount due, and appropriated the difference to his own use. This was held to be not larceny, but obtaining money by false pretences.—R. *v.* THOMPSON, L. and C. 233; 32 L. J. (M. C.) 57. It is difficult to distinguish the essential facts of this case from those in *R.* v. *Cooke*, L. R., 1 C. C. R. 295; 40 L. J. (M. C.) 68, where the prisoner was held to be guilty of larceny. *R.* v. *Thompson* was cited and observed upon

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in *R.* v. *Cooke*, although not overruled, Bovill, C.J., saying that the decision in *R.* v. *Thompson* went entirely on the question whether there was a larceny in the obtaining of the money in the first instance, and that the point was not considered whether the subsequent misappropriation was larceny.

So, where the defendant obtained goods by falsely stating that he wanted them for J S, who lived at N, and was a person whom he would trust with 1,000*l.*, and who went out to New Orleans twice a year to take goods to his sons, this was held to be a sufficient false pretence within the Statute.—R v. ARCHER, Dears, 449.

So, where the false pretence alleged was, that a person who lived in a large house down the street, and had had a daughter married some time back, had been to him (the defendant) about some carpet, and had asked him to procure a piece of carpet, whereby the defendant obtained from the prosecutor twenty yards of carpet: this was held sufficient.—R. v. BURNSIDES, Bell 282, 30 L. J. (M C.) 42

OBTAINING as a loan from the drawer of a bill accepted by the prisoner, and negotiated by the drawer part of the amount, for the purpose of paying the bill, under the false pretence that the prisoner was prepared with the residue of the amount, was holden to be an offence within the Statute, the prisoner being shown not to be prepared, and not intending so to apply the money.—R v. CROSSBY, 2 M and Rob 17.

IN like manner, where the defendant obtained goods by a false statement that a bill, drawn on and accepted by himself, and purporting to be payable at the London and Westminster Bank, which he gave the prosecutor for the price of the goods would be paid at the bank the next day, and that he had made arrangements for it, this was held a false pretence within the Act.—R v. HUGHES 1 F and F. 355

WHERE the Secretary of an Odd Fellows' Lodge told a member that he owed the Lodge 13*s.* 6*d.*, and thereby obtained that sum from him fraudulently, whereas the member owed 2*s.* 2*d* only, he was held to be rightly convicted of obtaining money by false pretences.—R v. WOOLLEY, 1 Dn. 559, 3 C. and K 98; 19 L J (M. C.) 165.

A CREDITOR who wilfully and fraudulently represents to a third person who holds moneys of his debtor that a larger sum is due to him from the debtor than is really the case, and thus obtains from such third person payment of the larger sum, is guilty of a false pretence within the Statute, and that, too, although he may have obtained a judgment by default, not set aside, against his debtor for the larger sum.—R. v. TAYLOR, 15 Cox. 265, 268.

OBTAINING money by means of false statements of the name and circumstances of the defendant or any other person, in a *begging letter*, is within the Statute.—R. v. JONES, 1 Den. 551; 19 L. J. (M. C.) 162.

WHERE the defendant obtained money from a woman under the threat of an action for breach of promise of marriage, he being, in fact, a married man already, an indictment laying as the false pretence that he was entitled to maintain an action against her for the breach of promise, was held by Maule, J., to be good, for that this was a false pretence within the Statute.—R. v. COPELAND, C. and Mar 516.

AN indictment charging the prisoner with obtaining money from a wife whose husband had run away, by falsely pretending to her that she, the prisoner, had power to bring him back, is good and sufficiently states an indictable offence.—R. v. GILES, L. and C. 502, 34 L. J. (M C.) 50.

WHERE the defendant pretended that he was carrying on an extensive business as a surveyor and house-agent, and thereby induced the prosecutor to deposit with him 25*l* as a security for his (the prosecutor's) fidelity as a clerk, whereas the defendant was not carrying on any business as a surveyor or house-agent, this was held to be a false pretence within the Statute.—R. v CRABB, 11 Cox. 85 (C C R.) But where the defendant pretended (1) that he was doing a good business, and (2) that he had recently sold a good business, and thereby induced the prosecutor to deposit with him 50*l* as a security for the prosecutor's fidelity as an assistant, whereas, in truth, defendant's business was worthless, and the defendant was a bankrupt, it was held that neither of the false pretences alleged came within the Statute. As to the first pretence, it was a mere exaggerated representation of value upon which, though fraudulently, an indictment would not lie, and as to the second, it was too remote. *R* v *Williamson*, 11 Cox. 328, *per* Byles, J. It will be noticed that, in the former of these two cases, there was no existing business at all, whereas, in the latter, there appears to have been an existing, although a worthless, business. See also *R.* v. *Watson*, Dears, and B. 348; 27 L J. (M C.) 18, in which, although it was not necessary to decide the point, Erle, J, said: "I wish not to be supposed to as-

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sent to the proposition that an indictment [for false pretences] can be sustained by proof of *mere* exaggeration of the prosperity of a business, where there is an original business. It is difficult to draw a decided line, but I think it has been decided that exaggerated praise does not render a person liable within the Statute." As to the general doctrine that exaggerated praise does not render a prisoner liable within the Statute and the limitation of that doctrine, see *R* v. *Bryan* and other cases, *post*.

WHERE the prisoner sold to the prosecutor a reversionary interest which he had previously sold to another, and the prosecutor took a regular assignment of it, with the usual covenants for title, Littledale, J., ruled that he could not be convicted for obtaining money by false pretences, for, if this were within the Statute, every breach of warranty or false assertion at the time of a bargain might be treated as such, and the party be transported.—R. v. CODRINGTON, 1 C. and P., 661. In *R.* v. *Kenrick*, 5 Q. B. 49; Dav. and M. 208, that decision was much questioned; and it was strongly intimated that the execution of a *contract* between the same parties does not secure from punishment the obtaining of money under false pretences in conformity with that contract. And in *R.* v. *Abbott*, 1 Den. 173; 2 C. and K. 630, it was decided unanimously by the Judges, upon a case reserved, that the law was so. And see also *R.* v. *Burgon*, Dears and B. 11, 25 L. J. (M. C.) 105, and *R.* v. *Goss*, Bell 208, 29 L. J. (M. C.) 86, in which, upon the authority of *R.* v. *Abbott*, the same law was laid down.

IN a recent case, *R.* v. *Meakin*, 11 Cox 270 (C. C. R.), where the defendant induced the prosecutor to lend him money on a bill-of-sale of furniture, and the joint and several promissory note of the defendant and another person, by representing that the furniture was unincumbered, whereas the defendant had previously given a bill-of-sale of the same furniture to another person, although not to its full value, this was held to be an indictable false pretence. Where the indictment charged that the defendant, having in his possession a certain weight of twenty-eight pounds, falsely pretended to C that a quantity of coals, which he delivered to C, weighed sixteen hundred weight (meaning 1,792 pounds weight), and were worth 1*l.*, and that the weight was fifty-six pounds, by means of which he obtained a sovereign from C with intent to defraud him of part thereof, to wit, 10*s.*; whereas the coals did not weigh 1,792 pounds, and were not worth 1*l.*, and whereas the weight was not fifty-six pounds, and whereas the coals were of the weight of 896 pounds only, and were not worth more than 10*s.*, and whereas the weight was twenty-eight pounds only, the Judges (according to the report) held a conviction on the indictment wrong, on the ground that all the pretences, except that relating to the weight, were mere false affirmations, and that, as to the weight, there was no allegation to connect the sale of the coals with the use of the weight. —R. v. REED, 7 C. and P. 848. It was stated by Lord Denman, C. J., in *Hamilton* v. *R.*, 29 B. 271, that this case of *R.* v. *Reed* was misreported, and that no such decision was given, but His Lordship seems to have been mistaken in this, see Dears and B. 35, note (*e*). But, at all events, the case of *R.* v. *Reed* can no longer be considered to be law since the decision in *R* v. *Sherwood*, Dears. and B. 251, 26 L. J. (M. C.) 81. There the defendant, having contracted to sell and deliver to the prosecutrix a load of coals at 7*d.* per cwt. delivered to her a load of coals which he knew weighed only 14 cwt., but which he stated to her contained 18 cwt., and produced a ticket, showing 18 cwt. to be the weight, which he said he had himself made out when the coals were weighed, and she thereupon paid him the price as for 18 cwt., which was 2*s.* 4*d.*, more than was really due, and it was held that the defendant was indictable for obtaining the 2*s.* 4*d* by false pretences. This decision was approved and followed in *R.* v. *Lee*, L. and C. 418; 33 L. J. (M. C.) 129.

SO, where the prosecutor bought of the defendant and paid him for a quantity of coal on a false representation by him that there were 15 cwt., whereas, in fact, there were only 8 cwt., but so packed in the cart as to have the appearance of a larger quantity, this was held to be an indictable false pretence.—R. v. RAGG, Bell 214, 29 L. J. (M. C.) 86. See also *R.* v. *Eagleton*, Dears. 515; 24 L. J. (M. C.) 158.

A PERSON who obtains from a pawnbroker upon an article which he falsely represents to be silver, a greater advance than would otherwise have been made, is guilty of a false pretence within the Statute, although the pawnbroker has the opportunity of testing the article at the time.—R. v. BALL, C. and Mar. 249; see R. v. ROEBUCK, Dears. and B. 24; 25 L. J. (M. C.) 101; R. v. Goss, Bell 208; 29 L. J. (M. C.) 86.

AND a false representation that a stamp on a watch is the hall-mark of the Goldsmiths' Company, and that the number 18 put thereon indicates that it is made of eighteen-carat gold, is a false pretence, and

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is not the less so because accompanied by the representation that the watch is a gold one, and some gold is proved to have been contained in its composition.—R. *v.* SUTER, 10 Cox. 577.

BUT a false representation of what is mere matter of opinion, falling within the category of untrue praise in the course of a contract for sale, is not indictable. The defendant was convicted on an indictment for obtaining money by false pretences, the pretences charged being that certain spoons were of the best quality; that they were equal to Elkington's A. (meaning spoons made by Messrs. Elkington, and stamped by them with the letter A); that the foundations were of the best material; and that they had as much silver on them as Elkington's A. The representations were made to a pawnbroker for the purpose of obtaining, and the defendant did thereby obtain, advances of money on the spoons, which were, in fact, of inferior quality, and were of less value than the money advanced on them, and the pawnbroker stated that he was induced, by the defendant's misrepresentations alone to advance the money, and that, if he had known the real quality of the spoons, he would have advanced no money on them. The jury found the defendant guilty of fraudulently and falsely representing that the spoons had as much silver on them as Elkington's A, and that the foundations were of the best material &c., and that he thereby obtained the money. It was nevertheless held by a large majority of the Judges that the conviction could not be sustained —R. *v.* BRYAN, Dears and B 265, 26 L. J. (M C) 84. See also *R.* v. *Levine*, Cox. 374. The decision in *R.* v. *Bryan* is said by Erle, C J., to have been given "upon the sound principle, that indefinite praise upon a matter of indefinite opinion cannot be made the ground of an indictment for false pretences." *R.* v. *Goss*, 29 L J (M. C.) 90: and by Byles, J., to have been governed by the maxim, *Simplex commendatio non obligat.*— R. *v.* ARDLEY, L. R. 1. C. C. R. 306; 40 L. J. (M. C.) 88.

BUT a false representation respecting an alleged matter of definite fact knowingly made is a false pretence within the statute, and that, too, although the representation is merely as to the *quality* of goods sold or pledged. Therefore, where the defendant induced the prosecutor to purchase a chain from him by fraudulently representing that it was fifteen-carat gold, when, in fact, it was only of a quality a trifle better than six carats, knowing at the time that he was falsely representing the quality of the chain as fifteen-carat gold, it was held that the statement, that the chain was fifteen-carat gold, not being mere exaggerated praise, nor relating to a mere matter of opinion, but a statement as to a specific fact within the defendant's knowledge, was a sufficient false pretence to sustain an indictment for obtaining money by false pretences.—R. *v.* ARDLEY, L. R., 1 C. C. R. 301; 40 L. J. (M. C) 85.

AND where the defendants induced a purchaser to buy and pay for a cheese of a very inferior description by the wilfully false statement that a taster of a different and superior cheese produced as a sample had formed part of and been taken out of the cheese sold, it was held that he might be convicted of obtaining money by false pretences —R. *v.* GOSS, Bell, 208; 28 L. J. (M. C.) 90.

So, where the defendant sold spurious blacking as "Everett's Blacking," he was held to be indictable for the false pretence. —R. *v.* DUNDAS, 6 Cox. 380.

WHERE the defendant falsely represented to the prosecutrix that certain packages which he sold to her contained good tea, whereas, in fact, each package contained a mixture of which only one-fourth part was tea, the remaining three-fourths consisting of sand and other articles unfit for food or drink, and the jury found that the defendant knew the real nature of the contents of the packages, that it was not tea, but a mixture of articles unfit for drink, and that he designedly falsely pretended that it was good tea with intent to defraud, and the defendant was convicted, it was held that the conviction was right.—R. *v.* FOSTER, L. R., 2 Q. B. D. 301, 40 L. J. (M. C.) 128.

THE Assistant Judge of the Middlesex Sessions having directed a jury that the decisions of the Judges were to the effect that a mere representation of an article as gold, however small the portion of gold it contained, amounted only to an exaggeration of its quality, and would not support a criminal charge, Willes, J., said that he must except to this direction —R. *v.* SUTER, 10 Cox 577, 578.

THE defendant and two other persons entered into articles of partnership, by the terms of which the profits were to be divided equally among them. By a subsequent verbal arrangement the defendant was to act as agent for the sale of the partnership-goods, and was to receive a commission on all orders obtained by him, which commission was to be paid out of the partnership-funds before

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any division of profits was made. The defendant, by falsely pretending that he had obtained some orders, got his partners to pay him a sum for commission. It was held that he was not indictable for false pretences, his charges were payable out of the partnership-funds, and his false statement was a misrepresentation concerning a partnership matter, and would have to be investigated, and the sum paid duly considered, in taking the partnership-accounts, in order to ascertain the profits.—R. *v.* EVANS, L. and C. 252; 32 L. J. (M. C.) 38.

IT is not necessary that the pretence should be in word; the conduct and acts of the party will be sufficient, without any verbal representation —R. *v.* HUNTER; R. *v.* CARTER, 10 COX. 642, 648.

THUS, if a person obtain goods from another upon giving him in payment his cheque upon a banker, with whom, in fact, he has no account, this (although not indictable as a fraud at common law, *R. v. Lara*, 6 T. R. 565; see *R. v. Flint*, R. and R. 460) is a false pretence within the meaning of the Act. —R. *v.* JACKSON, 3 Camp. 370.

BUT, if the defendant, at the time he gives the cheque, believes, although he has no account at the bankers, that the cheque will be paid on presentation, he cannot be convicted of a false pretence.—R. *v.* WALNE, 11 Cox. 647 (C. C. R.).

THUS, where the defendant bought a mare and paid for her on Thursday by a cheque drawn on a banker with whom he had no account, but told the prosecutor not to present the cheque until Saturday, to which the prosecutor assented, but nevertheless did present it on Thursday, when it was dishonoured, and it appeared from the evidence that the defendant was on Thursday in daily expectation of having money paid to him which would have enabled him to place the banker in funds to meet the cheque on Saturday, this was held to be no false pretence. *Id.* But a man who makes and gives a cheque for the amount of goods purchased in a ready-money transaction makes a representation that the cheque is a good and valid order for the amount inserted in it; and if such person has only a colourable account at the bank on which the cheque is drawn without available assets to meet it, and has no authority to overdraw, and knows that the cheque will be dishonoured on presentation, and intends to defraud, he may be convicted of obtaining such goods by such false pretence.—R. *v.* HAZELTON, L. R., 2 C. C. R. 134; 44 L. J. (M. C.) 11.

WHERE the prisoner was charged with falsely pretending that a post-dated cheque, drawn by himself, was a good and genuine order for 25*l.*, and of the value of 25*l.*, whereby he obtained a watch and chain; and the jury found that, before the completion of the sale and delivery of the watch by the prosecutor to the prisoner, he represented to the prosecutor that he had an account with the bankers on whom the cheque was drawn, and that he had a right to draw the cheque though he postponed the date for his own convenience, all which was false; and that he represented that the cheque would be paid on or after the day of the date, but that he had no reasonable ground to believe that it would be paid, and that he had no funds to pay it; he was held to be properly convicted.—R. *v.* PARKER, 2 Mood. C. C. 1; 7 C and P. 825.

BUT when the indictment stated that the defendant falsely pretended to A B that he was a captain in the East India Company's service, and that a certain promissory note, which he then delivered to A B, was a valuable security for 21*l.*, by means of which false pretences he fraudulently obtained from A B 8*l.* 15*s*; whereas the defendant was not a captain, &c., and the note was not a valuable security, &c.; it was holden, on error, that, as it did not appear that the note was the defendant's own promissory note, or that he *knew* it to be worthless, there was no sufficient false pretence in that respect; and as the two pretences were to be taken together, that the indictment was bad.—R. *v.* WICKHAM, 10 A. and E. 34; 2 Per and D. 333; 8 L. J. (M C) 87. See also *R. v. Philpotts*, 1 C and K. 112.

WHERE the prisoner passed the note of a country bank which he knew had stopped payment, it appearing that one of the partners was solvent, Gaselee, J., held that he could not be convicted for obtaining money under false pretences.—R. *v.* SPENCER, 3 C. and P. 420.

IT would seem, however, that an indictment which charged that the defendant obtained money by falsely pretending that a certain piece of paper was a bank-note then current, and of the value for which it purported to be made, would be supported by evidence that it was the note of a bank which had stopped payment, and was no longer in existence, and that it had paid only a small dividend, and that these facts were known to the defendant.—R. *v.* EVANS, Bell 187; 29 L. J. (M. C.) 20. But, in that case, an allegation that the note was *of no value whatever* was held not to be supported by the above evidence.

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WHERE an indictment charged the defendant with obtaining money, by falsely pretending that a piece of paper was a bank-note then current, and of the full value of 5*l.*, and the evidence was that the piece of paper was the note of a bank which had stopped payment forty years before, and had not re-opened and that the defendant knew it, this evidence was held sufficient to justify a conviction, although it appeared from the cross-examination of a witness for the prosecution that the bank note had been made bankrupt, and the bankruptcy proceedings were not produced, and there was no evidence as to what dividend, if any, had been paid.—R *v.* DOWEY, 37 L. J. (M. C.) 52.

WHERE a man obtained goods and money for a forged note of hand for ten shillings and six pence, the Judges held it to be a false pretence within the Act.—R. *v.* FREETH, R. and R. 127.

IN another case, however, where the prisoner obtained goods by means of a forged order, Taunton, J., held that he could not be indicted for obtaining them by false pretences, but should have been indicted for forgery, *R.* v *Evans*, 5 C and P. 553, and the same was afterwards held by Parke, B., and Coltman, J., in *R* v. *Anderson*, 2 M. and Rob 471. But see now 14 and 15 Vict., c. 100, s. 12

AND when the cashier of a bank who had a general authority to conduct the business of the bank, and to part with its property on the presentation of a genuine order from a customer, was deceived by a forged order, and parted with the property of the bank to the person who presented the order, and who knew the order to be forged, it was held that the latter was guilty of obtaining by false pretences the money so paid on the order.—R. *v.* PRINCE, 38 L. J. (M C.) 8, L. R., 1 C. C. R. 150.

FRAUDULENTLY offering a "flash-note" in payment, under the pretence that it is a bank-note, is a false pretence within the Statute.—R. *v.* COULSON, 1 Den. 592; 19 L. J. (M. C.) 182.

A PERSON who fraudulently obtains goods by forwarding to the vendor the half of a bank-note, having previously parted with the corresponding half to a third person, is guilty of obtaining goods by false pretences as by forwarding the half-note he represents that he has the corresponding half ready for the vendor's satisfaction.—R *v.* MURPHY, 13 Cox. 298 (Irish C. C. R.).

WHERE a man assumed the name of another to whom money was required to be paid by a genuine instrument, this was holden to be a pretence within the meaning of the Act —R. *v.* STORY, R. and R. 81.

SO, where a person at Oxford, who was not a member of the University, went, for the purpose of fraud, wearing a commoner's gown and cap, and obtained goods, this was held a sufficient false pretence to satisfy the Statute, though nothing passed in words.—R. *v.* BARNARD, 7 C. and P. 784.

THE pretence (as may be collected from the authorities above quoted) must be of some *existing fact*, made for the purpose of inducing the prosecutor to part with his property. Therefore, a pretence that the party *would do* an act he did not mean to do as a pretence to pay for goods on delivery, is not a false pretence within the Act, but merely a promise for future conduct.—R. *v.* GOODHALL, R. and R 461.

SO, where the defendant obtained money from the prosecutor by the false pretence that he *was going* to pay his rent, whereas he had no intention of paying his rent, this was held to be no false pretence with the Statute.—R *v.* LEE, L and C 309; 9 Cox. 304.

SO, also, a false pretence that the defendant wanted the loan of 30*l.* to enable him to take a public house is not within the Statute —R. *v.* WOODMAN, 14 Cox. 179.

AND a pretence to a parish-officer, as an excuse for not working, that the party had not clothes, when he really has, though it induced the officer to give him clothes, is not a pretence within the Statute, the statement being rather a false excuse for not working than a false pretence to obtain goods.—R. *v.* WAKELING, R. and R. 504.

AN indictment for obtaining money from A under the false pretence that the defendant intended to marry A, and wanted the money to pay for a wedding suit he had bought, was held not sufficient to sustain a conviction.—R. *v.* JOHNSON, 2 Mood. C. C. 254.

AND when the false pretence averred in the indictment was, that the defendant having executed certain work, there was a certain sum due and owing to him on account of it whereas only a smaller sum was due to him, this was held bad as not sufficiently averring a false pretence of an existing fact, and being proveable by evidence of a mere wrongful overcharge.—R. *v.* OATES, Dears. 459; 24 L. J. (M. C.) 123.

WHERE an indictment alleged that the defendant falsely pretended to P, who lived

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at one T's, that the said P was to give the defendant 10s., and that T was going to allow him 10s. a week, it was held (Blackburn, J., and Pigott, B., *dub.*) that the indictment did not allege with sufficient certainty any false pretence respecting any existing fact.—R. *v.* HENSHAW, L. and C. 444; 33 L. J. (M. C.) 132.

BUT where the statement consists partly of a fraudulent misrepresentation of an existing fact and partly of an executory promise to do something *in futuro*—as, that the defendant kept a shop, and that the prosecutrix might go and live with her at the said shop until she obtained a situation; whereas the defendant kept no shop; and the jury find that the prosecutrix parts with her money or goods, relying wholly or in part upon the misrepresentation of fact; this is a sufficient false pretence within the Act.—R. *v.* FRY, Dears. and B. 449; 27 L. J. (M. C.) 68

So, where the false representation was that the defendant *had* brought certain skins, and *would* sell them to the prosecutor.—R. *v.* WEST, Dears. and B. 575; 27 L. J. (M. C.) 227.

AND when a married man induced a woman to give him money by representing himself to be unmarried, and by promising that with the money he would furnish a house and return and marry her, he was held indictable for obtaining money by false pretences.—R. *v.* JENNISON, L. and C. 157; 31 L. J. (M.C.) 146.

IT is also to be observed that a promise to do a thing *in futuro* may involve a false pretence that the promisor has the power to do that thing, for which false pretence the promisor may be indictable.—R. *v.* GILES, L. and C. 502; 34 L. J. (M. C.) 50.

AND where the false pretence charged was that the defendant said he had got a carriage and pair, and expected it down, either that day or the next, this was held to be proved by evidence of his having said that he expected his carriage and pair down.—R. *v.* HOWARTH, 11 Cox. 588 (C. C. R.).

WHERE money was obtained by the defendant by the false representation that W was about to publish a new directory, and that the defendant was collecting information for it, this was held to be a false pretence of an existing fact.—R. *v.* SPEED, 15 COX 24 (C. C. R.) Indeed, it may be laid down generally that, as it is not necessary that the statement of the existing facts should be in words, but may be conveyed by the conduct and acts of the party, so also, if made by words or writing, it is not necessary that such statement should be made expressly, if the statement may be naturally and reasonably, although not necessarily, inferred from such words or writing.—*R.* v. *Cooper*, L. R. 2 Q. B. D. 510; 46 L. J. (M. C.) 219. Thus, where C was convicted of obtaining potatoes from the prosecutor by falsely pretending that he was then in a large way of business, that he was in a position to do a good trade in potatoes, and that he was able to pay for large quantities of potatoes as and when the same might be delivered to him, and the evidence that C had so pretended was the following letter written by him to the prosecutor: "Send me one truck of regents and one truck of rocks, as samples, at your prices named in your letter, let them be good quality, then I am sure a good trade will be done for both of us. I will remit you cash on arrival of goods and invoice. I may say, if you use me well, I shall be a good customer" It was held, affirming the conviction, that the words of the letter were fairly and reasonably capable of a construction supporting the pretences charged, and that it was a question for the jury whether the writer intended the prosecutor to put that construction upon them.—*Id.*

A FALSE pretence actually made to A in B's hearing, whereby money is obtained from B, may be laid as made to B.—R. *v.* DENT, 1 C. and K. 249.

AND where the indictment alleged the false pretence to have been made to B and others, and it was proved that B was one of a firm, and that the false pretence was made to him alone, but with intent to defraud the firm, it was held sufficient, the words "and others" being rejected as surplusage.—R. *v.* KEALEY, 2 Den. 68; 20 L. J. (M. C.) 57. The jury may connect together representations made in several distinct conversations (supposing them to be in their nature connectible), and convict the defendant for obtaining money, &c., by means of false pretences made in those several conversations — R. *v.* WELLMAN, Dears 188; 22 L. J. (M C.) 118.

A FALSE pretence made through an innocent agent is the same as if made by the defendant himself, and may be so charged.—R. *v.* BUTCHER, Bell 6; 28 L. J (M. C.) 14.

K REPRESENTED to B that he had a quantity of good tabacco, and induced B to agree to buy some. P was with K at the time, and it was arranged that P was to deliver the tobacco to B, and that B was to pay P for K. P afterwards delivered to B two bales purporting to be tobacco as in pursuance of the contract, and received payment from B. The

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bales contained little else but rubbish; K and P were parties to the fraud. It was held on these facts that K was liable to be convicted on an indictment charging him with obtaining money from B by falsely pretending that he was possessed of a quantity of good tobacco.—R. *v.* KERRIGAN, L. and C 383; 33 L. J. (M. C) 71.

WHERE the indictment charged the defendant with falsely pretending to the prosecutor, whose mare and gelding had strayed, that he would tell him where they were, if he would give him a sovereign down; and the prosecutor gave the sovereign, but the defendant refused to tell, the conviction was held bad; the indictment should have stated that he pretended he *knew* where they were. —R. *v.* DOUGLAS, *1 Mood. C. C. 462*

AN indictment against A and B charged that C was possessed of a mare and A of a horse, and that A and B falsely pretended to C that B was then and there possessed of a certain sum of money, to wit, 12*l.*, and that, if C would exchange his mare for A's horse, B was willing and ready to purchase the horse of C, and give him 12*l.* for it; whereas, in truth and in fact, B was not then and there possessed of the said sum of 12*l.*, and was not then and there ready and willing to purchase the said horse of C, and to pay him the 12*l.*, and it was held bad on demurrer, for not averring that the defendant *knew* that B was not possessed of the 12*l.*—R. *v.* HENDERSON, 2 Mood. C. C. 192; C. and Mar. 328. But as the word "knowingly" is not in the Statute, an indictment which does not contain that word, but follows the words of the Statute, is sufficient after verdict—R *v.* BOWEN, 13 Q. B. 790, 19 L. J. (M. C.) 65. See *Hamilton* v. R., 9 Q. B. 271: 16 L. J. (M. C.) 9.

THE indictment also must negative the pretences by special averment as in the above precedent, and where such an averment was omitted it was holden to be an error, and the judgment was reversed.—R. *v.* PERROTT, 2 M. and Sel 379, 386.

WHERE the false pretence alleged was, that the defendant "*then* was a captain in Her Majesty's 5th Regiment," &c., the pretence was held to be well negatived by an averment that the defendant was not, "at the time of making such pretence," a captain, &c.—HAMILTON *v.* R., 9 Q. B. 271.

IT was also holden, in cases decided on former Statutes, that the indictment should state that the money, &c. obtained was the property of the person whom it was intended to defraud, since, otherwise, a conviction or acquittal on this indictment could not be pleaded in bar to a subsequent indictment for larceny in respect of the same transaction.—SILE *v.* R, Dears. 132; 1 E. and B. 533; 22 L. J. (M. C.) 41. But this allegation is expressly declared to be unnecessary by the present Statute, 24 and 25 Vict., c. 96, s. 88. It is not necessary to allege that the pretence was made *with the intent* of obtaining the money, &c.; it is sufficient to show that the pretence was made, that the money, &c., was obtained thereby with intent to defraud, and that the pretence was false to the knowledge of the defendant.—HAMILTON *v.* R., 9 Q. B. 271. It is still, however, necessary to allege in the indictment that the defendant obtained the money, &c, "with intent to defraud," and if those words be omitted, the indictment is bad, and cannot be amended under 14 and 15 Vict., c. 100, s. 1, by inserting them—R. *v.* JAMES, 12 Cox. 127. *per* Lush, J If it be a valuable security that was obtained, the indictment need not, it seems, show it to be still unsatisfied at all events, it is good after verdict without such averment.—*Id.* The offence is completed by the obtaining of the money, &c., and it is no defence where the indictment charges the obtaining of *money*, that the money has been obtained only by way of a loan, and that the defendant intends to repay it; *R.* v. *Crossley*, 2 M. and Rob. 17; because the property in money that is lent passes as much in a case of loan as on a sale, there being no expectation that the same money which is lent will be returned See the judgment of Crompton, J., in *R.* v. *Burgon*, Dears. and B. 11.

WHERE, however, a *chattel* is obtained by way of loan, the property in the chattel does not pass (see the judgment of Crompton, J., *supra*), and since to constitute an obtaining by false pretence it is equally essential, as in larceny, that there shall be an intention to deprive the owner wholly of his property, if it appears that the defendant has no such intention, but merely intended to obtain the use of the chattel for a limited time, he cannot be convicted of obtaining the chattel by false pretences—R. *v.* KILHAM, L. R., 1 C. C. R. 261; 39 L. J. (M. C.) 109.

AND, therefore, where the defendant, by false pretences, obtained from a livery stable-keeper a horse on hire, rode it himself during the time of hiring, and afterwards returned it to the stables, it was held that he could not be convicted of obtaining the horse by false pretence—*Id.* See *R.* v. *Boulton*, 1 Ben. 508; 2 C and K. 917, 919; L. J. (M. C.) 67.

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WE have seen that the offence is completed by the obtaining of the money; and, therefore, where it was transmitted in a letter, posted by the defendant's request in county A, but which reached him in county B, it was held that this was an obtaining of the money in county A, and that the venue was rightly laid there.—R. *v.* JONES, 1 Den. 551; 19 L. J. (M. C.) 162. See *R.* v. *Buttery*, cit. 4 B. and Ald. 179.

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**418.** Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates he was bound, either by law or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Not comp.

Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.

**419.** Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine or with both.

Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

Punishment for cheating by personation.

A WITNESS falsely deposing in another's name should be charged with giving false evidence under s. 193, and not with cheating by personation under ss. 415 and 419 of the Penal Code.—REG. *v.* PREMA BHIKA, 1 Bom. H. C. R. 89. [Forbes, Westropp, and Tucker, JJ. Nov. 5, 1863.]

THE prisoner, having passed himself off as a police officer, and cheated several villagers out of money, was held guilty of cheating and falsely personating a public servant.—QUEEN *v.* SADANUND DOSS *alias* SONA BISWAS, 2 W. R. 29. [Kemp, J. Jan. 30, 1865.]

A MAN, named Yesu, gave the accused four annas with which to purchase for him (Yesu) a stamp. When the stamp collector asked the accused for his name, he said "Yesu," instead of giving his own name. It was held that this was furnishing false information under s. 177, not cheating by personation under s. 419.—REG. *v.* RAGHOJI BIN KANOJI, 3 Bom. H. C. R. 42. [Couch, C.J., and Newton, J. Mar. 6, 1867.]

WHERE a person represented a girl to be the daughter of one woman when she was within his knowledge the daughter of another woman, *held* that he was guilty of cheating by personation under s. 416 of the Penal Code, and that it was unnecessary to bring in s. 109 relating to abetment.—QUEEN *v.* DHANPUT OJHAH, 7 W. R. 51. [Glover, J. April 5, 1867.]

WHERE two girls were bought by the prisoners on speculation, taken to a foreign and distant district, palmed off as women of much higher caste than they really were, and married to two Rajputs after receiving the usual bonus, *held* that the prisoners could not be convicted under s. 373 of the Penal Code, but of cheating and false personation under ss. 415 and 416.—QUEEN *v.* DABEE SINGH, 7 W. R. 55; 3 Wyman's Rev., Civ., and Crim. Rep. 32. [Kemp and Seton-Karr, JJ. April 8, 1867.]

WHERE A intended to register a deed, but was too ill to do so, and B, who was known to A, personated A, and had the deed registered in her name, it was held that, in the absence of anything to prove that it was intended to defraud anybody, A was not guilty of cheating by personation under s. 419 of the Penal Code but an offence under s. 93 of the Registration Act (XX. of 1866). C and D, who abetted A, were convicted of an offence under s. 94 of the said Act.—*In re* LOOTHY BEWA, 11 W. R. 24; 2 B. L. R. A. Cr. 25. [Norman and Jackson, JJ. Mar. 31, 1869.]

WHERE the accused represented to the prosecutor that a girl was a Brahmin, and thereby induced him to part with his money in consideration of the marriage of the girl to his brother, when the girl was really of the Sudra caste, it was held that he was guilty of cheating by false personation under s. 416.—QUEEN *v.* MOHIM CHUNDER SIL, 16 W. R. 42. [Ainslie, J. Sep. 2, 1871.]

WHERE the accused enlisted in the police, calling himself a Jat, got an appointment, and drew pay as a Government servant, whereas he was in reality an Ahir, a caste whose enlistment was prohibited, which fact was well known to the accused, *held* that the Magistrate rightly held that the offence of cheating by personation had not been com-

mitted. *Semble*, that the accused might have been convicted under s. 182.—EMPRESS *v.* BUDDHU, Panj. Rec., No. 24 of 1880.

A FALSELY represented himself to be B at a university examination, got a hall-ticket under B's name, and headed and signed answer-papers to questions with B's name. *Held* that A committed the offences of forgery and cheating by personation.—QUEEN-EMPRESS *v.* APPASAMI, I. L. R., 12 Mad. 151. [Collins, C.J., and Parker, J. Jan. 18, 1889.]

To constitute the offence of cheating under s. 415 of the Indian Penal Code, the damage or harm caused or likely to be caused to the person deceived in mind, body, reputation, or property, must be the necessary consequence of the act done by reason of the deceit practised, or must be necessarily likely to follow therefrom. Where, therefore, certain persons were charged under s. 419 of the Indian Penal Code, one with personating another person before a Registrar, and the others with abetting such personation, and causing the Registrar to register a divorce, under the provisions of Bengal Act I. of 1876, with the wife of the personated person, and where the lower Courts convicted the accused under that section, holding that, as such registrations were voluntary and a source of gain to the Registrar, harm was caused to the Registrar in mind and reputation by registering false divorces, as well as by losing his fees in the future through persons being less likely to avail themselves of his services, and that therefore an offence under the section had been committed. *Held* that the possibilities contemplated by the lower Courts were too remote; that the facts did not constitute an offence under the section, and that the conviction must therefore be set aside.—MOJEY *v.* QUEEN-EMPRESS, I. L. R., 17 Cal. 606. [Norris and Macpherson, JJ. Mar 18, 1890.]

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Bailable. Not comp.

Cheating and dishonestly inducing a delivery of property.

**420.** Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter, or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

A PERSON who purchased rice from a famine-relief officer at a certain rate (16 seers to the rupee), on condition that he should sell it at a seer the rupee less, was convicted of cheating under s 420 of the Penal Code, because he did not sell it at the rate agreed on, but at 12 seers to the rupee. *Held* that, as within the meaning of ss. 23 and 24 of the Penal Code there had been no wrongful gain or wrongful loss to any one, no offence had been committed under s. 415 of the Penal Code. —QUEEN *v.* LAL MAHOMED, 22 W. R. 82. [Couch, C.J., and Ainslie, J. Sep. 15, 1874.]

A CONTRACTOR in the Public Works Department, who was charged with cheating in respect of a sum of money which he received on account for work which it was alleged he had not then finished, was acquitted on the evidence, because it was not proved (1) that there was a false pretence made use of by accused; (2) that he knew he was making use of a false pretence, or that he intended to defraud; (3) that the Public Works Department were deceived by the pretence on account of their belief in its truth, and (4) that the accused received the money with the intention of causing wrongful loss to the Government.—QUEEN *v.* KALIPUDDO PORAMANICK, 23 W. R. 43. [Kemp and Birch, JJ. Mar. 2, 1875.

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## *Of Fraudulent Deeds and Dispositions of Property.*

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Not comp.

Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.

**421.** Whoever dishonestly or fraudulently removes, conceals, or delivers to any person, or transfers, or causes to be transferred, to any person without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**422.** Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Pres. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Not comp.

**Dishonestly or fraudulently preventing debt being available for creditors.**

WHERE A entered into an agreement with B not to compromise a case with C, because he had assigned the benefit of the suit to B as a security for the due payment of some monthly instalments of money, and A, notwithstanding, did afterwards compromise the suit with C, it was held that A could not be convicted under s. 422 of the Penal Code, unless the compromise with C was made dishonestly or fraudulently towards B.—IN THE MATTER OF NOBIN CHUNDER MUDDUCK, 22 W. R. 46. [Phear and Morris, JJ. July 29, 1874.]

THE petitioners mortgaged their property and under the terms of the agreement certain persons were appointed managers of the estate under certain conditions in regard to payment of the moneys realized by them. In execution of a decree obtained by the managers in a suit brought in the names of the petitioners a certain *putni taluk* was sold for Rs. 3,000. The debtor settled with the petitioners that, on payment of Rs. 1,000, the sale was to be set aside. The money was paid into Court, and an application was made by the petitioners for the withdrawal of this money. The Court, however, made no order on this application. The petitioners were convicted of an attempt to commit an offence under s. 422 of the Penal Code. *Held* that, having regard to the relation between the petitioners and their managers at whose instance the proceedings were taken, it could not properly be said that an attempt to commit an offence under s. 422 of the Penal Code was made. That the interference of the petitioners and their application to obtain the money paid into Court might have been breaches of their contract with the mortgagees, but such conduct could not necessarily be regarded as dishonest or fraudulent so as to render them liable to punishment. Their attempt to get this money was more to put an end to the management than to prevent the money from being available for payment of their debt under the mortgage. *Nobin Chunder Mudduck* (22 W. R., Cr. 46) referred to.—HARA KUMARY CHOWDHURANI v. R. SAVI, I. L. R., 28 Cal. 314. [Prinsep and Handley, JJ. July 5, 1900.]

**423.** Whoever dishonestly or fraudulently signs, executes, or becomes a party to, any deed or instrument which purports to transfer or subject to any charge any property or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ditto.

**Dishonest or fraudulent execution of deed of transfer containing a false statement of consideration.**

**424.** Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ditto.

**Dishonest or fraudulent removal or concealment of property.**

WHERE a Deputy Magistrate, considering that the attachment of a carriage in execution of a decree of a Civil Court was illegal, because it was placed in the custody of the judgment-debtor's husband, and that the husband, had acted fraudulently in recovering and concealing the wheels and axles of the carriage on its subsequent distraint for arrears of municipal tax, convicted him of an offence under s. 424 of the Penal Code, the conviction was set aside. A Deputy Magistrate has no authority to order arrears of municipal tax due by a person to be paid out of a fine levied on him.—QUEEN v. BROJA KISORE DUTT, 8 W. R. 17. [Jackson and Hobhouse, JJ. June 17, 1867.]

To sustain a charge of concealment of property under s. 424, there must be evidence of the persons intended to be defrauded by such

concealment.—QUEEN *v.* RAM DWAYA, Panj. Rec., No 16 of 1868.

THE offence which s. 424 of the Penal Code contemplates is such a concealment or removal of property from the place where the property is deposited as can be considered fraudulent, whether the fraud is intended to be practised on creditors or partners. *Case of Kiamuddin* v. *Allah Buksh* (15 W. R. 51) distinguished.—IN THE MATTER OF GOUR BENODE DUTT, 21 W. R. 10; 13 B. L. R. 308n. [Markby and Birch, JJ. Dec. 4, 1873.]

IN matters relating to the grant of sanction to prosecute under s. 195 of the Criminal Procedure Code (Act X. of 1882), a Court is regarded as "subordinate" to another Court where the latter is the Court to which an appeal from the former *ordinarily* lies, and an application for such sanction must be made to such superior Court, even in those particular cases in which an appeal lies to some other Court, *e.g.*, to the High Court. A decree-holder applied to the First-class Subordinate Judge for sanction to prosecute his judgment-debtor, under ss. 206 and 424 of the Penal Code, for fraudulent concealment of certain moveable property, worth about Rs. 10,000 awarded by the decree. This application was rejected by the Subordinate Judge The District Judge declined to interfere, on the ground that, the decree being appealable to the High Court, the High Court alone could deal with the application under s. 195 of the Criminal Procedure Code. *Held* that, though the decree in the present instance was appealable to the High Court, still, as appeals from the Court of the First-class Subordinate Judge ordinarily lay to the District Court, the former was *subordinate* to the latter Court within the meaning of s. 195 of the Criminal Procedure Code.—*In re* ANANT RAMCHANDRA LOTLIKAR, I. L. R., 11 Bom. 438. [West and Birdwood, JJ. Nov. 16, 1886.]

A JUDGMENT-DEBTOR, whose standing crops were attached, harvested them while the attachment was in force, and was convicted of theft. *Held* that the accused was not guilty of theft, but of the offence of dishonestly removing the property under Penal Code, s 424 *Per* Benson, J.—The offence was also criminal misappropriation within the meaning of Penal Code, s. 403.—QUEEN-EMPRESS *v.* OBAYA, I. L. R., 22 Mad. 151. [Davies and Benson, JJ. Sep. 13, 1898.]

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*Of Mischief.**

**425.** Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public, or to any person, causes the destruction of any property, or any such change in any property, or in the situation thereof, as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief."

**Mischief.**

*Explanation 1.*—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property whether it belongs to that person or not.

*Explanation 2.*—Mischief may be committed by an act effecting property belonging to the person who commits the act, or to that person and others jointly.

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* All persons are bound to give information of offences punishable under s. 435 or 436.—See the new Code of Criminal Procedure (Act V. of 1898), s. 44.

Offences punishable under ss. 426 and 427 are, in certain cases, compoundable.—See *ibid*, s. 345. As to stage of proceedings at which no composition is allowable without the leave of the Court, see *ibid*, sub-s. (5).

As to whipping in the Punjab Frontier Districts and Baluchistan for offences punishable under ss. 427 to 429, 435, and 436, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 8; in Upper Burma for offences punishable under ss. 435, 436, and 449, see the Upper Burma Laws Act (XIII. of 1898), s. 4 (3) (*b*) and Sch. II.

As to punishment for offences under ss 427, 429, 435, and 436, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

*Illustrations.*

(*a*.) A voluntarily burns a valuable security belonging to Z, intending to cause wrongful loss to Z. A has committed mischief.

(*b*.) A introduces water into an ice-house belonging to Z, and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(*c*.) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(*d*) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z, A has committed mischief.

(*e*.) A, having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the under-writers. A has committed mischief.

(*f*.) A causes a ship to be cast away, intending thereby to cause damage to Z, who has lent money on bottomry on the ship. A has committed mischief.

(*g*.) A, having joint-property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(*h*.) A causes cattle to enter upon a field belonging to Z, intending to cause, and knowing that he is likely to cause, damage to Z's crop. A has committed mischief.

A, a joint-owner of a parcel of land, erected on it an edifice without the consent and against the will of B, another joint-owner. A dispute having arisen in consequence, the Magistrate held an inquiry, and made an order under s. 530 of the Criminal Procedure Code, awarding to A exclusive possession of the part of the land on which the edifice had been erected. *Held per* Jackson, J., that such order was erroneous, as the matter was not one to which s. 530 could apply. B subsequently brought a suit in the Civil Court to establish his title to joint possession of the whole parcel, and for a declaration that A was not entitled to erect any edifice thereon, and he further prayed that such edifice should be removed. B obtained a decree, whereupon his servants went on the land, and pulled it down. They were charged before the Deputy Magistrate with having committed mischief, and on this convicted and fined. *Held per* Jackson, J., that, as there had been no causing of wrongful loss, the accused had not been guilty of mischief. On the 8th October, the accused, who were the servants of B, found that the men in the employ of A were again putting up this erection, a nawbut-khana, and accordingly protested against its erection, pulled down the bamboos, and thrust aside the servants of A, throwing to the ground one man who was clinging to the bamboos. On the 9th October 1877, these servants were charged before the Magistrate with rioting, and, being called upon for their defence, named several witnesses, and summonses on the following morning were issued for their appearance; but they were not found. The accused then applied for further time for the appearance of the witnesses. This the Magistrate refused to grant, and convicted the accused on 12th October 1877. *Held per* Jackson, J., that, this being a warrant case, it was the duty of the Magistrate to summon the witnesses that might be offered by the accused, and that he might, at his discretion, have adjourned the case. *Held*, further, *per* Jackson, J., that the meaning of s. 359 of the Criminal Procedure Code is, that, if, among the persons named by the accused as witnesses, the Magistrate considers that any witness is included for the purpose of vexation and delay, he is to exercise his judgment, and enquire whether such witness is material, but that the section is not intended to enable the Magistrate to inquire into what the defence of the accused person is to be, and to consider whether, on learning the nature of the defence, he is absolutely to abstain from summoning the whole of the witnesses cited by the accused; and further that, in the present case, there was not any purpose of vexation or delay, and that, by the refusal to grant further time, the accused had been probably prejudiced in their defence. *Held*, further, *per* Jackson, J., that, as the accused were not on the land in question as members of an unlawful assembly, nor for any unlawful purpose, the conviction, as well as the procedure, was illegal. *Held per* Cunningham, J., that the accused were merely exercising the remedy of abating a private nuisance, and were exercising a legal right of self-defence. *Held*, further, *per* Cunningham, J., that the acts of the complainants in erecting the nawbat-khana amounted to mischief, and came within the purview of s. 425 of the Penal Code. *Held*, further, *per* Ainslie and McDonell, JJ., that the High Court, in the

exercise of its powers of extraordinary jurisdiction, cannot, in criminal matters, interfere, unless all other remedies provided by law have been previously exhausted. Therefore, where parties who had been convicted of riot by a Magistrate, and who, having a right of appeal to the Sessions Court, instead of doing so, moved the High Court under cl. 15 of the Charter, the Court would not interfere until that remedy had been resorted to. —DENONATH GHATTACK *v.* RAJCOOMAR SINGH, I. L. R., 3 Cal. 573. [Jackson and Cunningham, JJ. Mar. 25, 27, 1878.]

THE word "object" in s. 295 of the Penal Code does not include animate objects. A bull dedicated and set at large at the *sradha* of a Hindu in accordance with religious usage is not an "object" within the meaning of that section. Where such an animal was killed by certain Mahomedans secretly and at night in the presence of none but Mahomedans for the sake of the meat and value of the skin, *held* that no offence had been committed under s 295. *Queen-Empress* v. *Imam Ali* (I. L. R., 10 All. 150) followed. *Held*, further, that such a bull is not "moveable property" within the meaning of ss. 378 and 403, or "property" within the meaning of s. 425 of the Penal Code, and could not therefore be the subject of theft, criminal misappropriation, or mischief. The fact that such a bull receives some attention from the cowherd of the persons who set it at liberty, and is daily fed by him by direction of his employers, and is not used for breeding purposes without their permission being asked, is not inconsistent with a total surrender by those who set it at liberty of all their rights as proprietors. *Queen-Empress* v. *Bandhu* (I. L. R., 8 All. 51) followed. *Queen-Empress* v. *Nalla* (I. L. R., 11 Mad. 145) referred to and commented on. For the purpose of construing a section of an Act and ascertaining the intention of the Legislature, the Report of the Indian Law Commissioners or a Select Committee appointed to consider a Bill may be referred to. *Queen-Empress* v. *Kartick Chunder Das* (I. L. R., 14 Cal. 721) followed.—ROMESH CHUNDER SANNYAL *v.* HIRU MONDAL, I. L. R., 17 Cal. 852. [Norris and Macpherson, JJ. Mar. 27 & April 15, 1890.]

Any Mag. Uncog. Summons. Bailable. Comp. when the only loss or damage caused is loss or damage to a private person.

**426.** Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Punishment for mischief.

A DOUBLE sentence for theft and mischief is illegal and improper.—BICHUK AHEER *v.* AUHUCK BHOONEA, 6 W. R. 5. [Jackson and Campbell, JJ. June 18, 1866.]

THE prisoners had cleared a piece of Government land, cutting down without permission and appropriating the trees thereon, and were convicted of theft under s. 379 and of mischief under s. 425, and sentenced, the first prisoner to one month's imprisonment and a fine of Rs. 40, and the second prisoner to pay a fine of Rs. 10. *Held* that the convictions and sentences were not illegal, as the mischief preceded the theft, which could not have been committed till the trees were severed from the ground. — REG. *v.* NARAYAN KRISHNA, 2 Bom. H. C. R. 392. [Couch, C.J., and Newton, J. June 27, 1866.]

WHERE a person levelled, filled up, and cultivated a watercourse over his own lands which conveyed water to the land of the prosecutor, it was held that this act was mischief within the meaning of s. 425, if the defendant knew that the prosecutor was entitled to the water, and that, by this act, his right would be obstructed. The authority vested in the Criminal Court of punishing persons for acts of mischief is one which must be exercised with great caution, and it must be very clear before conviction that the accused has brought himself within the meaning of s. 425.—IN THE MATTER of RAM GOLAM SINGH, 6 W. R. 59. Wyman's Rev., Civ., and Crim. Rep. 47. [Loch and Jackson, JJ. Aug. 27, 1866.]

STEALING property, and then destroying it, are but one offence, *viz.*, theft—not two, theft and mischief; but the fact that the offender has rendered the property irrecoverable should be considered in awarding punishment.—CROWN *v.* HAMIRA, Panj. Rec., No. 37 of 1866.

A COURT copyist obtained the file of a case from the record-officer by pretending that a copy of the decree was required. He afterwards returned the file having abstracted and destroyed a receipt given by the decree-holder for the money paid by the defendant in satisfaction of a decree. *Held* that he was guilty of mischief.—CROWN *v.* TAHUL RAM, Panj. Rec., No. 112 of 1866.

S. 425 of the Penal Code supposes that the destruction was caused with the intention to cause wrongful loss or damage, and does not apply to cases of mere carelessness; and s. 17, Act III. of 1857, supposes the mischief (cattle-trespass) was done intentionally, and not by negligence.—*In re* ARAZ SIRKAR, 10 W. R. 29. [Loch and Glover, JJ. Aug. 21, 1868.]

To constitute the offence of mischief according to the Penal Code, the act done must be shown to have caused destruction of some property, or such a change in the property or the situation of it as destroys or diminishes its value or utility, or affects it injuriously. The probable consequential damage to other property would not of itself constitute mischief.—PRO., Oct. 22, 1868, 4 Mad. H. C. R., Ap. 15.

A RIGHT of fishery was in dispute between the zamindar of Bali and the zamindar of Maharajpur. The former obtained a decree declaring the fishery to be his, in proceedings in which the latter was not a party Thereupon, the servants of the zamindar of Bali removed a bamboo-bar which the Maharajpur people had erected to prevent the passage of fish. For this removal the Bali people were convicted of mischief, and fined. On a reference to the High Court, it was held that the conviction could not stand, as the Maharajpur zamindar had not shown that he was legally entitled to the fishery in dispute, and it did not appear that the defendants were acting otherwise than under a *bond-fide* belief that the Maharajpur people were encroaching on their master's rights. In so removing a bar which interfered with those rights, it could not be said that they acted with intent to cause, or knowing it to be likely that they would cause, wrongful loss to the opposing party.—QUEEN *v.* DENOO BUNDHOO BISWAS, 12 W. R. 1; 3 B. L. R., A. Cr. 17. Norman and Jackson, JJ. June 1, 1869.

THE defendants were convicted of mischief under s. 427 of the Penal Code for grazing their cattle upon waste lands without payment of certain capitation-fees to which the prosecutor was entitled. *Held* that there was no evidence that the defendants caused mischief.—PRO., July 22, 1870, 5 Mad. H. C. R Ap. 20.

To render a person liable under s. 425 of the Penal Code for mischief in consequence of damage done by cattle-trespass, he must in some way have caused the cattle to enter the prosecutor's fields, knowing that by so doing he is likely to cause damage. Mere neglect to keep the cattle from straying is not sufficient.—FORBES (MAJOR) *v.* GRISH CHUNDER BHUTTACHARJEE, 14 W. R. 31; 6 B. L. R. Ap. 3. [Couch, C.J., and Jackson, J. Aug. 12, 1870.]

THE accused were convicted of mischief. The facts were that, whilst the accused were employed in floating timber through a bridge, some of the logs struck against the arch of the bridge. *Held* that the conviction was bad. — PRO., Nov. 4, 1870, 5 Mad. H. C. R. Ap. 40.

THE mere fact of allowing cattle to stray, whereby damage is caused to the complainant, affords no evidence to support a conviction on the charge of mischief.—PRO., Nov. 10, 1871, 6 Mad. H. C. R. Ap. 36.

WITHOUT evidence that the accused intended, or knew that he was likely to cause wrongful loss or damage to the complainant, the offence of mischief under s. 425 of the Penal Code was held not made out.—KASHI NATH GHOSE *v.* DINOBUNDHOO MYTEE, 16 W. R. 62. [Kemp and Jackson, JJ. Dec. 2, 1871.]

A CONVICTION for mischief was quashed in a case where it appeared that the complainant had formerly destroyed crop belonging to the accused, and the latter, instead of complaining at once, merely bided his time, and then took the complainant's crop.—MAHOMED FOYAZ *v.* KHAN MAHOMED, 18 W R. 10. [Kemp and Glover, JJ. June 7, 1872.]

IN a case in which the accused was charged with having cut and carried away bamboos, the right to which was disputed, it was held that he could not be convicted of mischief under s 427 of the Penal Code.—SHAKUR MAHOMED *v.* CHUNDER MOHUN SHAH, 21 W. R. 38. [Kemp and Glover, JJ. Jan. 28, 1874.]

DEFENDANTS were convicted of committing mischief under the following circumstances. During certain seasons of the year they received water through a certain sluice for the irrigation of their lands. At another season the sluice was closed, and the water allowed to flow to the lands of other cultivators The arrangement was prescribed by the Revenue Authorities, and the defendants violated it by opening their sluice during the seasons prescribed for the irrigation of the lands of the other cultivators *Held* by the High Court that the conviction could not be sustained; that there had been no destruction of property, or diminution in the value or utility of property by defendants, within the definition in s. 425 of the Penal Code.—PRO., Nov. 12, 1874, 7 Mad. H. C. R. Ap. 39.

A PERSON commits mischief if he cuts trees on land which he claims, but of which possession after an execution-sale has been legally made over to another person, without any objection or formal intervention on his part. —SONAI SARDAR *v.* BHUKTAR SARDAR, 25 W. R. 46. [Kemp and Glover, JJ. May 12, 1876.]

WHERE an accused person had, at the instance of the Magistrate who had come across him while out walking one morning, been placed on his defence for mischief, and

summarily tried and sentenced to two months' rigorous imprisonment; and the Magistrate had, by a letter to the Registrar of the High Court, furnished the explanation that the accused had, while extending a garden, and laying the foundation of a house, encroached on the inner slope of a river embankment, and thereby endangered the safety of the whole station, *held*, firstly, that, in order to justify a conviction for the offence of mischief, it must appear that the accused person had done a particular act with intent to cause, or knowing it to be likely to cause, wrongful loss; and that, as the house and garden on which the accused was engaged would be the first to be swept away in the event of the dreaded breach in the bund and consequent irruption of the river, such guilty knowledge or intent could not reasonably be inferred on his part; and, secondly, that in a case of this kind, where Government had been made prosecutor, but no complaint had been offered to the Magistrate, who had acted on his own impulse, the Magistrate had erred seriously in dealing with the case summarily, and sentencing off the accused to imprisonment.—IN THE MATTER OF PRAN NATH SHAHA AND ROMANATH BANERJEE, 25 W. R. 69. [Jackson and McDonell, JJ. June 6, 1876.]

THE accused, A, C, and another, members of the Municipal Committee of Jalapur, permitted a tree within municipal limits to be cut for a public purpose against the order of the Municipal Committee as a body. *Held* that accused had not committed the offence of mischief as defined in s. 425.—AMIR CHAND v. CROWN, Panj. Rec., No. 9 of 1878.

IF a person enters on land in the possession of another in the exercise of a *bond-fide* claim of right, and without any intention to intimidate, insult, or annoy such other person, or to commit an offence, when, though he may have no right to the land, he cannot be convicted of criminal trespass. So also, if a person deals injuriously with property in the *bond-fide* belief that it is his own, he cannot be convicted of mischief. The mere assertion, however, in such cases of a claim of right is not in itself a sufficient answer to charges of criminal trespass and mischief. It is the duty of the Criminal Court to determine what was the intention of the alleged offender; and, if it arrives at the conclusion that he was not acting in the exercise of a *bond-fide* claim of right, then it cannot refuse to convict the offender assuming that the other facts are established which constitute the offence. Where a person committed a trespass with the intention of committing mischief, thereby committing criminal trespass, and at the same time committed mischief, *held* that such person could not, under cl. 3 of s. 454 of Act X. of 1872 receive a punishment more severe than might have been awarded for either of such offences. The provisions of that law do not, in such a case, prohibit the Court from passing sentence in respect of each offence established. —EMPRESS *v.* BUDH SINGH, I L. R., 2 All. 101 [Turner, J. Jan. 24, 1879.]

THE destruction of a document evidencing an agreement void for immorality may constitute the offence of mischief within the the meaning of s. 426 of the Penal Code.—REG. *v.* VYAPURI, I. L. R., 5 Mad. 401. [Kernan and Muttusami Ayyar, JJ. July 11, 1882.]

THE owner of an animal who buries it after its death is not guilty of mischief or any other offence, although he does so with the express object of preventing the Mahars of the village from taking its skin according to the custom of the country.—QUEEN-EMPRESS *v.* GOBINDA PUNJA, I. L. R., 8 Bom. 295. [West and Nanabhai Haridas, JJ. Jan. 31, 1884.]

WHERE complainant had, for the purpose of removal, placed certain goods upon a cart, and accused came and unyoked the bullocks, and turned the goods off the cart on to the road, and complainant thereupon went away at once, leaving them there, *held* that, under these circumstances, a conviction under s. 341 of the Penal Code could not be sustained, but that there was such "mischief" as to bring the offence within s. 425. *Held* also that s. 425 does not necessarily contemplate damage of a destructive character. It *requires merely* that there should be an invasion of right and diminution of the value of one's property, caused by that invasion of right, which must have been contemplated by the doer of it when he did it.—*In re* JUGGESHWAR DASS. JUGGESHWAR DASS *v.* KOYLASH CHUNDER CHATTERJEE, I. L. R., 12 Cal 55. [Garth, C J., and Prinsep, Wilson, Field, and O'Kinealy, JJ. Sep. 4, 1885.]

THE damage contemplated in s. 425 of the Penal Code need not necessarily consist in the infringement of an existing, present, and complete right, but it may be caused by an act done *now* with the intention of defeating and rendering infructuous a right *about to come into existence*. Any person who contracts to purchase property, and pays in a portion of the purchase-money, has such an interest in that property, although his title may not be complete, or his right final and conclusive, that the destruction of such property may cause to him wrongful loss or damage within the meaning of s. 425.—

DHARMA DAS GHOSE v. NUSSERUDIN, I. L. R., 12 Cal. 660. [Wilson and Porter, JJ. April 14, 1886.]

FISH in a public river cannot be said to be property in the possession of the person who may have the fishery right, and the infringement of the right is not *theft* under s. 378 of the Penal Code. The accused were charged with unlawfully taking fish along with some eleven others in a public river, the right of fishing in which had been let out by the Government to the complainant, and the lower Court, among other offences, convicted them of theft, criminal misappropriation, mischief, criminal trespass, and unlawful assembly. *Held* that the conviction was wrong, and that no offence had been committed.—BHAGIRAM DOME v. ABAR DOME, I. L. R., 15 Cal. 388. [Norris and Ghose, JJ. Jan. 24, 1888.]

AN accused person was convicted under s. 457 of the Penal Code of house-breaking by night in order to commit an offence (mischief and assault), and also under ss. 426 and 352 for the offences of mischief and assault, and punished separately for each offence These offences formed parts of one transaction. *Held* that the sentences were legal.—QUEEN-EMPRESS v. NIRICHAN, I. L. R., 12 Mad 36. [Kernan and Muttusami Ayyar, JJ. April 17. 1888.]

P M was convicted by a Magistrate under s 426 of the Penal Code on a charge of mischief by tearing up a promissory note for Rs. 20. *Held* that the offence charged fell under s. 477 of the Penal Code, and was therefore triable by a Sessions Court only.—*In re* MADURAI, I. L R., 12 Mad. 54 [Wilkinson and Shephard, JJ. Sep. 11, 1888.]

THE words "any person in possession" in s. 441 of the Penal Code do not mean only "a complainant in possession." Certain persons were prosecuted under ss. 426 and 447 of the Penal Code (Act XLV. of 1860) for committing mischief and criminal trespass by entering upon a certain field which was in the possession of the complainant's tenants, and destroying the seed sown therein. The defence raised was an *alibi*; it was also contended on behalf of the accused that the field belonged to one of them, and that the complainant had no title whatever to it. The Magistrate, who tried the case, declined to go into the question of title; he found that the complainant's tenants were in possession of the field; and, disbelieving the evidence of *alibi*, he convicted the accused, and sentenced them to fine. On application in revision to the High Court it was urged (*inter alia*) that the complainant, not being the person in possession, could not legally institute the criminal proceedings, and that, therefore, the conviction was bad. *Held* that, looking to the nature of the false defence set up by the accused, this was not a case for interference in revision, as to do so would encourage perjury. *Held* also that the words "any person in possession" in s. 441 of the Penal Code do not mean only "a complainant in possession," there being no authority for taking the offences of mischief and criminal trespass out of the general rule which allows any person to complain of a criminal act. *Reference in the case of Kalinauth Nag Chowdhry* (9 Cal. W. R. Cr. R. 1), *Chandi Pershad* v. *Evans* (1 L. R., 22 Cal. 123), *Iswar* v. *Sital* (8 B. L. R. App. 62), and *In re Ganesh Sathe* (1. L. R., 13 Bom. 600), referred to.—IMPERATRIX v KESHAVLAL, I. L. R., 21 Bom. 536. [Jardine and Ranade, JJ. Jan. 20, 1896.]

CERTAIN Hindus, present at a caste dinner, had sat down to partake of the food which had been served to them, when certain other members of the caste came, and, after telling those who were seated to move to another place, which they refused to do, threw down a shoe amongst the men who were seated. The persons who threw the shoe were convicted of mischief, on the ground as their action had polluted the food, and had, from a Hindu religious point of view, rendered it unfit to be eaten. On reference by the Sessions Judge it was held that this conviction was wrong; neither could the accused be convicted under s. 298 or under s. 504 of the Indian Penal Code on the facts found.—KING-EMPEROR v. MOTI LAL, I. L. R., 24 All. 155. [Blair, J. Nov. 15, 1901.]

**427.** Whoever, commits mischief, and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Pres. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Comp when the only loss or damage caused is loss or damage to a private person.

**Mischief, causing damage to the amount of fifty rupees.**

HOUSE-TRESPASS and mischief not being separate offences, but being included in the graver offence of being members of an unlawful assembly armed with deadly weapons, no separate convictions and sentences were deemed to be requisite.—QUEEN v. SURROOP NAPIT, 3 W. R. 54 [Kemp and Seton-Karr, JJ. July 15, 1865.]

THE defendants were convicted of mischief under s. 427 of the Penal Code for grazing their cattle upon waste lands without payment

of certain capitation-fees to which the prosecutor was entitled. *Held* that there was no evidence that the defendants caused mischief.—PRO., July 22, 1870, 5 Mad. H. C. R. Ap. 29.

THE mere fact of allowing cattle to stray, whereby damage is caused to the complainant, affords no evidence to support a conviction on the charge of mischief.—PRO., Nov. 10, 1871; 6 Mad. H. C. R. Ap. 36.

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

**428.** Whoever commits mischief by killing, poisoning, maiming, or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Mischief by killing or maiming animal of the value of ten rupees.

Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

**429.** Whoever commits mischief by killing, poisoning, maiming, or rendering useless any elephant, camel, horse, mule, buffalo, bull, cow, or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by killing or maiming cattle, &c., of any value, or any animal of the value of fifty rupees.

SEPARATE convictions and sentences under ss. 429 and 379, and under ss. 457 and 380 of the Penal Code, were set aside, and the convictions under s. 429, in the former case, and under s. 457 in the latter, allowed to stand. — QUEEN *v.* SAHRAE, 8 W. R. 31 [Jackson and Hobhouse, JJ. July 1, 1867.]

A BULL dedicated to an idol, and allowed to roam at large, is not *fera bestii*, and therefore *res nullius*, but *primâ facie*, the trustee of the temple, where the idol is worshipped, has the rights and liabilities attaching to its ownership.—QUEEN-EMPRESS *v.* NALLA, I L. R., 11 Mad. 145. [Muttusami Ayyar and Brandt, JJ. Sep. 13, 1887.]

THE words "bull" and "cow," in s. 429 of the Penal Code, include the young of those animals. The section specifies the more valuable of the domestic animals, without any regard to age, but in respect of other kinds of the animals not so specified, the section would not apply, unless the particular animal in question was shown to be of the value of fifty rupees or upwards.—HARI MANDLE *v.* JAFAR, I L. R., 22 Cal. 457. [Norris and Beverley, JJ. Feb 14, 1895.]

Ditto.

**430.** Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings, or for animals which are property, or for cleanliness, or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by injury to works of irrigation, or by wrongfully diverting water.

HELD by the majority of a Full Bench (Innes, J., dissenting) that it is not part of the definition of the offence of causing a diminution of water-supply for agricultural purposes that the act of the accused should be a mere wanton act of waste It is sufficient that the act is done without any show of right.—RAMAKRISHNA CHETTI *v.* PALANYANDI KUDAMBAR, I. L. R., 1 Mad 262. [Morgan, C.J., and Holloway, Innes, Kernan, and Kindersley, JJ. Nov. 24, 1876.] Followed in *Queen-Empress* v. *Jaggannath Bhikaji Bhave*, I. L. R., 10 Bom. 183, *infra*.

WHERE, upon the evidence, it appeared that the complainant was the exclusive owner of a water-course, and that the accused had no sort of right to assert any claim to it, the causing of a diminution of the supply of water by the accused, even though in the assertion of a right, was held to be only an additional wrong, and to constitute mischief within the meaning of s. 430 of the Penal Code. *Ram Krishna Chetti* v. *Palanyandi Kudambar* (I. L. R., 1 Mad. 262) followed.—QUEEN-EMPRESS *v.* JAGGANNATH BHIKAJI BHAVE, I. L. R., 10 Bom. 183. [Birdwood and Wedderburn, JJ. Oct. 29, 1885.]

**431.** Whoever commits mischief by doing any act which renders, or which he knows to be likely to render, any public road, bridge, navigable river, or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by injury to public road, bridge, river, or channel.

Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

**432.** Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by causing inundation or obstruction to public drainage attended with damage.

Ditto.

**433.** Whoever commits mischief by destroying or moving any light-house or other light used as a sea mark, or any sea-mark, or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy, or other such thing as aforesaid, less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine or with both.

Mischief by destroying, moving, or rendering less useful, a light-house or sea-mark.

Ct. of Ses. Cognizable. Warrant. Bailable. Not comp.

**434.** Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Mischief by destroying or moving, &c., a land-mark fixed by public authority.

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Not comp.

**435.** Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards, "or (where the property is agricultural produce) ten rupees or upwards,"* shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees.

Ct. of Ses. Cognizable. Warrant. Bailable. Not comp.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 435 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention. —CRIM. PRO. CODE (Act V. of 1898), s. 44.

**436.** Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship, or as a human dwelling, or as a place for the custody of property, shall be punished

Mischief by fire or explosive substance with intent to destroy house, &c.

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

* In s. 435 the words quoted have been inserted by the Indian Penal Code Amendment Act (VIII. of 1882), s. 10.

with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 436 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention. —CRIM. PRO. CODE (Act V. of 1898), s. 44.

IN a case of mischief by fire with intent to cause the destruction of a dwelling-house, the charge should lay the intent as an intent to cause the destruction, not of a house simply, but of a house used as a human dwelling.—QUEEN *v.* DURBAROO POLIE, 8 W. R. 30. [Hobhouse, J. June 29, 1867.]

HELD by Glover, J., that incendiarism having, on several occasions occurred in a village, produced by a ball of rag with a piece of burning charcoal within it, and the prisoner one evening being discovered to have a ball of that description concealed in his dhoti, which contained burning charcoal, he is, under s. 511, guilty of an attempt to commit mischief by fire. The possession of the instrument to commit mischief by fire, and the going about of the person with it, are sufficient to raise a presumption that he intended to commit the act, and had already begun to move towards the execution. These facts are sufficient to constitute an attempt. *Held* by Mitter, J., that the possession of a fire-ball and moving about with it cannot support a conviction under ss. 436 and 511. These facts are not sufficiently indicative of an intention to destroy a building used for human dwelling. To constitute an offence under s. 511, it is not only necessary that the prisoner should have done an overt act towards the commission of the offence, but that the act itself should have been done in the attempt to commit it.—QUEEN *v.* DOYAL BAWRI, 3 B. L. R. A. Cr. 55. [Glover and Mitter, JJ. Sep. 1, 1869.]

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

Mischief with intent to destroy or make unsafe a decked vessel or one of 20 tons burden.

**437.** Whoever commits mischief to any decked vessel, or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ditto.

Punishment for the mischief described in section 437, committed by fire or explosive substance.

**438.** Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ditto.

Punishment for intentionally running vessel aground or ashore with intent to commit theft, &c.

**439.** Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein, or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ditto.

Mischief committed after preparation made for causing death or hurt.

**440.** Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

## *Of Criminal Trespass.**

**441.**† Whoever enters into or upon property in the possession of another with intent to commit an offence, or to intimidate, insult, or annoy any person in possession of such property,

**Criminal trespass.**

or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult, or annoy any such person, or with intent to commit an offence,

is said to commit "criminal trespass."

IN this section the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—S. 40, Penal Code.

A PERSON who forcibly enters upon property in the *possession* of another, and erects a building thereon, or does any other act with intent to annoy the person so in possession, is guilty of criminal trespass within the meaning of s 441 of the Penal Code without reference to the question in whom the title to the land may ultimately be found.—QUEEN v. RAM DYAL MUNDLE, 7 W. R. 28. [Kemp and Markby, JJ. Feb 4, 1867.]

IN order to convict of criminal trespass under s. 441 of the Penal Code, it must be proved that the property was in the possession of the prosecutor, and that the entry was made with intent to "commit an offence, or to intimidate, insult, or annoy any person in possession of the property."—*In re* KALINATH NAG CHOWDHRY, 9 W. R. 1. [Kemp and Mitter, JJ. Dec. 21, 1867.] Referred to in *Imperatrix* v. *Keshavlal*, I. L. R., 21 Bom. 536, *infra*.

WHERE the accused secretly entered an exhibition building without having purchased a ticket, and was there apprehended, it was held that such act did not amount to the offence of cheating under s 415 of the Penal Code. Such entry, when unaccompanied by any of the intents specified in s. 441 of the Penal Code, does not amount to criminal trespass or any other offence.—REG. v. MEHERVANJI BAJANJI, 6 Bom H. C. R. 6. [Tucker and Warden, JJ. Feb. 11, 1869.]

HELD by Jackson, J. (setting aside the order of the Magistrate. Markby, J., dissenting) that a Magistrate ought not to decline to go into a case of criminal trespass under s. 441 of the Penal Code, because the complainant did not make out his title to the land; the offence may be committed in respect of property in a person's possession, even though such possession may not have originated in right.—QUEEN v. SURWAN

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* As to the application of ss. 441 and 445 to offences under special or local laws, see s. 40, *supra*.

All persons are bound to give information of offences punishable under ss. 449, 450, and 456 to 460.—See the new Code of Criminal Procedure (Act V. of 1898), s. 44.

Village-headmen, &c., to give information of offences under ss. 449, 450, and 457 to 460.—See the new Code of Criminal Procedure (Act V. of 1898), s. 45.

Offences punishable under ss. 447 and 448 are compoundable.—See *ibid*, s. 345. As to stage of proceedings at which no composition is allowable without the leave of the Court, see *ibid* sub-s. (5).

As to whipping for offences defined in ss. 443-446, see the Whipping Act (VI. of 1864), ss 2, 3, 4, 6.

As to whipping for offences punishable under ss. 448-460 in the Punjab Frontier Districts and Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 8; for offences punishable under ss. 455, 458, 459, 460 in Upper Burma, see the Upper Burma Laws Act (XIII. of 1898), s. 4 (3) (*b*) and Sch. II.

As to punishment for offences under ss. 448-460, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

† In s. 441 the word "offence" has the same meaning when the thing punishable under the special or local law as defined in ss. 41 and 42 is punishable under such law, with imprisonment for a term of six months or upwards, whether with or without fine.—See s. 40, *supra*.

SINGH, 11 W. R. 11. [Jackson and Markby, JJ. Feb. 17, 1869.]

IT is essential to a conviction for criminal trespass under s. 441 of the Penal Code that there should be the intent to commit an offence, or to intimidate, insult, or annoy any person.—QUEEN v. CHOORAMONI SANT, 14 W. R. 25. [Jackson and Mitter, JJ. July 30, 1870.]

THE accused were convicted of criminal trespass under s. 441 of the Penal Code for driving their carts across an open green in violation of an order issued by the Municipal Commissioners. *Held* that there was nothing to show that the Municipal Commissioners had authority to issue such an order, and that the breach of it was not criminally punishable.—PRO., Oct. 28, 1870, 5 Mad. H. C. R. Ap. 38.

ACCUSED was ejman of complainant's family. Complainant obtained a decree setting aside an alienation made by accused. In execution, complainant obtained possession from the alienee. The accused entered on this land. *Held* that he had not committed the offence of criminal trespass.—PRO., Feb 10, 1871. 6 Mad. H. C. R. Ap., 19.

AN intention to intimidate, insult, or annoy any person in possession of a house, does not mean to insult or annoy any person in constructive but in actual possession of the premises.—ISHUR CHUNDER KURMOKAR v. SEETUL DASS MITTER, 17 W. R. 47, 8 B. L. R. Ap. 62. [Couch, C.J., and Ainslie, J. April 6, 1872.] Referred to in *Imperatrix* v. *Keshavlal*, I. L. R., 21 Bom 536, *infra*.

To bring an act of trespass within the meaning of the Penal Code, s. 441, the entry upon the land must be with the intent to annoy, which means *with the purpose of annoying* the person in possession.—IN THE MATTER OF SHIB NATH BANERJEE, 24 W. R. 58. [Phear and Lawford, JJ. Oct. 1, 1875.]

A PERSON plying a boat for hire at a distance of three miles from a public ferry cannot be said, with reference to such ferry, to commit "criminal trespass" within the meaning of that term in s. 441 of the Penal Code. If, when directed by the order of a public servant, duly promulgated to him, to abstain from plying a boat for hire at or in the immediate vicinity of a public ferry, a person disobeys such direction, he renders himself liable to punishment under the Penal Code.—MUTHRA v. JAWAHIR, I. L. R., 1 All. 527. [Spankie, J. Dec. 15, 1877.]

ENTRY into a local fund market with intent to evade payment of market dues is not criminal trespass.—REG. v. VARTHAPPA, I. L. R., 5 Mad. 382. [Muttusami Ayyar and Tarrant, JJ. Aug. 29, 1882.]

WHEN a stranger, uninvited and without any right to be there, effects an entry in the middle of the night into the sleeping apartment of a woman, a member of a respectable household, and, when an attempt is made to capture him, uses great violence in his efforts to make good his escape, a Court should presume that the entry was made with an intent such as is provided for by s. 441 of the Penal Code. An accused person in the middle of the night effected an entry into a house occupied by two widows, members of a respectable family. On an alarm being given, and an attempt made to capture him, he made use of great violence, and effected his escape. Upon these facts he was charged with offences under ss. 456 and 323 of the Penal Code. The defence set up was an *alibi*, which was disbelieved by both the lower Courts. Neither Court found specifically what was the intention with which the accused entered the house, but it was suggested that it was probably for the purpose of prosecuting an intrigue with one of the women. There was no evidence that he had been invited by her to go there. The lower Courts convicted the accused under s. 456. It was contended that, as the prosecution had failed to prove that the entry was made with intent to commit any offence, the conviction was illegal. *Held* that, under the circumstances of the case, the Court ought to presume that the entry was effected with such intent as is provided for by s. 441, and that the conviction should be upheld.—*In re* KOILASH CHANDRA CHAKRABARTY: KOILASH CHANDRA CHAKRABARTY v. THE QUEEN-EMPRESS, I. L. R., 16 Cal. 657. [Prinsep and Hill, JJ. May 20, 1889.]

C, A RATE-PAYER in a municipality, who had filed a petition against an assessment which, in his absence, had been dismissed, entered a room where a Committee of the Municipal Commissioners were seated, hearing and deciding petitions in assessment matters, ostensibly with the object of presenting a petition for the revision of his assessment. The Chairman of the Committee ordered him to leave the rooms, and on his refusal to do so he was turned out. Outside the room in the verandah, he addressed the crowd, complaining that no justice was to be obtained from the Committee. C was prosecuted on these facts at the instance of the Chairman of the Committee, and convicted of house-trespass under s. 448 of the Penal Code. *Held* that the conviction was wrong, and that no offence had been committed. The prosecution was bound to prove, in order to support a conviction of a charge under s. 441 or 442, that the property trespassed upon was at the time

in the possession of a complainant who could compound the offence under s. 345 of the Code of Criminal Procedure, and the complainant had failed to prove that the room was in his possession, and had, in fact, shown that he was merely sitting in it with other persons at the invitation and with the consent of the person, whoever he might be, who had the immediate right to such possession. *Held*, further, that, even if the complainant could be held to be in possession of the room, there was no evidence of any intent to commit an offence, or to intimidate, insult, or annoy any person, it appearing that the object of the accused in going into and remaining in the room was to endeavour to induce the complainant and his colleagues to reconsider their decision, the verbal insult on which the conviction was based having been uttered after C had left the room.—CHANDI PERSHAD *v.* EVANS, I. L. R., 22 Cal. 123. Petheram, C.J., and Beverley, J. Aug. 13, 1894. Referred to in *Imperatrix v. Keshavlal*, I. L. R. 21 Bom. 536, *infra*.

THE accused in the middle of the night effected an entry into a room occupied by four women. On an alarm being given, and an attempt made to capture him, he escaped. He was charged with an offence under s. 456 of the Penal Code The defence set up was disbelieved by both the lower Courts. Neither Court found specifically what was the intention with which the accused entered the room, but it was suggested that it was probably for the purpose of prosecuting an intrigue with one of the women. There was no evidence that he had been invited by her to go there. The lower Courts convicted the accused under s. 456. It was contended that, as the prosecution had failed to prove that the entry was made with intent to commit any offence, the conviction was illegal. *Held* that the facts proved were good evidence of an intent and of an intrusion on privacy within the meaning of s. 509 of the Penal Code, and that therefore the intent to commit an offence within the meaning of s. 441 was made out. *Balmukand Ram* v. *Ghansamram* (I. L. R., 22 Cal. 391) followed.—PREMANUNDO SHAHA *v.* BRINDABUN CHUNG, I. L. R., 22 Cal. 994. [Pigot and Banerjee, JJ. July 22, 1895.]

THE words "any person in possession" in s. 441 of the Penal Code do not mean only "a complainant in possession." Certain persons were prosecuted under ss. 426 and 447 of the Penal Code (Act XLV. of 1860) for committing mischief and criminal trespass by entering upon a certain field which was in the possession of the complainant's tenants, and destroying the seed sown therein. The defence raised was an *alibi*; it was also contended on behalf of the accused that the field belonged to one of them, and that the complainant had no title whatever to it. The Magistrate, who tried the case, declined to go into the question of title; he found that the complainant's tenants were in possession of the field, and, disbelieving the evidence of *alibi*, he convicted the accused, and sentenced them to fine. On application in revision to the High Court it was urged (*inter alia*) that the complainant, not being the person in possession, could not legally institute the criminal proceedings, and that, therefore, the conviction was bad. *Held* that, looking to the nature of the false defence set up by the accused, this was not a case for interference in revision, as to do so would encourage perjury. *Held* also that the words "any person in possession" in s. 441 of the Penal Code do not mean only "a complainant in possession," there being no authority for taking the offences of mischief and criminal trespass out of the general rule which allows any person to complain of a criminal act. *Reference in the case of Kalinauth Nag Chowdhry* (9 Cal. W. R. Cr. R. 1), *Chandi Pershad* v. *Evans* (I. L. R., 22 Cal. 123), *Iswar* v. *Sital* (8 B. L. R. App. 62), and *In re Ganesh Sathe* (I. L. R., 13 Bom. 600), referred to.—IMPERATRIX *v.* KESHAVLAL, I. L. R., 21 Bom. 536. Jardine and Ranade, JJ. Jan. 20, 1896.

**442.** Whoever commits criminal trespass by entering into or remaining in any building, tent, or vessel used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass."

House-trespass.

*Explanation.*—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

PRISONER was convicted of house-breaking, his object being to have sexual intercourse with complainant's wife. *Held* conviction valid.—PRO., Feb. 26, 1875, 8 Mad. H. C. R. Ap. 6.

WHERE a person entered into a havalat with intent to convey or attempt to convey food to an under-trial prisoner, such act on his part did not amount to house-trespass within the meaning of s. 442 of the Penal

Code, and it was not an act punishable under s. 45 of the Prisons Act. *Per* Spankie, J., *contra*. *Per* Stuart, C.J., that the fact that such person had been tried for house-trespass and acquitted was no bar to his being tried subsequently for an offence under s. 45 of the Prisons Act.—EMPRESS *v.* LALAI, I. L. R., 2 All. 301. [Stuart, C.J., and Spankie and Oldfield, JJ. May 16, 1879.]

ACCUSED, with intent to commit theft, entered at night a *dalan* or entrance-hall, surrounded by a wall in which there were two door-ways, but without doors, which was used for the custody of property. *Held* that the *dalan* was a building within the meaning of ss. 380 and 442, and that a conviction under s. 457 was therefore maintainable.—DAD *v.* CROWN, Panj. Rec. No. 10 of 1879.

A COURT-YARD consisting of a walled enclosure with four *kotahs* or chambers opening into it, and an outer door or gate leading into a side street, was held by a majority of the Court (Plowden, J., dissenting) to be a "building" within the meaning of s 442.—SHERA *v.* EMPRESS, Panj. Rec. No. 35 of 1879.

C, A RATE-PAYER in a municipality, who had filed a petition against an assessment which, in his absence, had been dismissed, entered a room where a Committee of the Municipal Commissioners were seated, hearing and deciding petitions in assessment matters, ostensibly with the object of presenting a petition for the revision of his assessment. The Chairman of the Committee ordered him to leave the room, and on his refusal to do so he was turned out. Outside the room in the verandah, he addressed the crowd, complaining that no justice was to be obtained from the Committee. C was prosecuted on these facts at the instance of the Chairman of the Committee, and convicted of house-trespass under s. 448 of the Penal Code. *Held* that the conviction was wrong, and that no offence had been committed. The prosecution was bound to prove, in order to support a conviction of a charge under s. 441 or 442, that the property trespassed upon was at the time in the possession of a complainant who could compound the offence under s. 345 of the Code of Criminal Procedure, and the complainant had failed to prove that the room was in his possession, and had, in fact, shown that he was merely sitting in it with other persons at the invitation and with the consent of the person, whoever he might be, who had the immediate right to such possession. *Held*, further, that, even if the complainant could be held to be in possession of the room, there was no evidence of any intent to commit an offence, or to intimidate, insult, or annoy any person, it appearing that the object of the accused in going into and remaining in the room was to endeavour to induce the complainant and his colleagues to reconsider their decision, the verbal insult on which the conviction was based having been uttered after C had left the room.—CHANDI PERSHAD *v.* EVANS, *I. L. R., 22 Cal. 123.* [Petheram, C.J., and Beverley, J. Aug. 13, 1894.]

Lurking house-trespass.

**448.** Whoever commits house-trespass, having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent, or vessel which is the subject of the trespass, is said to commit "lurking house-trespass."

Lurking house-trespass by night.

**444.** Whoever commits lurking house-trespass after sunset and before sunrise is said to commit "lurking house-trespass by night."

House-breaking.

**445.*** A person is said to commit "house-breaking," who commits house-trespass, if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say:—

*First.*—If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

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* In s. 445 the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in ss. 41 and 42 of this Code.—See s. 40 of this Code, *supra*.

*Secondly.*—If he enters or quits through any passage not intended by any person other than himself, or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

*Thirdly.*—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass, by any means by which that passage was not intended by the occupier of the house to be opened.

*Fourthly.*—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

*Fifthly.*—If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

*Sixthly.*—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house trespass.

*Explanation.*—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

*Illustrations.*

(*a.*) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.

(*b.*) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

(*c.*) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(*d.*) A commits house-tresspass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(*e*) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(*f.*) A finds the key of Z's house-door which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(*g*) Z is standing in his door-way. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house breaking.

(*h.*) Z, the door-keeper of Y, is standing in Y's door-way. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

IN this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

EFFECTING an entrance into a house at night by scaling a wall constitutes house-breaking by night under s. 445 of the Penal Code.—QUEEN v. EMDAD ALLY, 2 W. R. 65. [Glover, J. April 24, 1865.]

WHEN the door of a shop was found broken open, *held* that the conviction should have been for house-breaking by night, and not simply lurking house-trespass by night.—QUEEN v. KENARAM BOUSEE, 4 W. R. 19. [Glover, J. Oct. 25, 1865.]

WHEN a prisoner convicted of "house-breaking in order to commit theft" and of "theft," both offences being portions of one continuous criminal act, was sentenced, on the first head of charge, to one year's rigorous imprisonment under s. 457 of the Penal Code, and on the second head of charge to receive twenty stripes under s. 2 of the Whipping Act (VI. of 1864), the separate sentences, though not illegal, were disapproved of as

contrary to the spirit and intention of the Whipping Act.—REG. *v.* GENU BIN AKU, 5 Bom. H. C. R. 83. [Couch, C.J., and Newton, J. Sep. 16, 1868.]

**446.** Whoever commits house-breaking after sunset and before sunrise is said to commit "house-breaking by night."

House-breaking by night.

Any Mag. Cognizable. Summons. Bailable. Comp.

**447.** Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Punishment for criminal trespass.

THE entry by one man on another's property accompanied by the cutting down of trees in that property is criminal trespass — QUEEN *v.* JEENUT BEBEE, 1 W. R. 46. [Kemp and Glover, JJ. Dec. 21, 1864.]

THE prisoner entered a house for the purpose of committing an assault, and in carrying out that intention caused grievous hurt. In convicting and punishing him for the substantive offence (grievous hurt), *held* that it was not necessary to pass a separate sentence for the offence of house-trespass. — QUEEN *v.* BASSOO RANNAH, 2 W. R 29. [Kemp and Glover, JJ. Jan. 30, 1865.]

WHERE a constable and others enter a house and apprehend certain persons as gamblers, and afterwards release them on payment of a sum of money by the latter, the offence committed is not house-trespass and extortion, but taking a bribe as regards the constable, and abetment of that offence as regards the others.—GOVT. *v.* MAHOMED HOSSEIN, 5 W. R. 49. [Norman and Campbell, JJ. Mar 5, 1866.]

THE order of the Magistrate directing the prisoner, on the expiration of his sentence for the offence of criminal trespass, to execute a personal recognizance to keep the peace, was upheld as legal and necessary.—QUEEN *v.* GENDOO KHAN, 7 W. R. 14 [Kemp and Glover, JJ. Jan. 21, 1867.] Distinguished in *Subal Chunder Dey* v. *Ram Kanai Sanyasi*, I. L. R., 25 Cal. 628, *infra*.

HELD by Jackson, J. (setting aside the order of the Magistrate, Markby, J., dissenting), that a Magistrate ought not to decline to go into a case of criminal trespass under s. 441 of the Penal Code, because the complainant did not make out his title to the land: the offence may be committed in respect of property in a person's possession, even though such possession may not have originated in right. — QUEEN *v.* SURWAN SINGH, 11 W. R. 11. [Jackson and Markby, JJ. Feb. 17, 1869.]

WHERE the trespass (if any) was not committed with the intent to commit an offence, or to intimidate, insult, or annoy the person in possession, but in the *bond-fide* assertion of a claim of title, this does not amount to criminal trespass. QUEEN ON THE PROSECUTION OF GOKUL CHUND *v.* SEITH ROSHUN LAL, 2 N.-W. P. 82. [Turner and Spankie, JJ. Feb. 11, 1870.]

THE defendant was convicted under s. 447 of the Penal Code for cultivating village waste land which he had been ordered by the Subordinate Collector to refrain from cultivating. The High Court upheld the conviction.—PRO., Feb. 15, 1870, 5 Mad. H. C. R. Ap 17.

THE accused were convicted of criminal trespass under s. 443 of the Penal Code for driving their carts across an open green in violation of an order issued by the Municipal Commissioners. *Held* that there was nothing to show that the Municipal Commissioners had authority to issue such an order, and that the breach of it was not criminally punishable.—PRO., Oct. 28, 1870, 5 Mad. H. C. R. Ap. 38.

To bring a case under the definition of *trespass in s 441 of the Penal Code*, the entry must be made with the intent to commit an offence, or to intimidate, insult, or annoy. One member of a joint family commits no trespass by entering the house which forms the joint property, but he is guilty of that offence when he enters the room ordinarily occupied by another member of the family.—PRANKRISTO CHUNDER *v.* BISSONATH CHUNDER, 15 W. R. 6; 6 B. L. R. Ap. 80. [Norman, Offg. C.J., and Loch, J. Jan 21, 1871.]

DEFENDANT was convicted of criminal trespass for having enclosed and commenced to cultivate a portion of a burial-ground. *Held* that the conviction was right. The person (corporate) in possession of the burial-ground is the portion of the public entitled to use the burial-ground, and the act of ploughing up the burial-ground was evidence of intent to annoy such person, the defendant not being one of the portion of the public entitled to its use.—PRO., Mar. 28, 1871, 6 Mad. H C. R. Ap 25.

DEFENDANT was convicted of criminal trespass for including in his own land a portion of a public footpath. *Held* that, as the public generally were entitled to the use of the footpath, there was no illegal entry by the defendant on property in the possession of another with intent to annoy the person in possession, and consequently that the defendant was wrongly convicted.—PRO., May 25, 1871, 6 Mad. H. C. R. Ap. 26.

IN the definition of criminal trespass, the entry and the *intention* with which a party enters are the essentials. Thus, where A and B all along asserted their prescriptive right to fish in a lake free of rent, and C had failed to establish the relationship of landlord and tenant in a suit brought by him under Act X. of 1859 to get rent from them, *held* that no conviction for criminal trespass could be had against A and B, and that C's remedy was by suit in the Civil Court, either to eject them if he treated them as trespassers, or to have them declared liable to pay him rent for the future.—SRISTEEDHUR PAROOE *v.* INDRO BHOOSUN CHUCKERBUTTY. 18 W. R. 25; 9 B. L. R. Ap. 19. [Kemp and Glover, JJ. July 2, 1872.]

ON a conviction for criminal trespass under s. 447, Penal Code, the Joint-Magistrate added to the sentence of imprisonment an order that the prisoners should give recognizances to keep the peace. The Sessions Judge recommended that the order as to recognizances should be quashed, as criminal trespass was not one of the offences detailed in s. 489 of Act X. of 1872, for which such recognizances could be taken. The High Court declined to act on this recommendation, holding that there was nothing illegal in the Joint-Magistrate's order, the conduct of the accused clearly pointing to an intention to commit a breach of the peace.—QUEEN *v.* JHAPOO, 20 W. R. 37. [Markby and Birch, JJ. June 16, 1873.] Distinguished in *Subal Chunder Dey* v. *Ram Kanai Sanyasi*, I. L. R., 25 Cal. 628, *infra*.

THE unlawful infringement of a right of exclusive fishery in a part of a public river is not an offence which can be brought within the definition of "criminal trespass" in the Penal Code.—EMPRESS *v.* CHARU NAVIAH, I. L. R, 2 Cal. 354. [Markby and Prinsep, JJ. May 4, 1877.]

ACCUSED for several years cultivated land under a lease from the Forest Department which was renewed annually. During the period of his occupation accused built a dwelling-house, and made other improvements. The Forest Department requiring the land for conservation, accused was served with notice of ejectment, and he was told to remove the materials of his house. Accused refused to relinquish the land until payment of compensation for his improvements, whereupon he was criminally prosecuted by the Forest Department, and convicted by the Tahsildar of Kharian of criminal trespass under s. 447. *Held* that the conviction was illegal. In order to sustain a conviction for criminal trespass, it must be shown that the property was in the possession of some person other than the alleged trespasser.—CROWN *v.* FOUJDAR, Panj. Rec., No. 28 of 1878.

WHERE the accused persons (execution-creditors), in company with an authorized bailiff, broke open complainant's door before sunrise, with intent to distrain his property, for which they were convicted on a charge of lurking house-trespass by night or house-breaking by night, *held* that, as they were not guilty of the offence of criminal trespass, there being no finding of any such intent as is required to constitute that offence, and that as criminal trespass is an essential ingredient of either of the offences with which they were charged, the conviction must be quashed.—IN THE MATTER OF JOTHARAM DAVEY, I. L. R, 2 Mad. 30. [Innes and Muttusami Ayyar, JJ. Sep. 27, 1878.]

IF a person enters on land in the possession of another in the exercise of a *bonâ-fide* claim of right, and without any intention to intimidate, insult, or annoy such other person, or to commit an offence, then, though he may have no right to the land, he cannot be convicted of criminal trespass. So also, if a person deals injuriously with property in the *bonâ-fide* belief that it is his own, he cannot be convicted of mischief. The mere assertion, however, in such cases of a claim of right is not in itself a sufficient answer to charges of criminal trespass and mischief. It is the duty of the Criminal Court to determine what was the intention of the alleged offender, and if it arrives at the conclusion that he was not acting in the exercise of a *bonâ-fide* claim of right, then it cannot refuse to convict the offender, assuming that the other facts are established which constitute the offence. Where a person committed a trespass with the intention of committing mischief, thereby committing criminal trespass, and at the same time committed mischief, *held* that such person could not, under cl. 3 of s. 454 of Act X. of 1872, receive a punishment more severe than might have been awarded for either of such offences. The provisions of that law do not in such a case prohibit the Court from passing sentence in respect of each offence established.—EMPRESS *v.* BUDH SINGH, I. L. R., 2 All. 101. [Turner, J. Jan. 24, 1879.]

A, WHO had been warned off the lands of B, subsequently, having shot a deer near the boundary of B's land, and the deer having run on to B's land, followed it on to such land for the purpose of killing it. *Held* that his doing so was not a criminal trespass.—*In re* CHUNDOO NARAIN *v.* FARQUHARSON (J. G.), I. L. R., 4 Cal. 837. [Birch and Mitter, JJ. Mar. 28, 1879.]

CERTAIN immoveable property was the joint undivided property of C, G, and a certain other person. R obtained a decree against G for the possession of such property, and such property was delivered to him in the execution of that decree in accordance with the provisions of s. 264 of Act X. of 1877. C in good faith, with the intention of asserting her right, and without any intention to intimidate, insult, or annoy R, or to commit an offence, and G, in like manner, with the intention of asserting the right of his co-owners, remained on such property. *Held* that, under such circumstances, they could not be convicted of criminal trespass. Re-entry into, or remaining upon, land from which a person has been ejected by civil process, or of which possession has been given to another for the purpose of asserting rights he may have solely or jointly with other persons, is not criminal trespass, unless the intent to commit an offence, or to intimidate, insult, or annoy, is conclusively proved.—*In re* GOVIND PRASAD, I. L. R., 2 All. 465. [Straight, J. Oct. 15, 1879.]

A, THE servant of B, was convicted of criminal trespass, in going upon the land of C, one of B's tenants, and preventing him from cutting his crops. B was convicted of abetment of criminal trespass A and B pleaded that they were acting in the exercise of the legal right of distraint. It appeared that no written demand under s. 72 of the Rent Act (Ben. Act VIII of 1869) for the amount of the arrears, together with an account exhibiting the grounds on which demand had been made, was served on C, and that no written authority under s. 76 had been given by B to A. *Held* that it lay upon A and B to show that they had conformed to the provisions of the law, or at least had acted with the *bonâ fide* intention of distraining the complainant's crops; and that the conviction was right. *Held* also that, as under s. 74, standing crops and ungathered products may, notwithstanding distraint, be reaped and gathered by the cultivator. A had no right, even if he was acting *bonâ fide*, to restrain C from cutting his crops.—JHUMUK NONIAH *v.* SHUDASHIB ROY, I. L. R., 7 Cal. 26. [Pontifex and Field, JJ. Mar. 31, 1881.]

A PLEA of right to possession is no answer to a charge of rioting by making a forcible entry on land cultivated by a trespasser, who is in possession, and opposes the entry.—APPAVU *v.* QUEEN, I. L. R., 6 Mad. 245. [Innes, ]. Dec. 19, 1882.]

FISH in a public river cannot be said to be property in the possession of the person who may have the fishery-right, and the infringement of that right is not *theft* under s. 378 of the Penal Code. The accused were charged with unlawfully taking fish, along with some eleven others, in a public river, the right of fishing in which had been let out by the Government to the complainant, and the lower Court, amongst other offences, convicted them of theft, criminal misappropriation, mischief, criminal trespass, and unlawful assembly. *Held* that the conviction was wrong, and that no offence had been committed.—BHAGIRAM DOME *v.* ABAR DOME, I. L. R., 15 Cal. 388. [Norris and Ghose, JJ. Jan. 24, 1888.]

ACCUSED were charged with having taken fish from a tank belonging to the complainant, and convicted of theft and criminal trespass under ss. 379 and 447 of the Penal Code. It was found that the tank in question was not enclosed on all sides, and was dependent on the overflow of a neighbouring channel which was connected with flowing streams for its supply of fish; that the fish were not reared and preserved in the tank; and that the occurrence complained of took place at a time when the floods were high, and the tank was connected with the streams, so that the fish could leave it at pleasure. *Held* that the fish were *feræ naturæ* and not "the possession of" the complainant, and consequently no offence had been committed. *Held* further that, had the fish been taken at a time when they were restrained of their natural liberty, and were liable to be taken at the pleasure of the owner of the tank the conviction would have been upheld. The Meherpore case of 1887 (I. L. R. 15 Cal. 390) distinguished.—MAYA RAM SURMA *v.* NICHALA KATANI, I. L. R., 15 Cal. 402. [Norris and Ghose, JJ. Jan. 24, 1888.]

DURING the pendency of a civil suit, certain persons, on behalf of the plaintiff, went on to the premises belonging to the defendant for the purpose of making a survey, and for getting materials for a hostile application against the defendant. They went (some of them armed) without the permission of the defendant, and in his absence, and when the defendant's servants objected to their action, they persisted in their trespass, and endeavoured to prevent opposition by making false statements as to the authority under which they were acting. *Held* that their actions amounted to criminal trespass.—GOLAP PANDEY *v.* BODDAM, I. L. R., 16 Cal. 715 [Trevelyan and Beverley, JJ. June 3, 1889.]

**448.** Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Punishment for house-trespass.

Any Mag. Cognizable. Warrant. Bailable. Comp.

THE prisoner entered a house for the purpose of committing an assault, and, in carrying out that intention, caused grievous hurt. In convicting and punishing him for the substantive offence (grievous hurt), *held* that it was not necessary to pass a separate sentence for the offence of house-trespass.—QUEEN *v.* BASSOO RANNAH, 2 W. R. 29. [Kemp and Glover, JJ. Jan. 30, 1865.]

HOUSE-TRESPASS and mischief, not being separate offences, but being included in the graver offence of being members of an unlawful assembly, armed with deadly weapons, no separate convictions and sentences were deemed to be requisite.—*QUEEN v.* SURROOP NAPIT, 3 W. R. 54. [Kemp and Seton-Karr, JJ. July 15, 1865.]

A ENTERED the house of B without the latter's permission, and committed adultery with B's wife. *Held* that A could be separately convicted of, and punished for, both the adultery and house-trespass, as they were distinct offences, but that, under the circumstances, B's wife was by law incapable of committing abetment of the house-trespass. CROWN *v.* SHEIKH MUNGLI, Panj. Rec., No. 5 of 1871.

A PRISONER charged with dacoity and riot, and acquitted, cannot be convicted of house-trespass, if the latter charge was not read out or explained to him, and he was not called on to plead to it.—QUEEN *v.* SALAMUT ALI, 23 W. R 59. Kemp and Morris, JJ. Mar. 31, 1875.]

TO constitute criminal trespass, there must be an intent to cause annoyance or to insult. Mere knowledge that such entry is likely to annoy is not sufficient The mere presence may be annoying, but unless a person is present *with intent* to annoy he has not committed criminal trespass.—*In re* PUNJAB SINGH, I. L. R., 6 Cal. 579 (at pp. 580—1). [Mitter and Maclean, JJ. Jan. 5. 1881.]

C, a rate-payer in a municipality, who had filed a petition against an assessment which, in his absence, had been dismissed, entered a room where a Committee of the Municipal Commissioners were seated, hearing and deciding petitions in assessment matters, ostensibly with the object of presenting a petition for the revision of his assessment. The Chairman of the Committee ordered him to leave the room, and on his refusal to do so he was turned out. Outside the room in the verandah, he addressed the crowd, complaining that no justice was to be obtained from the Committee. C was prosecuted on these facts at the instance of the Chairman of the Committee, and convicted of house-trespass under s. 448 of the Penal Code. *Held* that the conviction was wrong, and that no offence had been committed The prosecution was bound to prove, in order to support a conviction of a charge under s. 441 or 442, that the property trespassed upon was at the time in the possession of a complainant who could compound the offence under s. 345 of the Code of Criminal Procedure, and the complainant had failed to prove that the room was in his possession, and had, in fact, shown that he was merely sitting in it with other persons at the invitation and with the consent of the person, whoever he might be, who had the immediate right to such possession. *Held*, further, that, even if the complainant could be held to be in possession of the room, there was no evidence of any intent to commit an offence, or to intimidate, insult, or annoy any person, it appearing that the object of the accused in going into and remaining in the room was to endeavour to induce the complainant and his colleagues to reconsider their decision, the verbal insult on which the conviction was based having been uttered after C had left the room.—CHANDI PERSHAD *v.* EVANS, I L. R., 22 Cal. 123 [Petheram, C.J., and Beverley, J Aug 13, 1894.]

ALTHOUGH a trespasser knows that his act, if discovered, will be likely to cause annoyance, it does not follow that he does the act with that intent.—QUEEN-EMPRESS *v.* RAYAPADAYACHI, I. L. R., 19 Mad. 240. [Shephard and Davies, JJ. Jan. 9, 1896.]

AN order under s. 106 of the Criminal Procedure Code, 1882, binding down the accused to keep the peace, upon conviction for "house-trespass" under s. 448 of the Penal Code, cannot stand where the intention of the accused for committing the trespass was to have illicit intercourse with the complainant's wife. *The Queen* v. *Gendoo Khan* (7 W. R. Cr. 14) and The *Queen* v. *Thapoo* (20 W. R. Cr. 37) distinguished. It is necessary, before an order under s. 106 of the Criminal Procedure Code can be made, that the accused should have an opportunity of answering to an accusation for an offence of the kind, upon a conviction for which such an order can be made.—SUBAL CHUNDER DEY *v.* RAM KANAI SANYASI, I. L. R., 25 Cal. 628. [Banerjee and Hill, JJ. Dec. 14, 1897.]

THE accused No. 1, who held a decree against a certain judgment-debtor, went with his son, accused No. 2, and a Civil Court bailiff to execute a warrant. Finding the door of the judgment-debtor's house shut, they entered his compound by passing through the complainant's house without his consent and notwithstanding his protest. *Held* that the accused's act amounted to criminal trespass for when they trespassed on the complainant's house notwithstanding his protest, they must, as reasonable men, have known that they would annoy him. There is no presumption that a person intends what is merely a possible result of his action or a result which though reasonably certain is not known to him to be so; but it must be presumed that when a man voluntarily does not an act, knowing at the time that in the natural course of events a certain result will follow, he intends to bring about that result. *Queen* v. *Hicklin* (1868, 3 Q. B. 375), *Queen* v. *Martin* (1881, 8 Q. B. D. 58), *Reg.* v. *Lobett* (9 C and P. 466), *Freeman* v. *Pope* (1870, 5 Ch. 538), and *Ex parte Mercer, In re Wise* (1886, 17 Q. B. D 290) referred to.—EMPEROR v. LAKSHMAN RAGHUNATH, I. L. R., 26 Bom. 558. [Fulton and Crowe, JJ. April 10, 1902.]

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

House-trespass in order to commit offence punishable with death.

**449.*** Whoever commits house-trespass in order to the committing of any offence punishable with death shall be punished with transportation for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

Ditto.

House-trespass in order to commit offence punishable with transportation for life.

**450.*** Whoever commits house-trespass in order to the committing of any offence punishable with transportation for life shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Any Mag. Cognizable. Warrant. Bailable. Not comp.

House-trespass in order to commit offence punishable with imprisonment.

**451.** Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence † intended to be committed is theft, the term of the imprisonment may be extended to seven years.

† Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Warrant. Not bailable. Not comp.

A CHARGE under s. 451 must charge the accused with committing house-trespass with intent to commit some *specific* offence punishable with imprisonment.—QUEEN v. MEHAR DOWAIJA, 16 W. R. 53. [Kemp, Offg. C J., and Ainslie, J Oct. 6, 1871.]

A CHARGE of house-trespass with intent to commit adultery can be entertained without a complaint by the husband or the person having care of the woman. *Per* Lindsay and Plowden, JJ. (Fitzpatrick, J., dissenting).—CROWN v. SUBZ ALI Panj. Rec., No. 2 of 1877.

To sustain a conviction under s. 451 of the Penal Code for the offence of house-trespass with intent to commit an offence, the prospective offence being adultery, it is necessary to show that there has been no consent or connivance on the part of the husband of the woman the intent to commit adultery with whom is charged against the accused.—BRIJ BASI v. QUEEN-EMPRESS, I. L. R., 19 All. 74. [Edge, C.J., and Aikman, J. Aug. 26, 1896.]

Ditto.

House-trespass after preparation for hurt, assault, or wrongful restraint.

**452.** Whoever commits house-trespass, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

WHERE A goes with a forged warrant of arrest into a house, and takes away one of the inmates against his will under the authority of such warrant, he is guilty of house-trespass by putting such person in fear of wrongful restraint under s. 452 of the Penal Code.—QUEEN v. NUNDO MOHUN SIRCAR, 12 W. R 33. [Kemp and Glover, JJ. July 15, 1869.]

* Every person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under ss. 449, 450 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act V. of 1898), s. 44.

**453.** Whoever commits lurking house-trespass or house-breaking shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

Presv. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Not bailable. Not comp.

**Punishment for lurking house-trespass or house-breaking.**

**454.** Whoever commits lurking house-trespass, or house-breaking in order to the committing of any offence punishable with imprisonment shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

Ct. of Ses., Presy. Mag., or Mag. of 1st or and class. Cognizable. Warrant. Not bailable. Not comp.

**Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment.**

HOUSE-BREAKING by night and theft form a single and entire offence, and cannot be punished separately.—QUEEN *v.* TONAOKOCH, 2 W. R. 63. Jackson and Glover, JJ April 19, 1865.

PRISONER was convicted of house breaking, his object being to have sexual intercourse with complainant's wife *Held* conviction valid —PRO. Feb 26, 1875 8 Mad. H. C. R. Ap. 6

UNDER ss 35 and 235 of the Criminal Procedure Code, a Magistrate may legally pass a separate sentence of two years' rigorous imprisonment and fine under each of the ss. 379 or 380 and 454 of the Penal Code for house-breaking in order to the commission of theft and theft, the two offences forming part of the same transaction, and being tried together. In such a case, where the prisoner had been three times previously convicted, *held* that the better course would have been to commit him to the Court of Session under ss 454-57 of the Code. But a Sessions Judge trying such a case under s. 379 or 380 and s. 454 would, under no circumstances, be justified in passing a sentence of ten years' imprisonment under the latter part of s. 454, and of four years' imprisonment under s. 380. The latter portions of ss. 454 and 457 were framed to include the cases of house-trespassers and house-breakers who had not only intended to commit, but had actually committed, theft *Queen-Empress* v. *Ajudhia* (I. L. R., 2 All 644), and *Queen-Empress* v. *Sukharam Bhau* (I L. R, 10 Bom 493) referred to —QUEEN-EMPRESS *v.* ZOR SINGH, I. L R., 10 All. 146 Straight and Broadhurst, JJ. Dec. 16, 1887.]

**455.** Whoever commits lurking house trespass or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp.

**Lurking house-trespass or house-breaking after preparation for hurt, assault, or wrongful restraint.**

**456.** Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Ct. of Ses., Presy. Mag., or Mag. of 1st or and class. Cognizable. Warrant. Not bailable. Not comp.

**Punishment for lurking house-trespass or house-breaking by night.**

EVERY person, whether within or without the Presidency-towns aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 456 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention. —CRIM. PRO. CODE (Act V. of 1898), s. 44.

A PRISONER may be conviction of theft in a building and of house-breaking by night with intent to commit theft, though, if the Judge considers the punishment for the first offence sufficient, he need not award any additional sentence for the second.—QUEEN *v.* TINCOWREE, W R Gap., 1864, 31. Jackson J. May 11, 1864.

FIVE men armed were discovered committing an act of house-breaking by night. One of the parties was engaged in cutting a hole through the wall, while the others stood on guard. When the alarm was given, the neighbours ran up, and one of the robbers cut down one of the villagers. The robbers effected their escape, not however before two

of them were identified, the prisoners in the case. *Held* that the crime of which the prisoners were guilty was house-breaking by night, and not dacoity.—QUEEN *v.* REWUT RAJWAR, W. R. Gap., 1864, 39 [Loch, Seton-Karr, and Jackson, JJ. July 19, 1864.]

HOUSE-BREAKING by night and theft form a single and entire offence, and cannot be punished separately.—QUEEN *v.* TONAOKOCH, 2 W. R. 63; 4 R. J. P. J. 563. [Jackson and Glover, JJ. April 19, 1865.]

A PERSON convicted of house-breaking, followed immediately by theft, is punishable only under s. 457 of the Penal Code.—QUEEN *v.* CHYTUN BOWRA, 5 W. R. 49. [Jackson and Glover, JJ. Mar. 5, 1866.]

THE splitting up of one aggravated offence into separate minor offences (*e.g.*, a conviction for lurking house-trespass and theft under ss. 456 and 380 of the Penal Code, instead of for lurking house-trespass in order to commit theft under s. 457) prohibited. Where a Magistrate convicted under ss. 456 and 380, it was held that the Judge, on appeal, instead of setting aside the conviction, and sending the case back to the Magistrate for re-trial under ss. 457 and 380, ought only to have set aside the conviction under s. 380, and allowed the conviction under s. 456 to stand. [Norman, J., *dubitante*]—QUEEN *v.* RAM CHURN KAIREE, 6 W. R. 39. [Peacock, C.J., and Norman, Kemp, Seton-Karr, and Campbell, JJ. July 9, 1866.]

A CONVICTION for lurking house-trespass by night under s. 456 of the Penal Code is not bad for want of the specification of the intention in the charge, but one under s 457 cannot be sustained without such specification. In a charge under the former section, though a guilty intention must be proved, it is not necessary to prove which of the several guilty intentions the accused had; it will be enough if it is shown that the intention must have been one or other of those specified in s. 441, though it may not be certain which it was. An accused person, the landlord of a house in which he occupied the lower flat, was found in the middle of the night in the room of the complainant, one of his tenants, upstairs, in which the complainant and his wife were at the time sleeping. Upon being detected the accused was subjected to very severe treatment, but did not utter a word of protestation of innocence or make any show of remonstrance, and when questioned said, "I have committed a fault: pardon me." He was arrested upon a charge under s. 456 of the Penal Code, the criminal intention alleged being that of committing theft. The charge framed by the Magistrate did not specify any intention, and the Magistrate came to the conclusion that the trespass was not committed by the accused, who was a wealthy man, with that intention. He found, however, that the complainant had suppressed some important facts, and that he was not in his wife's room when the accused entered it, and relying on the decision in *Koilash Chandra Chakrabarty* v. *The Queen-Empress* (I. L. R., 16 Cal. 657), he convicted the accused. On appeal the Sessions Judge, though finding that the Magistrate's views were against the evidence, upheld the conviction without finding what specifically was the intention with which the entry was made In revision, it was contended that the conviction was bad—(1) because no guilty intention was set out in the charge; (2) because no such intention was proved by the evidence; and (3) because no such intention was specifically found by the Sessions Judge. *Held* that the first contention was unsupportable for the reasons above stated. Even if it had been necessary to specify the intention in the charge, it would have to be shown under the provisions of s. 587 of the Code of Criminal Procedure that the omission had occasioned a failure of justice; and having regard to the nature of the charge and the line of defence adopted, the accused had not in any way been prejudiced in his defence. *Held*, as regards the second contention, that, though it was not certain what the precise intention of the accused was in committing the trespass, it was clear that it must have been with one or other of the intentions specified in s. 441 of the Penal Code, as judging from the time, the place, and manner in which the trespass was committed, and the conduct of the accused when discovered it was impossible to suppose that the trespass could have been committed either unintentionally or with any innocent intention, and that it must have been committed with the intention of committing some offence, but that the accused was entitled to have it taken that it was with the least possible culpable intention, namely, that of committing an offence under s. 509 of the Penal Code. *Held*, as regards the third contention, that, in exercising its powers under s. 439 of the Code of Criminal Procedure, it is open to the High Court to alter any finding and confirm a conviction, and that, if the evidence on the record in a case be sufficient to warrant a conviction, the Court would not be justified in setting such conviction aside, merely because the view taken of the evidence by the lower Court is not sustainable, or some fact which ought to have been found by that Court is not found or found incorrectly.—BALMAKAND RAM *v.* GHANSAMRAM, I. L. R., 22 Cal. 391. [Banerjee and Sale, JJ. Oct. 27, 1894.]

THE accused in the middle of the night effected an entry into a room occupied by four women. On an alarm being given, and an attempt made to capture him, he escaped. He was charged with an offence under s. 456 of the Penal Code. The defence set up was disbelieved by both the lower Courts Neither Court found specifically what was the intention with which the accused entered the room, but it was suggested that it was probably for the purpose of prosecuting an intrigue with one of the women. There was no evidence that he had been invited by her to go there The lower Courts convicted the accused under s. 456. It was contended that, as the prosecution had failed to prove that the entry was made with intent to commit any offence, the conviction was illegal. *Held* that the facts proved were good evidence of an intent and of an intrusion on privacy within the meaning of s. 509 of the Penal Code, and that therefore the intent to commit an offence within the meaning of s. 441 was made out *Balmakand Ram* v. *Ghansamram* (I. L. R., 22 Cal. 391) followed —PREMANUNDO SHAHA *v* BRINDABUN CHUNG, I. L. R., 22 Cal. 994. [Pigot and Banerjee, JJ. July 22, 1895.]

**457.** Whoever commits lurking house-trespass by night or house-breaking by night in order to the committing of any offence punishable with imprisonment shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Warrant. Not bailable. Not comp.

**Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment.**

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 457 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—CRIM. PRO. CODE (Act V. of 1898), s. 44.

IN drawing up a charge under s. 457, it is essential to mention the offence which the trespasser intended to commit.—2 W. R., Cr. L. 13, No. 1119 of 1864.

A PRISONER who, in the commission of lurking house-trespass by night, voluntarily attempts to cause grievous hurt to the owner of the house who tries to capture him, is punishable under s. 460, and not under ss. 457 and 324 of the Penal Code.—QUEEN *v.* LUKHUN DOSS, 2 W. R. 52. [Jackson and Glover, JJ. April 1, 1865.]

HOUSE-BREAKING by night and theft form a single offence, and cannot be punished separately, but under s. 457.—QUEEN *v.* TONAOKOCH, 2 W. R. 63: 4 R. J. P. J. 563 [Jackson and Glover, JJ. April 19, 1865.]

S. 71 of the Penal Code applies to the case of a person charged with "house-breaking" under s. 457, and "theft" committed under s. 380.—IN THE MATTER OF RAM GOLAM SINGH, 6 W. R. 59. [Loch and Jackson, JJ. Aug. 27, 1866.]

IN the case of a conviction of attempting to commit house-breaking by night with intent to commit theft, a sentence of whipping was annulled as being illegal.—REG. *v.* YELLAVALAD PARSHIA, 3 Bom. H. C. R. 37. [Couch, C. J., and Newton, J. Nov. 21, 1866.]

SEPARATE convictions and sentences under ss. 494 and 397, and under ss. 457 and 380 of the Penal Code, were set aside, and the convictions under s. 429 in the former case, and under s. 457 in the latter, allowed to stand.—QUEEN *v.* SAHRAE, 8 W. R. 31. [Jackson and Hobhouse, JJ. July 1, 1867.]

WHERE facts prove (1) a house-breaking by night with intent to commit theft, and (2) theft in a building, it is not necessary to divide the charge into two counts. The actual commission of the theft is conclusive evidence of the intent, and it is therefore sufficient to convict for the major offence under s. 457.—Mad. H. C. R., Jan. 20, 1868; 2 Mad. Jur. 77, see too *Queen* v. *Sahrae*, 8 W. R. 31.

WHERE a First-class Subordinate Magistrate sentenced a prisoner to six months' rigorous imprisonment under s. 457 of the Penal Code, and, finding that the prisoner was liable to enhanced punishment under s. 75 of the Penal Code, sentenced the prisoner to six months further imprisonment under s. 46 of the Code of Criminal Procedure (Act XXV. of 1861), the latter sentence was set aside by the High Court.—PRO., Nov. 2, 1869, 5 Mad. H. C. R. Ap. 3.

HELD that, where, in the course of one and the same transaction, an accused person appears to have committed several acts, directed to one end and object, which together amount to a more serious offence than each of them taken individually by itself would constitute, although for purposes of trial it may be con-

venient to vary the form of charge, and to designate not only the principal but the subsidiary crimes alleged to have been committed, yet, in the interests of simplicity and convenience, it is best to concentrate the conviction and sentence on the gravest offence proved. Where, therefore, a person who broke into a house by night, and committed theft therein, was charged and tried for offences under ss. 380 and 457 of the Penal Code, and was convicted of both those offences, and punished for each with rigorous imprisonment for 18 months, the Court convicted him of the offence under s. 457, and sentenced him to rigorous imprisonment for three years, and acquitted him of the offence under s. 380.—EMPRESS v. AJUDHIA, I. L. R., 2 All. 644. [Straight, J. Jan. 19, 1880.]

THE accused was convicted at one trial by a Magistrate of the first class of the offences of house-breaking by night with intent to commit theft, punishable under s. 457, and of theft in a dwelling-house, punishable under s. 380 of the Penal Code (Act XLV. of 1860), the two offences being part of the same transaction, the theft following the house-breaking. The prisoner was sentenced to two years' rigorous imprisonment under s. 457, and to six months rigorous imprisonment and a fine of Rs 100, or, in default of payment, three months' further rigorous imprisonment under s. 380. The District Magistrate referred the case to the High Court, on the ground that the aggregate of punishment awarded on the two heads of charge exceeded the powers of the First-class Magistrate who tried the case. The Sessions Judge, to whom an appeal had been preferred, was of the same opinion, and reduced the sentence to two years' rigorous imprisonment. *Held* that, as the accused committed two distinct offences which did not "constitute, when combined, a different offence," punishable under any section of the Penal Code (Act XLV. of 1860), s 71 of the Code did not apply, and as the aggregate punishment did not exceed twice the amount of punishment which the trying Magistrate was competent to inflict, the sentences were legal under s. 35 of the Criminal Procedure Code (Act X. of 1882). *Per* Jardine, J. The rules for assessment of punishment contained in s 454 of the Criminal Procedure Code of 1872, having been omitted in s 235 of the Criminal Procedure Code of 1882, must now be sought for in s. 71 of the Penal Code (Act XLV. of 1860), and in s. 35 of the Criminal Procedure Code (Act X. of 1882).—QUEEN-EMPRESS v. SAKHARAM BHAU, I. L. R., 10 Bom 493 [Birdwood and Jardine, JJ. Feb. 1886.]

AN accused person was convicted under s. 457 of the Penal Code of house-breaking by night in order to commit an offence (mischief and assault), and also under ss. 426 and 352 for the offences of mischief and assault, and punished separately for each offence. These offences formed parts of one transaction. *Held* that the sentences were legal.—QUEEN-EMPRESS v. NIRICHAN, I. L. R., 12 Mad. 36. [Kernan and Muttusami Ayyar, JJ. April 17, 1888.]

A COURT has no power under s. 395 of the Criminal Procedure Code to revise its sentence of whipping by inflicting a fine. In cases where the sentence of whipping cannot be carried out, all that the Court can do is either to remit the whipping altogether, or to sentence the offender, in lieu of such whipping, or of so much of the sentence of whipping as was not carried out, to imprisonment, &c. The word "imprisonment" in s. 395 of the Criminal Procedure Code means a substantive sentence of imprisonment, and not imprisonment for default in payment of a fine.—QUEEN-EMPRESS v. SHEODIN, I. L. R., 11 All. 308. Straight, J. Jan. 5, 1889.]

A CONVICTION for lurking house-trespass by night under s. 456 of the Penal Code is not bad for want of the specification of the intention in the charge, but one under s. 457 cannot be sustained without such specification. In a charge under the former section, though a guilty intention must be proved, it is not necessary to prove which of the several guilty intentions the accused had, it will be enough if it is shown that the intention must have been one or other of those specified in s 441, though it may not be certain which it was. An accused person, the landlord of a house in which he occupied the lower flat, was found in the middle of the night in the room of the complainant, one of his tenants, upstairs, in which the complainant and his wife were at the time sleeping. Upon being detected the accused was subjected to very severe treatment, but did not utter a word of protestation of innocence or make any show of remonstrance, and when questioned said, "I have committed a fault: pardon me." He was arrested upon a charge under s. 456 of the Penal Code, the criminal intention alleged being that of committing theft. The charge framed by the Magistrate did not specify any intention, and the Magistrate came to the conclusion that the trespass was not committed by the accused, who was a wealthy man, with that intention. He found, however, that the complainant had suppressed some important facts, and that he was not in his wife's room when the accused entered it, and relying on the decision in *Koilash Chandra Chakrabarty* v. *The Queen-Empress* (I. L. R., 16 Cal. 657), he convicted the accused. On appeal, the Sessions Judge, though

finding that the Magistrate's views were against the evidence, upheld the conviction without finding what specifically was the intention with which the entry was made. In revision, it was contended that the conviction was bad—(1) because no guilty intention was set out in the charge; (2) because no such intention was proved by the evidence; and (3) because no such intention was specifically found by the Sessions Judge. *Held* that the first contention was unsupportable for the reasons above stated Even if it had been necessary to specify the intention in the charge, it would have to be shown under the provisions of s. 587 of the Code of Criminal Procedure that the omission had occasioned a failure of justice; and having regard to the nature of the charge and the line of defence adopted, the accused had not in any way been prejudiced in his defence *Held*, as regards the second contention, that, though it was not certain what the precise intention of the accused was in committing the trespass, it was clear that it must have been with one or other of the intentions specified in s 441 of the Penal Code, as, judging from the time, the place, and manner in which the trespass was committed, and the conduct of the accused when discovered, it was impossible to suppose that the trespass could have been committed either unintentionally or with any innocent intention, and that it must have been committed with the intention of committing some offence, but that the accused was entitled to have it taken that it was with the least possible culpable intention, namely, that of committing an offence under s. 509 of the Penal Code. *Held* as regards the third contention, that, in exercising its powers under s. 439 of the Code of Criminal Procedure, it is open to the High Court to alter any finding and confirm a conviction, and that, if the evidence on the record in a case be sufficient to warrant a conviction, the Court would not be justified in setting such conviction aside, merely because the view taken of the evidence by the lower Court is not sustainable, or some fact which ought to have been found by that Court is not found or found incorrectly.—BALMAKAND RAM *v.* GHANSAMRAM, I. L. R., 22 Cal. 391. [Banerjee and Sale, JJ. Oct. 27, 1894.]

S 75 of Act XLV. of 1860 does not apply to the case of an attempt to commit the offence punishable under s. 457 of the Code, after previous convictions of offences falling within Ch. XII. or Ch. XVII., such offence being punishable under s. 511. *Sheo Saran Tato* v. *The Empress* (I. L. R., 9 Cal. 877), *Empress of India* v. *Ram Dayal* (I. L. R., 3 All. 773), *Empress* v *Nana Rahim* (I L. R., 5 Bom 140), and *Queen-Empress* v. *Sricharan Bauri* (I L. R., 14 Cal. 367) referred to. —QUEEN-EMPRESS *v.* AJUDHIA, I. L. R., 17 All. 120. [Banerji, J. Jan. 10, 1895.]

WHERE, on a charge under s. 457 of the Penal Code, it was proved to the satisfaction of the Court that the accused did enter the complainant's house in order to have sexual intercourse with a woman whom he knew was the wife of the complainant, and further that he did so without the husband's consent, and the accused was convicted, it was held that the conviction was proper. It was not necessary under the circumstances that the complainant should bring a specific charge of adultery *Brijbasi* v. *The Queen-Empress* (I. L. R., 19 All 74) referred to. — QUEEN-EMPRESS *v.* KANGLA, I. L. R., 23 All. 82. [Aikman, J. Oct 30, 1900.]

THERE is no jurisdiction in the High Court to hear appeals in respect of sentences passed on conviction of offences committed within the districts known as the Chittagong Hill Tracts.— QUEEN-EMPRESS *v* SONAI MUGH, I L R., 27 Cal, 654. [Prinsep and Stanley, JJ. Mar. 30, 1900.]

**458.** Whoever commits lurking house-trespass by night or house-breaking by night, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp.

**Lurking house-trespass or house-breaking by night after preparation for hurt, assault, or wrongful restraint.**

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 458 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention, —CRIM. PRO. CODE (Act V. of 1898), s. 44.

**459.** Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, shall be punished with transportation for life, or imprison-

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

**Grievous hurt caused whilst committing lurking house-trespass or house-breaking.**

ment of either description for a term which may extend to ten years, and shall also be liable to fine.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 459 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention. —CRIM. PRO. CODE (Act V. of 1898), s. 44.

A DEPUTY MAGISTRATE has no power to convict of theft (s. 380), where the offence charged is lurking house-trespass by night with aggravating circumstances (ss. 458 and 459), but must commit on the latter charge. —PURAN TELER v. BHUTTOO DOME, 9 W. R. 5. [Kemp and Jackson, JJ. Jan. 13. 1869.]

WHEN the door of a shop was found broken open, *held* that the conviction should have been for house-breaking by night, and not simply lurking house-trespass by night.—QUEEN v. KENARAM BOUSEE, 4 W. R. 19. [Glover, J. Oct. 25, 1865.]

IN a case of conviction of house-breaking by night in order to commit theft under s. 457, and theft under s. 380 of the Penal Code, there may be either one sentence for both offences, or separate sentences for each offence, provided that the total punishment awarded does not exceed that which may be given for the graver offence.—REG. v. TUKAYA BIN TAMANA, I. L. R., 1 Bom. 214. [Westropp, C.J., and Kemball, West, and Nanabhai Haridas, JJ. Sep. 14, 1875.]

To support a charge under s. 459 (causing grievous hurt, &c., whilst committing house-breaking) or s. 460 (causing grievous hurt, &c., at the time of committing house-breaking), the grievous hurt must be caused or the attempt must be made during the time that the house-breaking is being committed, and not after that offence is completed, and the offender has left the premises.—IMAMUDDIN v. CROWN, Panj Rec., No. 17 of 1876.

Ss. 459 and 460 of the Penal Code provide for a compound offence, the governing incident of which is that either a "lurking house-trespass" or "house breaking" must have been completed, in order to make a person who accompanies that offence either by causing grievous hurt or attempt to cause death or grievous hurt responsible under those sections. The sections must be construed strictly, and they are not applicable where the principal act done by the accused person amounts to no more than a mere attempt to commit lurking house-trespass or house-breaking.—QUEEN-EMPRESS v. ISMAIL KHAN I. L. R. 8 All 649. [Straight, Offg. C.J. Aug. 9, 1886.]

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.

**460.** If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 460 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—CRIM. PRO. CODE (Act V. of 1898), s. 44.

A PERSON who, in the commission of lurking house-trespass by night, voluntarily attempts to cause grievous hurt to the owner of the house who tries to capture him, is punishable under s. 460, and not under ss. 457 and 324 of the Penal Code. —QUEEN v. LUKHUN DOSS, 2 W. R. 52. [Jackson and Glover, JJ. April 1, 1865.]

THE appellants and another person attempted to break into a house by night for the purpose of committing theft, and were interrupted by the inmates, one of whom was killed by one of the accused. There was no evidence to show which of the accused caused death. *Held* that the appellants could not be punished with transportation for life under s. 460, as the offence of house-breaking had been attempted only, and not committed.—SAIFUDIN v. CROWN, Panj. Rec. No. 16 of 1874.

To support a charge under s. 459 (causing grievous hurt, &c., whilst committing house-breaking), or s. 460 (causing grievous hurt, &c., at the time of committing house-breaking), the grievous hurt must be caused, or the

attempt must be made during the time that the house-breaking is being committed and not after the offence is completed, and the offender has left the premises.—IMAMUDDIN v. CROWN, Panj. Rec. No. 17 of 1876.

CRIMINAL COURTS dealing with an approver's evidence in a case where several persons are charged should require corroboration of his statements in respect of the identity of each of the individuals accused. *Queen-Empress* v. *Ram Saran* (I. L. R., 8 All. 306), *Queen-Empress* v. *Kure* (2 Weekly Notes, 1886, p. 65), and *Reg.* v. *Mullins* (3 Cox C C. 526) referred to. A, B, M, R, and N, were tried together on a charge under s 460 of the Penal Code. The principal evidence against all of them was that of an approver. Against A, B, and M, there was the further evidence that they produced certain portions of the property stolen on the night of the crime from the house where the crime was committed. With regard to R, it was proved that he was present when B pointed out the place where some of the property was dug up, but he did not appear to have said anything or give any directions about it. *Held* with reference to A, B, and M, that it could not be said that their recent possession of part of the stolen property, so soon after it had been stolen, was not such corroboration of the approver's evidence of their participation in the crime as entitled the Court to act upon his story in regard to those particular persons. *Held* that, inasmuch as there was no sufficient material to warrant the inference of guilty knowledge on R's part, and, with regard to N, no property was found with him or produced through his instrumentality, both R and N ought to have been acquitted — QUEEN-EMPRESS v. BALDEO, I. L. R., 8 All. 509. [Straight, Offg. C J. June 28, 1886.]

**461.** Whoever dishonestly, or with intent to commit mischief, breaks open or unfastens any closed receptacle, which contains, or which he believes to contain, property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonestly breaking open receptacle containing property.

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

ACCORDING to the definition given in s. 442, a large circular receptacle for grain made of straw, with an opening in the top, and situated in a backyard, is not "a place for the custody of property," and therefore the offence of house-breaking cannot be committed in respect of it; but the offence really committed was the dishonestly breaking open a closed receptacle containing property.—Mad. H. C. Rul. 1865, on s. 457.

**462.** Whoever, being entrusted with any closed receptacle which contains, or which he believes to contain, property without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for same offence when committed by person entrusted with custody.

Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

## CHAPTER XVIII.

### OF OFFENCES RELATING TO DOCUMENTS* AND TO TRADE OR PROPERTY-MARKS.*

**463.** Whoever makes any false document or part of a document with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud, or that fraud may be committed, commits forgery.

Forgery.

* As to authority for instituting prosecutions under s. 463, 471, 475, or 476, see the new Code of Criminal Procedure (Act V. of 1898), s. 195, sub-s. (*1*), cl. (*c*).

As to procedure in case of offences described in s. 463, 471, 474, 475, 476, or 477, see the Code of Civil Procedure (Act XIV. of 1882), s. 643.

As to whipping for the offences defined in ss. 463, 466, 469, see the Whipping Act (VI. of 1864), ss. 4, 6.

THE forgery of a *copy* of a document comes within the definition of forgery as contained in s. 463 of the Penal Code.—ESHAN CHUNDER DUTT v. PRAN NATH CHOWDHRY, W. R. Gap, 1864, 71; Marsh, R. 270. [Peacock, C.J., and Bayley and Kemp, JJ. Feb. 9, 1863.]

THE making of a fraudulent document without any criminal intent has been held to be no offence under this Code.—3 W. R. Cr. L. 18, No. 689 of 1865.

THE fraudulent preparation of a deed intending to cause injury to certain parties is not forgery unless such deed is a false document.—5 W. R. Cr. L. 2, No 157 of 1866.

THE signing of a vakalatnama in the name of co-decree-holders without their authority to do so, and delivering it to a vakil, with instructions to file a petition, stating that the debt had been satisfied, and praying that the case may be struck off the file, is forgery within the meaning of s 463 of the Penal Code.—QUEEN v. GAYNEE RAM, 6 W. R. 78. [Markby, J. Sep. 27, 1866.]

WHERE a prisoner, who appealed to the Commissioner from an order of an assessor under Act XXI. of 1867, filed a stamp-paper for a copy of the assessor's decision after the period of appeal had elapsed, but on appeal averred that he filed the stamp-paper before the time for appealing had elapsed, and fraudulently obtained a certificate to that effect which was antedated, it was *held* that he was guilty of having abetted the commission of a forgery of a document within s. 463 and s. 464, cl. 1, of the Penal Code.—QUEEN v. SOOKMOY GHOSE, 10 W. R. 23. [Loch and Glover, JJ. July 25, 1868.]

THE simple making of a false document constitutes the offence of forgery under s. 463 of the Penal Code, and it is not necessary that it should be issued or made known to the injury of a person's reputation either by being presented in Court, or shown to any person. A false document may be made in the name of a fictitious person. Where a draft-petition was prepared with the intention of being used as evidence of a matter, it was *held* that it fell within the terms of s. 29 of the Penal Code, and as it contained false statements calculated to injure the reputation of a person, the offence was held to fall within s. 469 of the Penal Code.—*In re* SHEEFAIT ALLY, 10 W. R. 61; 2 B. L. R. A. Cr. 12. [Loch and Glover, JJ. Dec 14, 1868.]

A SPECIALLY registered bond was presented before the Small Cause Court Judge for execution under s. 53, Act XX. of 1866, and a decree passed upon it in the usual form. Subsequently the Registrar sanctioned the prosecution of the decree-holder, on the ground that the bond was a forgery. The Small Cause Court Judge thereupon, on application made, without taking any evidence or making further inquiry, set aside the decree, and sanctioned the prosecution under s. 170 of the Criminal Procedure Code (Act XXV. of 1861). *Held* that he was justified in sanctioning the prosecution, but not in setting aside the decree.—QUEEN v. NAWAB SING, 3 B. L. R., A. Cr. 9. [Norman and Jackson, JJ. April 2, 1869.]

THE subsequent falsification of a roznamcha-bahi kept in the office of a Deputy Inspector of Schools by the mohurrir in charge thereof for the purpose of concealing frauds previously committed, merely with a view to avoid disgrace and punishment, held not to fall within the definition of forgery as given in the Penal Code. Appeal from the order of the Sessions Judge of Goruckpore.—QUEEN v. JOGESHUR PERSHAD, 6 N.-W. P. 56. [Pearson, J. Dec. 20, 1873.]

A SIGNED B's name to petitions presented by C to the Mamlatdar requesting his summary assistance, under Reg. XVII. of 1827, for the recovery of rents from B's tenants. *Held* that, even if A had no authority from B to sign his name, and if A wished to deceive the Mamlatdar into the belief that it was B himself who had signed the petitions, still, if there had been no intention to defraud anybody, or if no wrongful gain or wrongful loss could have been caused to A or B, A's act did not constitute forgery within the meaning of the Penal Code. Avoidance of litigation is no wrongful loss to Government. —REG. v. BHAVANISHANKAR, 11 Bom. H. C. R 3. [Melvill and Nanabhai Haridas, JJ. Feb. 19, 1874.]

FALSIFICATION of a record made in order to conceal a previous act of negligence not amounting to fraud does not amount to forgery within the meaning of ss. 463 and 464 of the Penal Code.—EMPRESS v. SHANKAR, I. L. R., 4 Bom. 657. [Kemball and Melvill, JJ. July 19, 1880.]

THAT which constitutes a false document within the meaning of ss. 463 and 464 of the Penal Code is not the writing of any number of words which in themselves are innocent, but the affixing the seal or signature of some other person to the document with a knowledge that the seal or signature is not his, and that he gave no authority to affix it. A person, therefore, who has given orders for the printing of certain receipt-forms similar to those formerly used by a certain company, and corrected the proofs of the same, it being his intention to use the receipt-forms in order to commit a fraud, cannot be convicted of forgery until one of the printed forms has been converted by him into a false document,

nor of an attempt to commit forgery until he had done some act towards making one of the forms a false document. Until a form had been converted into a false document, all that was done consisted in mere preparation for the commission of an offence. An attempt to commit an offence must be to do that which, if successful, would amount to the offence. *Per* Garth, C.J.. The fact that the word "make" is used in s. 464 of the Penal Code in conjunction with the words "sign," "seal," or "execute," clearly denotes that the making of a document does not mean writing or printing it, but signing or otherwise executing it.—IN THE MATTER OF RIASAT ALI, *alias* BABU MIYA, *alias* BODIUZZUMA: EMPRESS *v.* RIASAT ALI, *alias* BABU MIYA, *alias* BODIUZZUMA, I. L. R., 7 Cal. 352; 8 C. L. R. 572. [Garth, C.J., and Prinsep, J. June 3, 1881.]

ON the 2nd August 1884, a Munsif, who was of opinion that, in the course of a suit which had been tried before him, certain persons had committed offences under ss 193, 463, and 471 of the Penal Code, and that the prosecution of these persons was desirable, made an order which he described as passed under s. 643 of the Civil Procedure Code, and in which he directed that the accused should be sent to the Magistrate, and that the Magistrate should inquire into the matter. In May 1885, upon an application by one of the accused to the District Court to "revoke the sanction for prosecution granted by the Munsif," it was contended that the "sanction" had expired on the 2nd February 1885, and had ceased to have effect. *Held* by the Full Bench that the Munsif's order, whether it was or was not a sanction, was a sufficient "complaint" within the meaning of s. 195 of the Criminal Procedure Code, and that the limitation-period prescribed by that section was applicable to the case. *Per* Petheram, C.J., and Straight, J.: That considering that s. 643 of the Civil Procedure Code was closely similar to s. 470 of the Criminal Procedure Code, the Munsif's order might be taken as having been passed under the latter section. Also *per* Petheram, C.J., and Straight, J.: The words in s. 195 of the Criminal Procedure Code, "except with the previous sanction or on the complaint of the public servant concerned," must be read in connection with s. 476, which was enacted with the object of avoiding the inconvenience which might be caused if a Munsif, or a Subordinate Judge, or a Judge were obliged to appear before a Magistrate, and make a complaint on oath, like an ordinary complainant, in order to lay the foundation for a prosecution. The language of s. 476 indicates that, where a Court is acting under s. 195, a complaint in the strict sense of the Code is not required, and that the procedure therein laid down constitutes the "complaint" mentioned in s. 195.—ISHRI PROSAD *v.* SHAM LALL, I. L. R., 7 All. 871. [Petheram, C.J., and Straight, Brodhurst, and Tyrrell, JJ. July 4, 1885.]

A SUB-REGISTRAR under the Registration Act (III. of 1877) is not a Judge, and, therefore, not a "Court" within the meaning of s. 195 of Code of Criminal Procedure (Act X. of 1882). His sanction is, therefore, not necessary for a prosecution for forgery in respect of a forged document presented for registration in his office. The word "forgery" is used as a general term in s. 463 of the Penal Code and that section is referred to in a comprehensive sense in s. 195 of the Criminal Procedure Code (Act X. of 1882) so as to embrace all species of forgery, and thus includes a case falling under s. 467 of the Penal Code. The definition of "Court" given in the Evidence Act (I of 1872) is framed only for the purposes of the Act itself, and should not be extended beyond its legitimate scope. Distinction between a *judicial* and an *administrative* inquiry pointed out.—QUEEN-EMPRESS *v.* TULJA, I. L. R., 12 Bom. 36 [West and Birdwood, JJ. July 14, 1887.]

PRISONER was requested to make an entry in a book of account belonging to the complainant to the effect that he was indebted to the complainant in a certain sum found due on a settlement of accounts; instead of making this entry as requested, prisoner entered in a language not known to complainant that this sum had been paid to complainant. He was convicted of forgery under s. 465 of the Penal Code *Held* that the offence was not forgery, but an attempt to cheat.—QUEEN-EMPRESS *v.* KUNJU NAYAR, I. L. R., 12 Mad. 114 [Muttusami Ayyar and Shephard, JJ. Sep 9, 20, 1888.]

A FALSELY represented himself to be B at a university examination, got a hall-ticket under B's name, and headed and signed answer-papers to questions with B's name. *Held* that A committed the offences of forgery and cheating by personation.—QUEEN-EMPRESS *v.* APPASAMI, I. L. R., 12 Mad. 151. [Collins, C.J., and Parker, J. Jan. 18, 1889.] Approved in *Queen-Empress* v. *Soshi Bhushan*, I. L. R., 15 All. 210, *infra*.

THE term "claim" in s. 463 of the Penal Code is not limited in its application to a claim to property. The term "property" in the same section will cover a written certificate. It is not necessary to constitute a forgery under s. 463 of the Penal Code that the property with which it is intended that the false document shall cause a person to

part should be in existence at the time when the false document was made. *Queen-Empress* v. *Haradhan* (I. L. R., 19 Cal. 380) dissented from. *Queen-Empress* v. *Appasami* (I. L. R., 12 Mad. 151) and *Queen-Empress* v. *Ganesh Khanderao and Ganesh Daulat* (I. L. R., 15 Bom. 506) approved. One S B presented to the Principal of Queen's College, Benares, a false certificate purporting to have been granted by the Principal of Canning College, Lucknow, to the effect that he had attended a certain proportion of a certain first-year course of law-lectures delivered at Canning College, S B, in fact, never having attended such lectures. Had that certificate been a true one, it would have entitled S B to attend a further course of law-lectures at any one of several associated institutions amongst which was Queen's College, Benares, without attending or paying the fees for the first course of lectures. On presentation of the above certificate S B obtained permission to attend, and attended, a course of second-year lectures at Queen's College, Benares, without attending or paying the fees required for the first-year course. After S B had attended the abovementioned second-year course of lectures at Queen's College, Benares, he again presented the said false certificate to the Principal of Queen's College with a view to his obtaining a consolidated certificate, which was necessary, as he alleged to enable him to become a candidate in the Judge's Court pleadership examination in Calcutta. *Held* that on both occasions, when he presented the false certificate to obtain admission to the second-year law-class at Queen's College, Benares, and again when he endeavoured by its use to obtain the consolidated certificate in order to gain admission to the pleadership examination in Calcutta, S B was guilty of the offence provided for by s. 471 of the Penal Code.—QUEEN-EMPRESS v. SOSHI BHUSHAN, I. L. R., 15 All. 210. [Edge, C.J., and Aikman, J. April 29, 1893.] See *Lolit Mohan Sarkar* v. *Queen-Empress*, I. L. R., 22 Cal. 313, under s. 408.

THE accused applied to the Superintendent of Police at Poona for employment in the police-force. In support of this application he presented two certificates which he knew to be false. One of these certificates was a wholly fabricated document, whilst the other was altered by several additions made subsequently to the issue of the certificate. *Held* that the accused was guilty of offences under ss 463 and 471 of the Indian Penal Code.—QUEEN-EMPRESS v. KHANDUSINGH, I. L. R., 22 Bom. 768. [Parsons and Ranade, JJ. Dec. 17 1896.]

DEPRIVATION of property, actual or intended, is not an essential element in the offence of fraudulently using as genuine a document which the accused knew or had reason to believe to be false. *Queen-Empress* v. *Haradhan* (I. L. R., 19 Cal. 380) overruled.—QUEEN-EMPRESS v. ABBAS ALI, I. L. R., 25 Cal. 512. [Maclean, C.J., and O'Kinealy, Macpherson, Prevelyan and Jenkins, JJ. Dec. 22, 23, 1896, and Jan 29, 1897.]

Making a false document.

**464.** A person is said to make a false document—

*First*—Who dishonestly or fraudulently makes, signs, seals, or executes a document or part of a document, or makes any mark denoting the executing of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, or executed by, or by the authority of, a person by whom or by whose authority he knows that it was not made, signed, sealed, or executed, or at a time at which he knows that it was not made, signed, sealed, or executed ; or

*Secondly*—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration ; or

*Thirdly*—Who dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document, knowing that such person, by reason of unsoundness of mind or intoxication, cannot, or that, by reason of deception practised upon him, he does not, know the contents of the document or the nature of the alteration.

*Illustrations.*

(*a.*) A has a letter of credit upon B for Rs. 10,000 written by Z. A, in order to defraud B, adds a cipher to the 10,000, and makes the sum 1,00,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(*b.*) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B, and thereby of obtaining from B the purchase-money. A has committed forgery.

(*c.*) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(*d.*) A leaves with B, his agent, a cheque on a banker signed by A, without inserting the sum payable, and authorizes B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(*e.*) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker, and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(*f.*) Z's will contains these words: "I direct that all my remaining property be equally divided between A, B, and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(*g.*) A endorses a Government promissory note, and makes it payable to Z or his order, by writing on the bill the words, "Pay to Z or his order," and signing the endorsement. B dishonestly erases the words, "Pay to Z or his order," and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(*h.*) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(*i.*) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and, by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(*j.*) A writes a letter, and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(*k.*) A, without B's authority, writes a letter, and signs it in B's name, certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery, inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an express or implied contract for service.

*Explanation 1.*—A man's signature of his own name may amount to forgery.

*Illustrations.*

(*a.*) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name.

(*b.*) A writes the word "accepted" on a piece of paper, and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery, and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(*c*.) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable. Here A has committed forgery.

(*d*.) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate to Z at a nominal rent and for a long period, and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(*e*.) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors, and, in order to give a colour to the transaction, writes a promissory-note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

*Explanation 2.*—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

*Illustration.*

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

IT must be proved that the accused practised deception so as to prevent a person from knowing the nature of the document before the accused can be found guilty under s. 464 of the Penal Code of making a false document.—QUEEN *v.* NUJEEBI TOOLLAH, 9 W. R. 20. [Jackson, J. Feb. 20, 1868.]

WHERE a prisoner, who appealed to the Commissioner from an order of an assessor under Act XXI. of 1867, filed a stamp-paper for a copy of the assessor's decision after the period of appeal had elapsed, but on appeal averred that he filed the stamp-paper before the time for appealing had elapsed, and fraudulently obtained a certificate to that effect which was antedated, it was held that he was guilty of having abetted the commission of forgery of a document within s. 463 and s. 464, cl. 1, of the Penal Code.—QUEEN *v.* SOOKMOY GHOSE, 10 W. R. 23. [Loch and Glover, JJ. July 25, 1868.]

WHERE prisoner, to screen his own negligence, altered an office-report, such conduct does not fall within the definition of forgery in the Penal Code.—QUEEN *v.* LALL GUMAL, 2 N.-W. P. 11. [Turner and Spankie, JJ. Jan. 18, 1870.]

WHERE the accused, a mohurrir in a registry-office, was charged with making false endorsements of registry on the back of certain deeds, which endorsements were signed by the registrar, it was held that, before he could be convicted of forgery under part III., s. 464, Penal Code, it must be shown that the registrar, in consequence of deception practised upon him by the accused, did not know the contents of the document he was signing. Money received by a mohurrir appointed under the Registration Act (IX. of 1862, B. C.) by way of fees for registering deeds is money entrusted to him as a public servant.—QUEEN *v.* DWARKA NATH GHOSE, 20 W. R. 49. [Glover and Birch, JJ. July 9, 1873.]

A MISREPRESENTATION by false description of one's position in life falls under the heading of cheating, and not under that of forgery. Where, therefore, a document purported to have been signed by "G L, patwari," and it was said that it was signed by G L, but at a time when G L was not a patwari, it was held that the document was not a forgery within s. 464 of the Penal Code.—JOY KURN SINGH *v.* MAN PATUCK, 21 W. R. 41. [Kemp and Ainslie, JJ. Feb. 17, 1874.]

FALSIFICATION of a record made in order to conceal a previous act of negligence not amounting to fraud does not amount to forgery within the meaning of ss. 463 and 464.—EMPRESS *v.* SHANKER, I. L. R., 4 Bom. 657. [Kemball and Melvill, JJ. July 19, 1880.]

WHERE the date of a document, which would otherwise not have been presented for registration within time, is altered for the purpose of getting it registered, the offence committed is not forgery, where there is nothing to show that it was done "dishonestly or fraudulently," within cl. 2, s. 464, of the

Penal Code, but fabricating false evidence within s. 192.—*In re* MIR EKRAR ALI. EMPRESS *v.* MIR EKRAR ALI, I. L. R., 6 Cal. 482. [Garth, C.J., and Field, J. Dec. 3, 1880.]

THAT which constitutes a false document within the meaning of ss. 463 and 464 of the Penal Code is not the writing of any number of words which in themselves are innocent, but the affixing the seal or signature of some other person to the document with a knowledge that the seal or signature is not his, and that he gave no authority to affix it. A person, therefore, who has given orders for the printing of certain receipt-forms similar to those formerly used by a certain company, and corrected the proofs of the same, it being his intention to use the receipt-forms in order to commit a fraud, cannot be convicted of forgery until one of the printed forms has been converted by him into a false document, nor of an attempt to commit forgery until he had done some act towards making one of the forms a false document. Until a form had been converted into a false document, all that was done consisted in mere preparation for the commission of an offence. An attempt to commit an offence must be to do that which, if successful, would amount to the offence charged. *Per* Garth, C.J. The fact that the word "make" is used in s. 464 of the Penal Code in conjunction with the words "sign," "seal," or "execute," clearly denotes that the making of a document does not mean writing or printing it, but signing or otherwise executing it.—*In re* RIASAT ALI, *alias* BABU MIYA, *alias* BODHUZZUMA, EMPRESS *v.* RIASAT ALI, *alias* BABU MIYA *alias* BODHUZZUMA, I. L. R., 7 Cal. 352; 8 C. L. R. 572. [Garth, C.J., and Prinsep, J. June 3, 1881.]

THE vendees of a plot of land altered the number by which the land was described in the deed of sale, doing so because such number was not the right number. Having made this alteration, they used the deed of sale as evidence in a suit. *Held* that the alteration of the deed did not amount to "forgery" within the meaning of s. 463 of the Penal Code, nor could the deed, after the alteration, be designated a "forged document" as contemplated by s. 470, the intention to cause wrongful loss or wrongful gain, or to defraud, being wanting, nor could it be said that, in using the deed, the vendees were "dishonestly" or "fraudulently" using as genuine a "forged document," and therefore the use by the vendees of the deed did not constitute any offence under s. 471 of the Penal Code. Further, that their use of it did not render them liable to conviction under s. 196 of that Code.—EMPRESS *v.* FATEH, I. L. R., 5 All. 217. [Mahmood, J. Oct. 2, 1882.]

THE accused, in order to obtain a recognition from a Settlement-officer that they were entitled to the title of "Luskur," filed a *sanad* before that officer purporting to grant that title. This document was found not to be genuine. The Sessions Judge convicted the accused under ss. 471 and 464 of the Penal Code. *Held* on appeal that, even supposing the accused had used the document knowing it not to be genuine, they could not be found guilty, as the intention of the accused was not to cause wrongful gain or wrongful loss to any one; their intention being to produce a false belief in the mind of the Settlement-officer that they were entitled to the dignity of "Luskur," and that this could not be said to constitute an "intention to defraud." A *sanad* conferring a title of dignity on a person is not a valuable security within the meaning of the Penal Code.—JAN MAHOMED AND JABAR MAHOMED *v.* QUEEN-EMPRESS; WARI MEAH *v.* QUEEN-EMPRESS, I. L. R., 10 Cal. 584. [Mitter and Norris, JJ. April 17, 1884.]

A TREASURY-ACCOUNTANT was convicted of offences under ss. 218 and 465 of the Penal Code under the following circumstances: A sum of Rs. 500, which was in the treasury, and was payable to a particular person through a Civil Court, was drawn out and paid away to other persons by means of forged cheques. After the withdrawal of the Rs. 500, but before such withdrawal had been discovered, the representative of the payee applied for payment. The prisoner then upon two occasions wrote reports to the effect that the Rs. 500 in question then stood at the payee's credit as a revenue-deposit, and that it was about to be transferred to the Civil Court. Upon the first of these reports, an order was signed by the treasury-officer for the transfer of the money to the Civil Court concerned, and to effect such transfer a cheque was prepared by the sale-mohurrir, which, as originally drawn up, related to the sum of Rs. 500 already mentioned. The signature of the cheque by the treasury-officer was delayed for some time, and meanwhile the cheque was altered by the prisoner, in such a manner as to make it relate to another deposit of Rs. 500, which had been made subsequently to the above, and to the credit of another person. The result of this was the transfer of the second payee's Rs. 500 to the Civil Court as if it had been the first Rs. 500, and to the credit of the first payee's representative. The prisoner was convicted under s. 465 of the Penal Code in respect of the cheque, and under s. 218 in respect of the two reports above referred to. *Held*, with

respect to the charge under s. 465, that the prisoner's immediate and more probable intention—which alone, and not his remoter and less probable intention, should be attributed to him—was not to cause wrongful loss to the second payee by delaying payment of the Rs. 500 due to her, though the act might have caused her loss, but to conceal the previous fraudulent withdrawal of the first payee's Rs. 500; that, under these circumstances, he could not be said to have acted "dishonestly" or "fraudulently" within the meaning of s. 24 or s. 25 of the Penal Code, and that, therefore, his guilt under s. 465 had not been made out, and the conviction under that section must be set aside. *Held* also that prisoner's intention in making the false reports was to stave off the discovery of the previous fraud, and save himself or the actual perpetrator of that fraud from legal punishment, and that, having prepared the reports in a manner which he knew to be incorrect, he was rightly convicted under s. 218 of the Penal Code. *Held* further that, as the prisoner, who was a public servant made these reports, and assumed to make them in due course and as a part of his duty, and held them out as reports which were made by the proper officer, and as no question was put in the examination of the witnesses from the office which suggested that it was not his business to make such reports, it must be inferred that he made them because it was his business to do so, and as a public servant, within the meaning of s. 218 of the Penal Code.—QUEEN-EMPRESS v. GRIDHARI LAL, I L. R., 8 All 653. [Edge, C J. Aug 24, 1886.]

THE accused, who was a copyist in the Sub-divisional Office at B, applied for a clerkship then vacant in that office. An endorsement on his application, recommending him for the post, and purporting to have been made by the Sub-divisional Officer of B, was found to have been falsely made by the accused. The application was accompanied by a letter, also fabricated by the accused, purporting to be from the Collector to the Sub-divisional Officer at B, informing the latter officer that he, the Collector, had selected the accused for the vacant post. The Sub-divisional Officer, having some suspicion as to the genuineness of his letter, wrote a demi-official letter to the Collector to ascertain whether he had really written it; and this being posted in the local post-office, the accused fabricated a third document, purporting to be a letter from the Sub-divisional Officer to the post-master, asking him to stop the despatch of the demi-official letter. The accused was charged with, and convicted in the Sessions Court of, the offence of forgery under s. 464 of the Penal Code, in respect of the three documents. *Held* that the conviction was right with regard to the first two documents, but with regard to the third document it could not be said that he falsely made it either dishonestly or fraudulently within the meaning of that section.—AMIRUT HAMID v. EMPRESS, I. L. R., 13 Cal. 349. [Mitter and Grant, JJ. Sep. 7, 1886.]

THE prisoner made certain entries in his ledger, which consisted of rough loose sheets, showing that certain sums of money had been re-paid to the prosecutor, which in fact, had not been repaid. *Held* that the prisoner was guilty of forgery under s. 464. Simply the omission of a count in the charge is a defect in the charge, and the Appellate Court may confirm a conviction under a different section of the Penal Code from that upon which the prisoner was tried and convicted, provided the prisoner has not been prejudiced or injured by the substitution of one section for another.—ANONYMOUS, 1 Ind. Jur., N. S. 46.

PRISONER was requested to make an entry in a book of account belonging to the complainant to the effect that he was indebted to the complainant in a certain sum found due on a settlement of accounts; instead of making this entry as requested, prisoner entered in a language not known to complainant that this sum had been paid to complainant. He was convicted of forgery under s. 465 of the Penal Code. *Held* that the offence was not forgery, but an attempt to cheat.—QUEEN-EMPRESS v. KUNJU NAYAR, I. L. R., 12 Mad. 114. [Muttusami Ayyar and Shephard, JJ. Sep. 9, 20, 1888.] See *Lalit Mohan Sarkar* v. *Queen-Empress*, I. L. R., 23 Cal. 313, under s. 408.

Ct. of Ses. Presy. Mag., or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp.

**465.** Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for forgery.

No appeal lies from an order of a Civil Court directing a criminal prosecution for forgery committed before it.—GUNGA NARAIN SIRCAR v. AZEEZOONISSA BEBEE, 5 W. R. Mis 18. [Bayley and Shumbhoonath Pundit, JJ. Feb. 6, 1866.]

WHEN a Civil Court directs that criminal proceedings be taken against a party to a suit before it for perjury or forgery, the High Court has no power, on an appeal being preferred against the decision of that Court, to direct that such proceedings be stayed until

the appeal shall have been heard and determined.—IN THE MATTER OF RAM PRASAD HAZRA, B. L. R. Sup. Vol. 420 (F. B.). [Peacock, C.J., and Bayley, Seton-Karr, Pundit, and Macpherson, JJ. Feb. 12, 1866.]

BY a person consenting to act under a mukhtarnama, and attaching his name in token of such consent, he does not become a maker of the mukhtarnama, or a forger, if the mukhtarnama turns out to be forged. It is the duty of the Judge to notice to the assessors discrepancies and contradictory statements made by the witnesses.—QUEEN v. BURJO BARICK, 5 W. R. 70. [Jackson and Glover, JJ. April 16, 1866.]

WHEN a Civil Court sends a prisoner before a Magistrate on a charge of forgery, it is competent to the Magistrate to commit the prisoner for trial on a charge, either of forgery or of using as genuine a false document, or of abetting forgery.—QUEEN v. MOHESH CHUNDER ACHARJEE, 6 W. R. 20. [Norman and Campbell, JJ. July 7, 1866.]

THE signing of a vakalatnama in the name of co-decree-holders without their authority to do so, and delivering it to a vakil, with instructions to file a petition, stating that the debt had been satisfied, and praying that the case may be struck off the file is forgery within the meaning of s. 463 of the Penal Code.—QUEEN v. GAYNEL RAM, 6 W. R. 78 [Markby, J. Sep. 27, 1866.]

A PRISONER was charged with having forged pattas A and B, bearing the same date, and adduced in evidence by him in the same suit. No mention of any charge as to patta B was made in the order of commitment; and the prisoner having been acquitted on an indictment for forging patta A, it was held by the majority of the Court (Markby, J., dissenting) that the plea of autrefois acquit was inadmissible on a subsequent trial of the prisoner for forging the patta B.—QUEEN v. DWARKANATH DUTT, 7 W. R. 15, 2 Ind. Jur. N. S. 67. [Peacock, C.J., and Kemp and Markby, JJ. Jan. 23, 1867.]

THE sanction for prosecution mentioned in the Criminal Procedure Code refers to those cases only where a forged document has been put in evidence in a Civil or Criminal Court; but in other cases a Magistrate is competent, *proprio motu*, to inquire into allegations of forgery, and no sanction is necessary.—QUEEN v. RAMDHARRY SINGH, 10 W. R. 5. [Loch and Glover, JJ. June 6, 1868.]

A CONVICTION for forgery under the Penal Code cannot be had unless it is proved that the accused *himself* made a document, or part of a document, with the intention of causing it to be believed that such document, or part of a document, was made by the authority of a person by whose authority he knew that it was not made.—QUEEN v. RAM GOPAL DHUR, 10 W. R. 7. [Phear and Hobhouse, JJ. June 23, 1868.]

THE offence of altering one part of a document executed in two parts for the mutual security of both the parties concerned deserves to be severely punished.—QUEEN v. KISSOREE MOHUN DUTT, 17 W. R. 58. [Bayley and Mitter, JJ. May 6, 1872.]

HELD that, where a person's object was to deceive his employer by falsifying account-books which were in his custody, such deception being likely to cause damage to his employer, he was rightly convicted under s. 460 of forgery with intent to cheat instead of under s. 465 of simple forgery.—QUEEN v. BANESSUR BISWAS, 18 W. R. 46. [Bayley and Mitter, JJ. Sep. 5, 1872.]

A CIVIL COURT has no power to order the commitment of persons for offences under ss. 471, 465, and 193 of the Penal Code without holding the preliminary inquiry required by s. 474 of the Criminal Procedure Code (Act X of 1872).—QUEEN v. RUNGATOONEE, 22 W. R. 52. [Markby and Mitter, JJ. Aug. 5, 1874.]

WHERE a clerk, who had committed criminal breach of trust, subsequently made false entries in an account-book, with the intention of concealing such offence, *held* that the making of such entries did not constitute the offence of forgery, and he had therefore been improperly convicted under s. 465 of the Penal Code. *Queen* v. *Jageshur Pershad* (6 N.-W. P. 50) and *Queen* v. *Lal Gumul* (2 N.-W. P. 11) followed.—EMPRESS v. JIWANAND, I. L. R., 5 All. 221. [Mahmood, J. Oct. 5, 1882.]

IN a suit on a bond, instituted in the Court of a Munsif, the question whether the defendant had executed the bond or not was referred to arbitration. The arbitrator decided that the defendant had not executed the bond, and that it was a forgery. The Munsif dismissed the suit in accordance with the award. The defendant then applied to the Munsif for sanction to prosecute the plaintiff without specifying in his application the offences in respect of which he desired to prosecute. The Munsif granted sanction, merely observing that there were sufficient grounds for sanctioning the prosecution, without giving any reasons or specifying the offence or offences in respect of which sanction was granted. *Held* that the terms in which the Munsif had given his sanction to a prosecution were not sufficiently explicit, and that he should have mentioned the section or sections of the Penal Code under which he authorized criminal proceedings to be taken, as also in a

general way the offence or offences to be charged, the date of commission, and the place where committed. Further, that, as the Munsif himself had not determined the question of forgery in the suit, he should have made some enquiry to satisfy himself that there were materials to justify a prosecution —IN THE MATTER OF PARSOTAN LAL *v.* BIJAI, I. L. R., 6 All. 101. [Straight, J. Oct. 23, 1883.]

SANCTION was granted to prosecute a defendant for forgery and perjury alleged to have been committed by him in a civil suit which was decided against him on the 22nd August 1882. The defendant then preferred an appeal, which was dismissed on the 9th August 1883 The plaintiff commenced criminal proceedings against the defendant, under the sanction, on the 23rd July 1884, but, such proceedings having been commenced more than six months after the date of the sanction, the charge was dismissed The plaintiff then on the 20th August 1884 applied for a fresh sanction, which was granted on the 13th April 1885 *Held* that, assuming that the Munsif who granted the fresh sanction had power to do so, as to which the Court expressed no opinion, such fresh sanction should not have been granted unless some explanation was given for the omission to commence proceedings within six months, and as no such explanation was given, or any special grounds shown why a fresh sanction should be given, the Munsif did not exercise a sound discretion in granting such fresh sanction, and consequently his order was set aside.—JOYDEO SINGH *v.* HARIHAR PERSHAD SINGH, I. L. R., 11 Cal. 577. [Mitter and Norris, JJ. May 22, 1885.]

A MORTGAGOR was charged with making a fraudulent alteration in his mortgage-deed which was then registered by a Sub-Registrar. *Held* that the sanction of the Sub-Registrar was not necessary for a prosecution on a charge of forgery. *In re Venkatachala* (I. L. R., 10 Mad. 154), *Queen Empress v. Subba* (I. L. R, 11 Mad. 3) explained.—QUEEN-EMPRESS *v.* SOBHANADRI, I. L. R., 12 Mad. 201. [Muttusami Ayyar and Parker, JJ. Feb. 11, 1889.]

UNDER the general revisional powers conferred by s. 439 of the Code of Criminal Procedure, a High Court has power to consider the propriety of an order which purports to be passed under s. 476 of the Code of Criminal Procedure. *Queen-Empress v. Rachappa* (I. L. R., 13 Bom 109) dissented from. Where a defendant in a suit in the Court of a Munsif applied to the District Judge for sanction under s 195 of the Code to prosecute a witness who had given evidence in the Munsif's Court in support of a deed, produced as evidence before that Court, which had been found by the Munsif to be a forgery, and the District Judge refused the application, but purporting to act under s. 476 of the Code, himself ordered the prosecution of such witness, *held* that the Judge's order was made without jurisdiction, the offence in respect of which the sanction was directed not having been committed before him, nor brought to his notice in the course of a judicial proceeding.—IN THE MATTER OF MATHURA DAS, I. L. R., 16 All 80 Aikman, J. Nov. 29, 1892.

Ct. of Ses. Uncog. Warrant. Not bailable. Not comp.

**466.** Whoever forges a document purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage, or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power-of-attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Forgery of record of Court or of public register, &c.

A CONVICTION may be had for using as genuine a forged document purporting to be made by a public servant in his official capacity, notwithstanding the illegibility of the seal and signature thereon —QUEEN *v.* PROSUNNO BOSE, 5 W. R. 96. [Norman and Campbell, JJ. May 28, 1866.]

THE subsequent falsification of a roznamcha-bahi kept in the office of a Deputy-Inspector of Schools by the mohurrir in charge thereof for the purpose of concealing frauds, previously committed, merely with a view to avoid disgrace and punishment, was held not to fall within the definition of forgery as given in the Penal Code.—QUEEN *v.* JAGESHUR PERSHAD, 6 N.-W. P. 56. [Pearson, J. Dec. 20, 1873.]

S. 35 of the Evidence Act, which provides "that any entry in an official public book, which is duly made by a public servant in the execution of his duty, is of itself a relevant fact," does not make the public book evidence to show that a particular entry has not been made in it. S. 466 of the Penal Code is not intended to apply to cases where a public officer, or a person acting for a pub-

lic officer, whose duty it is to make entries in a public book, knowingly makes a false entry, but to cases where a certificate or other document is forged by some unauthorized person with a view to make it appear that it was duly issued by a public officer. The accused, in order to save an estate from forfeiture, made a false entry of rent received in a public book kept by him for the purpose of informing the Collector as to the rents which had been paid into the Collectorate and as to what estates the rents were in arrear, so that he might take steps to enforce payment, and was convicted by the Sessions Judge of an offence under s. 465 of the Penal Code. *Held*, on appeal, that the accused ought properly to have been convicted under s 192 of the Code, the provisions of that section not being confined to false evidence to be used in judicial proceedings —IN THE MATTER OF JUGGUN LALL, 7 C. L. R. 356 [Garth, C J., and Field, J. Nov. 17. 1880.]

WHERE a document is made for the purpose of being used to deceive a Court of Justice, it is made *with the intention* of being used for that purpose. A person, therefore, who, at the request of another sent to trap him, fabricates a document purporting to be a notice under the seal and signature of a Deputy Collector, he being informed that the notice was required by such other person for the purpose of being used in a pending suit (there being, however, in reality no such suit in existence), is guilty of forgery, it not being necessary that the intention of fraudulently using the document should exist in the mind of any other person than the person fabricating the document — HARADHAN MAITI *v.* QUEEN-EMPRESS, I. L. R., 14 Cal 513. [Petheram, C J., and Wilson, Tottenham, Norris, and Ghose, JJ. June 4, 1887.]

*Held* that a person who, being himself the forger thereof, has used as genuine a forged document, cannot be punished as well under s. 471 of the Indian Penal Code for the use as under s. 466 for the forgery.— QUEEN-EMPRESS *v.* UMRAO LAL, I. L. R., 23 All. 84. [Aikman, J. Nov. 1, 1900.

IF a Court of Session proceeds to take action under s. 477 of the Code of Criminal Procedure, it must, in the first instance, frame a charge so as to enable the accused to know the exact nature of the offence he is alleged to have committed. A charge is a precise formulation of the specific accusation made against a person who is entitled to know its nature at the earliest stage. After the accusation has been formulated in the shape of a charge, the Sessions Court may then either commit the accused for trial before itself upon the charge so framed, or admit him to bail for the same purpose. R was examined as a witness by the Sessions Judge in a case. On the 15th of February the Sessions Judge delivered judgment in that case, and on the same day purporting to act under s. 477 of the Code of Criminal Procedure, had R arrested and committed to jail on charges under ss. 193, 466, and 471 of the Penal Code. The 25th of February was fixed for commencing the preliminary inquiry. No proceeding was drawn up or charges framed on the 15th. On the 16th of February an order was recorded by the Sessions Judge as follows: "In the course of the Sessions trial decided yesterday, I came to the opinion, for reasons stated in my judgment then delivered that R has committed offences under ss. 193, 465, and 471 of the Penal Code, and that it is my duty to hold an inquiry preliminary to committing him to the High Court to be tried for those offences. R was yesterday arrested and committed to jail. There was then no time owing to the lateness of the hour to draw up this formal proceeding. He will be produced before me, as directed in the warrant, on the 25th of February, when evidence will be taken.' *Held* that the proceeding of the 16th of February contained no particulars of the statements made and acts done by R upon which perjury and forgery were charged against him, and was not in any sense a charge or order of commitment, and was not warranted by law —REILY *v.* KING-EMPEROR, I. L. R., 28 Cal. 434. [Ameer Ali and Pratt, JJ. April 26, 1901.]

**467.** Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to the person to make or transfer any valuable security, or to receive the principal, interest, or dividends thereon, or to receive or deliver any money, moveable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable property or valuable security, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Forgery of valuable security, will, &c.**

Ct. of Ses. Uncog., but cog. when the valuable security is a pro-note of Govt. of India. Warrant. Not bailable. Not comp.

A FRAUDULENT alteration of a collectorate challan is the forgery of a document described in s. 467 of the Penal Code.—QUEEN v. HURISH CHUNDER BOSE, W. R., Gap., 1864, 22. [Loch and Jackson, JJ. April 12, 1864.]

THE forging of a document which purports, on the face of it, to be a copy only, and which, even if a genuine copy, would not authorize the delivery of moveable property, is not punishable under s. 467 of the Penal Code. The High Court will not alter a conviction by a Sessions Court aided by a jury on a charge only triable by a jury, to one of a nature not triable by such a tribunal, but will annul the proceedings, and leave the prosecution to take fresh proceedings against the prisoner on any other charge it may be advised.—REG. v. NARO GOPAL, 5 Bom. H. C. R. 56. [Warden and Gibbs, JJ. July 22, 1868.]

THE prisoner was charged, under s. 471 of the Penal Code, with fraudulently using as genuine a forged document, and having been tried before a Sessions Judge and jury was convicted of that offence. The Sessions Judge, considering the forged document to be of the nature of those specified in s. 467, sentenced the prisoner to ten years' transportation. On appeal the High Court held that the charge should have distinctly set forth the offence as that of using a forged document of the nature of those specified in s. 467, and that, that not having been done, the trial by jury was illegal. The conviction and sentence were therefore annulled, and it was directed that the prisoner should be re-tried.—REG. v. GANGARAM MALH, 6 Bom. H. C. R. 43. [Warden and Gibbs, JJ. June 24, 1869.]

WHERE prisoner, to screen his own negligence, altered an office-report, such conduct does not fall within the definition of forgery in the Penal Code.—QUEEN v. LALL GOMUT, 2 N.-W. P. 11. [Turner and Spankie, JJ. Jan. 10, 1870.]

A, INTENDING to procure a forged document purporting to be executed by one Chotak, applied to K to accompany A to Gorakpur, where A said Chotak would be found, and there to draw out a bond for execution by Chotak. In pursuance of this invitation K, believing that Chotak would execute the bond, accompanied A to Gorakpur. A took with him his ploughman, named Chetoo, and directed Chetoo to purchase a stamp-paper for the bond, and to give his name and description to the stamp-vendor as Chotak. Chetoo complied with this direction and the stamp-vendor wrote on the stamp-paper an endorsement to the effect that the purchaser was Chotak, with the description which would apply to that person, but, suspecting false personation, arrested Chetoo, and took him to the Magistrate. On the above facts, the Sessions Judge convicted A of attempt to forge a valuable security, and, under ss. 467 and 511, sentenced him to be rigorously imprisoned for five years. *Held* that, to constitute the offence of attempt under s. 511, Penal Code, there must be an act done with the intention of committing an offence, and for the purpose of committing that offence, and it must be done in attempting the commission of the offence. The provisions of s. 511, Penal Code, do not extend to make punishable as attempts acts done in the mere stage of preparation. Although such are doubtless done towards the commission of the offence, they are not done in the attempt to commit the offence, within the meaning of the word "attempt" as used in the section. —QUEEN v. RAMSARUN CHAWBEY, 4 N.-W. P. 46. Turner, J. Mar. 13, 1872.] Referred to in *Queen-Empress* v. *Kalyan Singh*, I. L. R., 16 All. 409, *infra*.

THE accused, in order to obtain a recognition from a Settlement-officer that they were entitled to the title of "Luskur," filed a *sanad* before that officer purporting to grant that title. This document was found not to be genuine. The Sessions Judge convicted the accused under ss. 471, 464, of the Penal Code. *Held* on appeal that, even supposing the accused had used the document knowing it not to be genuine, they could not be found guilty, as the intention of the accused was not to cause wrongful gain or wrongful loss to any one, their intention being to produce a false belief in the mind of the Settlement-officer that they were entitled to the dignity of "Luskar," and that this could not be said to constitute "an intention to defraud." A *sanad* conferring a title of dignity on a person is not a valuable security within the meaning of the Penal Code.—JAN MAHOMED AND JABAR MAHOMED v. QUEEN-EMPRESS; WARI MEAH v. QUEEN-EMPRESS, I. L. R., 10 Cal. 584. [Mitter and Norris, JJ. April 17, 1884.]

A SUB-REGISTRAR under the Registration Act (III. of 1877) is not a Judge, and, therefore, not a "Court" within the meaning of s. 195 of the Code of Criminal Procedure (Act X. of 1882). His sanction is therefore not necessary for a prosecution for forgery in respect of a forged document presented for registration in his office. The word "forgery" is used as a general term in s. 463 of the Penal Code, and that section is referred to in a comprehensive sense in s. 195 of the Criminal Procedure Code (Act X. of 1882) so as to embrace all species of forgery, and thus includes a case falling under s. 467 of the

**Penal Code. The definition of "Court" given in the Evidence Act (I. of 1872) is framed only for the purposes of the Act itself, and should not be extended beyond its legitimate scope. Distinction between a *judicial* and an *administrative* inquiry pointed out.—QUEEN-EMPRESS *v.* TULJA, I. L. R., 12 Bom. 36. [West and Birdwood, JJ. July 14, 1887.]**

ONE Chaturi, calling himself Kehri, the son of Bhupal Kachhi, went to a stamp-vendor, accompanied by a man named Kalyan Singh, and purchased from him, in the name of Kehri, a stamp-paper of the value of four annas. The two men then went to a petition-writer, and Chaturi again giving his name as Kehri, they asked the petition-writer to write for them a bond for Rs. 50 payable by Kehri to Kalyan Singh. The petitioner-writer commenced to write the bond, but, his suspicions being aroused, did not finish it, but took Chaturi and Kalyan Singh to the nearest thana. *Held* that, under the above circumstances, Kalyan Singh was rightly convicted of an attempt to commit the offence defined in s. 467 of the Indian Penal Code, and Chaturi of abetment of the said attempt. *The Queen* v. *Ram Saran Chowbey* (N.-W. P. H. C. Rep., 1872, p. 46) referred to.—QUEEN-EMPRESS *v.* KALYAN SINGH, I. L. R. 16 All. 409. [Burkitt, J. May 25, 1894. See *Lalit Mohan Sarkar* v. *Queen-Empress*, I. L. R., 22 Cal. 313, under s. 408.

THE accused was not only the writer but also took an active part in the preparation of a document, the alleged executant of which was dead before the date of the document, and the person who really had an interest under the document was convicted under s. 82 of the Registration Act (III. of 1877). But evidence was wanting to show that the accused took any part in the forgery of the name of the alleged executant. *Held* that the accused could not be convicted of the offence of forgery under s. 467 of the Penal Code. There being nothing on the record to show that the accused was a party to, or took any part in the actual forgery of the document, or that he was present on the occasion when it was forged, the proper section to convict him under would be section $\frac{467}{109}$, that is, of abetment of forgery, and not section $\frac{467}{114}$. An unregistered document, though it may not be a valuable security until registration is completed, still "purports" to be a valuable security within the meaning of s. 467 of the Penal Code. *Queen-Empress* v. *Ramasami*, (I. L. R. 12 Mad. 148) approved of. KASHI NATH NAG *v.* QUEEN-EMPRESS, I. L. R. 25 Cal. 207. [Ghose and Wilkins, JJ. July 6, 1897.]

**468.** Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses. Uncog. Warrant. Not bailable. Not comp.

**Forgery for the purpose of cheating.**

HELD that, where a person's object was to deceive his employer by falsifying account-books which were in his custody, such deception being likely to cause damage to his employer, he was rightly convicted under s. 468 of forgery with intent to cheat, instead of under s. 465 of simple forgery.—QUEEN *v.* BANNESSUR BISWAS, 18 W. R. 46. [Bayley and Mitter, JJ. Sep. 5, 1872.]

THE accused was charged with cheating by falsely and incorrectly reading out to an octroi-darogha the contents of an invoice of a consignment of goods, and so making the value appear to be less than it actually was, and also with forgery under s. 468, having afterwards altered the invoice so as to make it correspond with what he had dictated to the darogha. *Held* that the alteration in the invoice having been made after the offence of cheating was complete, and being made by the accused for the purpose of saving himself or concealing the offence of cheating, a charge under s. 468 was not sustainable.—HURRUCKH RAI *v.* CROWN, Panj. Rec., No. 15 of 1870.

THE granting of a sanction to a private person under cl. (c) of s. 195 of the Code of Criminal Procedure (Act X. of 1882) does not debar a Civil Court from proceeding under s. 478, nor can the dismissal by a Magistrate of a complaint made by a private person be held to be a bar, till set aside, to a proceeding under that section.—QUEEN-EMPRESS *v.* SHANKER, I. L. R., 13 Bom. 384. [Birdwood and Jardine, JJ. Dec. 13, 1888.]

**469.** Whoever commits forgery, intending that the document forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Ct. of Ses. Uncog. Warrant. Bailable. Not comp.

**Forgery for the purpose of harming reputation.**

WHERE a draft-petition was prepared with the intention of being used as evidence of a matter, it was held to fall within s. 29 of the Penal Code; and as it contained false statements calculated to injure the reputation of a person, the offence was held to fall within s. 469 of the Penal Code.—SHEEFAIT ALLY, 10 W. R. 61; 2 B. L. R. A. Cr. 12. [Loch and Glover, JJ. Dec. 14, 1868.]

"A forged document."

**470.** A false document made wholly or in part by forgery is designated "a forged document."

THE vendees of a plot of land altered the number by which the land was described in the deed of sale, doing so because such number was not the right number. Having made this alteration, they used the deed of sale as evidence in a suit. *Held* that the alteration of the deed did not amount to "forgery" within the meaning of s. 463 of the Penal Code, nor could the deed, after the alteration, be designated a "forged document" as contemplated by s. 470, the intention to cause wrongful loss or wrongful gain or to defraud being wanting; nor could it be said that, in using the deed, the vendees were "dishonestly" or "fraudulently" using as genuine a "forged document," and therefore the use by the vendees of the deed did not constitute an offence under s. 471 of the Penal Code. Further, that their use of it did not render them liable to conviction under s. 196 of that Code.—EMPRESS v. FATEH, I. L. R., 5 All. 217. [Mahmood, J. Oct. 2, 1882.]

Same Court as that by which forgery is triable. Uncog. Warrant. Bailable. Not comp.

Using as genuine a forged document.

**471.** Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document shall be punished* in the same manner as if he had forged such document.

WHERE a forged document is put in evidence before the Collector, the power of commitment rests with the Revenue Authorities, and does not, under any circumstances, extend to the Magistrate.—GOVT. v. HUNGSESSUR SEIN, 1 Ind. Jur. O. S. 11. [Steer, J. July 28, 1862.]

COUNTERFEIT seals and forged documents were found in the prisoner's possession, and, as he could give no satisfactory information as to how he became possessed of them, it was inferred that he kept them with the intention of using them fraudulently.—QUEEN v. KRISTO SOONDER DEB, 2 W. R. 5 [Kemp and Glover, JJ. Jan. 10, 1865.]

THE offence of uttering forged documents requires in this country to be punished with the severest punishment allowed by law. Contemporaneous sentences are not justified by the Penal Code.—QUEEN v. MOHESH CHUNDER SIRCAR, 3 W. R. 13. [Glover, J. May 15, 1865.]

A CONVICTION may be had for using as genuine a forged document purporting to have been made by a public servant in his official capacity, notwithstanding the illegibility of the seal and signature thereon.—QUEEN v. PROSSUNO BOSE, 5 W. R. 96. [Norman and Campbell, JJ. May 28, 1866.]

A PERSON may be convicted of using as genuine a document which he knew to be forged, though he in the first instance, produced only a copy of a copy of it.—QUEEN v. NUJUM ALI, 6 W. R. 41. [Jackson and Markby, JJ. July 9, 1866.]

WHERE a prisoner produced as evidence an account-book, one page of which had been fraudulently abstracted, and another substituted for it, *held* that he was not guilty of the offence of attempting to use as genuine fabricated evidence, unless he knew of the forgery, and intended to use the forged evidence for the purpose of affecting the decision on the point at issue when the book was tendered.—QUEEN v. MUDDOO SOODUN SHAW, 7 W. R. 23. [Kemp and Markby, JJ. Jan. 26, 1867.]

WHERE an intention to use a forged document, if necessary, inferred from the facts of the case and from the conduct of the prisoner.—QUEEN v. HATIM MOONSHEE *alias* MAHOMED HATIM, 8 W. R. 11. [Seton-Karr and Macpherson, JJ. June 8, 1867.]

THERE must be a fraudulent and dishonest using of a document as genuine before a conviction can be had under s. 471 of the Penal Code.—QUEEN v. JAHAN BUX, 8 W. R. 81. [Kemp and Glover, JJ. Nov. 19, 1867.]

* When the forged document is a pro. note of the Govt. of India, Ct. of Ses., Cognizable, Warrant, Bailable, Not comp., Sanction if offence committed in Court.

IN a case in which the accused was charged with dishonestly using as genuine a patta which he knew to be forged, and in which there was a fraudulent insertion, it was held that it was not necessary to prove that he personally inserted the word, but it was sufficient if it was inserted with his knowledge.—QUEEN v. HEMORUDDI MUNDUL, 9 W. R. 22. [Kemp and Jackson, JJ. Mar. 2, 1868.]

A DEED of divorce is a "valuable security" within the meaning of s. 30 of the Penal Code. The presenting of a forged document of such a nature for registration, and obtaining registration, would be "using" within s. 471 of that Code.—QUEEN v. AZIMOODDEEN, 11 W. R. 15. [Jackson and Glover, JJ. Mar. 3, 1869.]

THE false alteration of a police-diary by a head-constable was held to fall under s. 471, Penal Code, as the forgery of a document made by a public servant in his official capacity.—QUEEN v. RUGHOO BARRICK, 11 W. R. 44. [Norman and Jackson, JJ. May 3, 1869.]

THE prisoner was charged, under s. 471 of the Penal Code, with fraudulently using as genuine a forged document, and, having been tried before a Sessions Judge and jury, was convicted of that offence. The Sessions Judge, considering the forged document to be of the nature of those specified in s. 467, sentenced the prisoner to 10 years' transportation. On appeal, the High Court held that the charge should have distinctly set forth the offence as that of using a forged document of the nature of those specified in s. 467, and that, that not having been done, the trial by jury was illegal. The conviction and sentence were therefore annulled, and it was directed that the prisoner should be re-tried. —REG. v. GANGARAM MALJI, 6 Bom. H. C. R. 43. [Warden and Gibbs, JJ. June 24, 1869.]

TO support a conviction of the offence under s. 471 of the Penal Code, there must be a using of a document by a person who knows, or has reason to believe, that it is forged.—QUEEN v. BHOLAY PRAMANICK, 17 W. R. 32. [Kemp and Jackson, JJ. Feb. 20, 1872.]

THE offence imputed against an accused, who, in a civil suit, is alleged to have used as genuine a document which he knew to be a forged document, is one cognizable under s. 471 of the Penal Code. Such accused should, therefore, be charged under that section, and not under s. 196 of the Code.—EMPRESS v. KHERODE CHUNDER MOZUMDAR, I. L. R., 5 Cal. 717; 6 C. L. R. 118. [Jackson and Tottenham, JJ. Mar. 2. 1880.]

WHERE the accused were charged under s. 471 of the Penal Code with having, in a suit brought against them by the vendee of their sister to recover possession of certain property acquired by her by right of inheritance from her father, fraudulently and dishonestly used a forged document as genuine, knowing or having reason to believe it to be a forged document, it appeared that the accused were in possession of the property, and that the document in question purported to be a deed of gift from their father. It was proved that the endorsement of registration which appeared in the document was a forgery. In his charge to the jury the Sessions Judge omitted to deal with the fact of the accused being in possession of the property. He also directed that, the registration endorsement having been proved to be a forgery, it was for the accused persons to establish the genuineness of the document. *Held* that it was not sufficient for the jury merely to decide on the evidence whether the document was a forgery, and whether the accused knew it was a forgery when they used it, but it was further necessary for the jury to decide whether the document had been used fraudulently and dishonestly. *Held* also that the Sessions Judge, in omitting to deal with the fact of the possession of the accused, and in throwing the *onus* of proving the genuineness of the document upon them, had misdirected the jury.—KHORSHED KAZI v. EMPRESS, 8 C. L. R. 542. [Mitter and Maclean, JJ. May 30, 1881.]

WHERE a person, in the course of an action brought against him to gain possession of a property, uses a forged document for the purpose of supporting his title, though there may be no necessity for the use of it, such a user is clearly fraudulent. A general intention to defraud, without the intention of causing wrongful gain to one person or wrongful loss to another, would, if proved, be sufficient to support a conviction; and such an intention is a necessary inference which the jury should be directed to draw, if they are satisfied that the accused has uttered a forged document as a true one, meaning it to be taken as such, and knowing it to be forged.—IN THE MATTER OF DHUNAM KAZEE, I. L. R., 9 Cal. 53; 11 C. L. R. 69 [Maclean and Norris, JJ. July 13, 1882.]

THE vendees of a plot of land altered the number by which the land was described in the deed of sale, doing so because such number was not the right number. Having made this alteration, they used the deed of sale as evidence in a suit. *Held* that the alteration of the deed did not amount to "forgery" within the meaning of s. 463 of the Penal Code, nor could the deed, after the alteration,

be designated a "forged document" as contemplated by s. 470, the intention to cause wrongful loss or wrongful gain, or to defraud, being wanting; nor could it be said that, in using the deed, the vendees were "dishonestly" or "fraudulently" using as genuine a "forged document," and therefore the use by the vendees of the deed did not constitute an offence under s. 471 of the Penal Code. Further that their use of it did not render them liable to conviction under s. 196 of that Code. —EMPRESS v. FATEH, I. L. R., 5 All. 217 [Mahmood, J. Oct. 2, 1882.]

THE Court of an Assistant Collector is not subordinate to that of the Magistrate of the District within the meaning of s. 195 of the Criminal Procedure Code. Sanction to prosecution granted under s. 195 should specify the Court or other place in which, and the occasion on which, the offence was committed, and such sanction should not be granted without a preliminary inquiry, where such inquiry is "necessary" within the meaning of s. 476 of the Code. Where sanction to the prosecution of a person for the offence of using certain evidence known to be false was granted by a Court to which the Court in which such evidence was used was not subordinate, and such sanction did not specify the place in which, and the occasion on which, such offence was committed, and the Court granting the sanction did not make any preliminary inquiry, although such an inquiry was "necessary" in the sense of s. 476 of the Criminal Procedure Code, *held* that, the indispensable preliminary conditions of s. 195 of the Code being wanting to the prosecution, the committing Magistrate was incompetent to entertain the case, and the commitment was illegal, and should be quashed. *Held* also that the fact that there was not any evidence to connect such person with the use of such false evidence was a defect in law sufficient to justify the quashing of the commitment.—EMPRESS v. NOROTAM DAS, I. L. R., 6 All. 98. [Tyrrell, J. Oct. 2, 1883.]

THE accused, in order to obtain a recognition from a Settlement-officer that they were entitled to the title of "Luskur," filed a *sanad* before the officer purporting to grant that title. This document was found not to be genuine. The Sessions Judge convicted the accused under ss. 471 and 464 of the Penal Code. *Held* on appeal that, even supposing the accused had used the document knowing it not to be genuine, they could not be found guilty, as the intention of the accused was not to cause wrongful gain or wrongful loss to any one; their intention being to produce a false belief in the mind of the Settlement-officer that they were entitled to the dignity of "Luskur," and that this could not be said to constitute an "intention to defraud." A *sanad* conferring a title of dignity on a person is not a valuable security within the meaning of the Penal Code. - JAN MAHOMED AND JABAR MAHOMED v. QUEEN-EMPRESS; WARI MEAH v. QUEEN-EMPRESS, I. L. R., 10 Cal. 584. [Mitter and Norris, JJ., April 17, 1884.] Cited in *Queen-Empress* v. *Haradhan* alias *Rakhal Dass Ghosh*, I. L. R., 19 Cal. 380, *infra*

THE creditors of a police-constable applied to the District Superintendent of Police that Rs. 2 might be deducted monthly from the debtor's pay until the debt was satisfied. Upon an order being passed directing that the deduction asked for should be made, the debtor produced a receipt purporting to be a receipt for Rs. 18, the whole amount due. It subsequently appeared that the receipt was one for Rs. 8, which the debtor had altered by adding the figure "1," so as to make it appear that the receipt was for Rs. 18. *Held* that the real intent in the prisoner's mind being to induce his superior officer to refrain from the illegal act of stopping a portion of his salary, the Court in a criminal case ought not to speculate as to some other intent over and above this that might have presented itself to him, that it did not necessarily follow that he contemplated setting up the altered receipt to defeat his creditor's claim; and that, therefore, he ought not to have been convicted of an offence under s. 471 of the Penal Code.—QUEEN-EMPRESS v. SYED HUSSAIN, I. L. R., 7 All. 403. [Petheram, C.J., and Straight, J. Feb. 27, 1885.]

IN a trial upon a charge, under s. 471 of the Penal Code, of fraudulently or dishonestly using as genuine documents known to be forged, it was found that four forged receipts for the payment of rent, used by the prisoner had been fabricated in lieu of genuine receipts which had been lost. *Held* that, with reference to the definitions of the terms "dishonestly" and "fraudulently" in ss. 24 and 25 of the Penal Code, the prisoner, upon the facts as found, had not committed the offence punishable under s. 471.—QUEEN-EMPRESS v. SHEO DAYAL, I. L. R., 7 All. 459. [Brodhurst, J. Mar. 6, 1885.]

ON the 2nd August 1884, a Munsif, who was of opinion that, in the course of a suit which had been tried before him, certain persons had committed offences under ss. 193, 463, and 471 of the Penal Code, and that the prosecution of these persons was desirable, made an order which he described as passed under s. 643 of the Civil Procedure Code, and in which he directed that the accused should be sent to the Magistrate, and that the Magistrate should inquire into the matter. In May 1885, upon an application by one of

the accused to the District Court to "revoke the sanction for prosecution granted by the Munsif," it was contended that the "sanction" had expired on the 2nd February 1885, and had ceased to have effect. *Held* by the Full Bench that the Munsif's order, whether it was or was not a sanction, was a sufficient "complaint" within the meaning of s. 195 of the Criminal Procedure Code, and that the limitation-period prescribed by that section was applicable to the case *Per* Petheram, C.J., and Straight, J.—That, considering that s. 643 of the Civil Procedure Code was closely similar to s. 476 of the Criminal Procedure Code, the Munsif's order might be taken as having been passed under the latter section. Also *per* Petheram, C.J., and Straight, J.—The words in s. 196 of the Criminal Procedure Code, "except with the previous sanction or on the complaint of the public servant concerned," must be read in connection with s. 476, which was enacted with the object of avoiding the inconvenience which might be caused if a Munsif or a Subordinate Judge, or a Judge, were obliged to appear before a Magistrate, and make a complaint on oath, like an ordinary complainant, in order to lay the foundation for a prosecution. The language of s. 476 indicates that, where a Court is acting under s. 195, a complaint in the strict sense of the Code is not required, and that the procedure therein laid down constitutes the "complaint" mentioned in s. 195.—ISHRI PROSAD *v.* SHAM LALL, I. L. R., 7 All. 871. [Petheram, C.J., and Straight, Brodhurst, and Tyrrell, JJ. July 4, 1885.]

RULES of limitation are foreign to the administration of criminal justice, and it is only by express statutory provision that any rule of limitation could be made applicable to criminal cases, Art. 178, Sch. II., Limitation Act (XV. of 1877), must be construed with reference to the wording of the other articles, and can relate only to applications *ejusdem generis*. A suit was instituted for possession of certain land on which stood a factory. In proof of the claim, the plaintiffs filed in Court a *sarkhat* or lease, which was pronounced by the Munsif to be a forgery. Plaintiffs appealed up to the High Court, where, on the 24th June 1886, the Munsif's decree was affirmed. Defendants then applied to the Munsif for sanction to prosecute the plaintiffs for the offence of using a forged document, knowing the same to be forged. The Munsif refused to sanction the prosecution prayed for, but on application to the Sessions Judge, such sanction was granted. On application to revise the Sessions Judge's order granting sanction, it was contended that, after the lapse of nearly three years, sanction to prosecute should not have been granted. *Held* that there is no fixed period of limitation for making applications for sanction under s. 195 of the Criminal Procedure Code.—EMPRESS *v.* AJUDHIA SINGH, I. L. R., 10 All. 350 [Mahmood, J. Jan. 25, 1888.]

A POST-MASTER misappropriated a certain sum of money, and at the same time made a false document purporting to be a receipt signed by the person to whom the money was payable He was convicted of using a forged document under s. 471 of the Penal Code. It was contended that no forgery had been committed, because the receipt was made merely to cover the embezzlement. *Empress of India* v. *Jiwanand* (I. L. R., 5 All. 222.) *Held* that the conviction was right. A debtor who fabricates a release to screen himself from liability to pay the debt cannot be said not to be guilty of forgery, because he *intended by the fabrication to cover a dishonest purpose*.—QUEEN-EMPRESS *v.* SABAPATI, I. L. R., 11 Mad. 411. [Muttusami Ayyar and Wilkinson, JJ. July 5, 1888.]

THE granting of a sanction to a private person under cl. (*c*) of s. 195 of the Code of Criminal Procedure (Act X. of 1882) does not debar a Civil Court from proceeding under s. 478, nor can the dismissal by a Magistrate of a complaint made by a private person be held to be a bar, till set aside, to a proceeding under that section.—QUEEN-EMPRESS *v.* SHANKAR, I. L. R. 13 Bom. 384. [Birdwood and Jardine, JJ. Dec. 13, 1888.]

CERTAIN documents having been put into Court in a suit pending before a District Munsif, but not given in evidence, the District Munsif made an order for the prosecution of the parties who so put them in, on the ground that the documents were forgeries. *Held* (1) that the High Court had power to revise the proceedings of the District Munsif, (2) that the District Munsif was not competent to go beyond the record; (3) that the order was wrong, and should be set aside.—ABDUL KHADAR *v.* MEERA SAHEB, I. L. R., 15 Mad. 224. [Parker and Shephard, JJ. Jan. 5, 15, 1892.]

IN construing ss. 24 and 25 of the Penal Code, the primary and not the more remote intention of the accused must be looked at. *Queen-Empress* v. *Girdhari Lal* (I. L. R., 8 All. 653) cited. Under the rules of the Calcutta University a private student desiring to appear at the Entrance Examination is required to forward to the Registrar, with his application for permission to appear, a certificate to the effect, *inter alia*, that he is of good moral character, and has submitted himself to a test examination by, and furnished exercise to, the person signing the certificate

sufficient in that person's opinion to show that his qualifications give a reasonable probability of his passing the examination. Such certificate has to be signed by one or other of the persons mentioned in the rules, amongst them being the head-master of a high school under public management. On such certificate being sent to the Registrar and the prescribed fee paid, that officer forwards a receipt to the candidate with his roll-number thereon, which is also an authority for him to appear at the examination, and enter the examination-hall. A private student forwarded to the Registrar, with his application for permission to appear, a certificate in the prescribed form, purporting to be signed by the head-master of a high school, such signature, however, being, as the applicant well knew, a forgery. The Registrar, knowing at the time that the signature of the head-master was not genuine, sent to the applicant the receipt for his fee and the necessary authority allowing him to appear at the examination, and in due course the applicant appeared, took his seat in the hall at the desk allotted to him, and commenced the examination. Upon charges being preferred against the applicant of using as genuine a forged document (s. 471), and attempting to cheat (ss. 415 and 511): *held* that, his primary object or intention was, by falsely inducing the Registrar to believe that the certificate was signed by the head-master of a Government school under public management, to be permitted to sit for the Entrance Examination, and that such intention could not be held to be "fraudulent" or "dishonest" within the meaning of ss. 25 and 24 of the Penal Code. *Held*, consequently, that the use of the forged document, though with the knowledge or belief that it was forged, was not fraudulent or dishonest, and that as these are essential elements to offences under ss. 471 and 415 of the Penal Code, the accused had not committed either of the offences charged. *Held* further that the accused had not committed any offence under the Penal Code. *Jan Mahomed* v. *Queen-Empress* (I. L. R., 10 Cal. 584) cited. In a reference by a Presidency Magistrate to the High Court, under s. 432 of the Code of Criminal Procedure, as to whether, on the facts stated, any offence has been committed by an accused person, it lies on the prosecution to make out that an offence has been committed, and under the circumstances the prosecution must begin.—QUEEN-EMPRESS v. HARADHAN *alias* RAKHAL DASS GHOSH, I. L. R., 19 Cal. 380. [Norris and Beverley, JJ. April 20, 1892.] Dissented from in *Queen-Empress* v. *Soshi Bhushan*, I. L. R., 15 All 210, *infra*; and overruled by *Queen-Empress* v. *Abbas Ali*, I. L. R., 25 Cal. 512, *infra*.

THE term "claim" in s. 463 of the Penal Code is not limited in its application to a claim to property. The term "property" in the same section will cover a written certificate. It is not necessary to constitute a forgery under s. 463 of the Penal Code that the property with which it is intended that the false document shall cause a person to part should be in existence at the time when the false document was made. *Queen-Empress* v. *Haradhan* (I. L. R., 19 Cal. 380) dissented from. *Queen-Empress* v. *Appasami* (I. L. R., 12 Mad. 151), and *Queen-Empress* v. *Ganesh Khanderao and Ganesh Daulat* (I. L. R., 15 Bom. 506) approved. One S B presented to the Principal of Queen's College, Benares, a false certificate purporting to have been granted by the Principal of Canning College, Lucknow, to the effect that he had attended a certain proportion of a certain first-year course of law-lectures delivered at Canning College, S B, in fact, never having attended such lectures. Had that certificate been a true one, it would have entitled S B to attend a further course of law-lectures at any one of several associated institutions amongst which was Queen's College, Benares, without attending or paying the fees for the first course of lectures. On presentation of the above certificate, S B obtained permission to attend, and attended, a course of second-year lectures at Queen's College, Benares, without attending or paying the fees required for the first-year course. After S B had attended the above-mentioned second-year course of lectures at Queen's College, Benares, he again presented the said false certificate to the Principal of Queen's College with a view to his obtaining a consolidated certificate, which was necessary, as he alleged, to enable him to become a candidate in the Judge's Court pleadership examination in Calcutta. *Held* that on both occasions, when he presented the false certificate to obtain admission to the second-year law-class at Queen's College, Benares, and again when he endeavoured by its use to obtain the consolidated certificate in order to gain admission to the pleadership examination in Calcutta, S B was guilty of the offence provided for by s. 471 of the Penal Code.—QUEEN-EMPRESS v. SOSHI BHUSHAN, I. L. R., 15 All. 210. [Edge, C.J., and Aikman, J. April 29, 1893.] See *Lolit Mohan Sarkar* v. *Queen-Empress*, I. L. R., 22 Cal. 313, under s. 408.

SANCTION was given for the prosecution of a pleader who, in the conduct of a case, had presented to the Court for his clients a document of suspicious appearance, and which his clients were charged with having forged. The sanction was granted by the Sessions Judge on the ground that the document bore

on its face such marks of concoction that the pleader's suspicions must have been aroused at the first sight of it, and that, had he examined it, as he ought to have done, he would either have rejected it, or have advised his client to produce it in Court at his own risk. On appeal to the High Court, *held* that the sanction should be revoked. A pleader is under no higher obligation than any other agent would be, and to justify his prosecution, it should be shown that he had been a party (principal or accessory) to the concoction of the document, or that he had the knowledge that it was concocted. The mere fact that his suspicions ought to have been aroused by the sight of the document was not *primâ-facie* evidence that he knew, or had reason to believe the document to be forged.—*In re* RANCHHODDAS, I. L. R., 22 Bom. 317. [Parsons and Ranade, JJ. July 22, 1896.]

THE accused applied to the Superintendent of Police at Poona for employment in the police-force. In support of his application he presented two certificates which he knew to be false. One of these certificates was a wholly fabricated document, whilst the other was altered by several additions made subsequently to the issue of the certificate. *Held* that the accused was guilty of offences under ss. 463 and 471 of the Indian Penal Code.—QUEEN-EMPRESS v. KHANDUSINGH, I. L. R., 22 Bom 768. [Parsons and Ranade, JJ. Dec. 17, 1896.]

DEPRIVATION of property, actual or intended, is not an essential element in the offence of fraudulently using as genuine a document which the accused knew or had reason to believe to be false. *Queen-Empress v. Haradhan* (I. L. R., 19 Cal. 380) overruled.—QUEEN-EMPRESS v. ABBAS ALI, I. L. R., 25 Cal. 512. [Maclean, C.J., and O'Kinealy, Macpherson, Trevelyan and Jenkins, JJ Dec. 22, 29, 1896, and Jan. 29, 1897.]

A VAKIL of the High Court was convicted, under section 471 of the Indian Penal Code, of fraudulently using as genuine a document which he knew to be forged. This was affirmed on appeal, when the punishment to which he had been sentenced was reduced to two years. The High Court, while not allowing the propriety of the conviction and sentence to be questioned, had considered whether his culpability was such as to disqualify him for his profession, and had decided in the affirmative, removing him from the roll, under para. 8 of the Letters Patent, 1866. *Held* that, in the present case, the conviction, followed by the sentence, was sufficient without further inquiry, to justify the High Court in making that order. The appellant could not be allowed to have an indirect appeal against the judgment of the Sessions Judge confirmed by the High Court. The judgment of Lord Mansfield in *Ex-parte Brounsall* (1778, 2 Cowper's Rep., 829) referred to as well explaining the disqualification of a member of the legal profession that attends such a conviction and sentence. *In re Wear* (1893, L. R., 2 Q. B., 439) where the Court of Appeal looked to see what was the nature of the offence, and would not, as a matter of course, strike a solicitor off the roll because he had been convicted, distinguished from the present case. *In re Durga Charan* (I L. R., 7 All 290) dealt with under section 12 of Act XVIII. of 1879, referred to as a case where the nature of the offence admitted of further inquiry and also distinguished. In regard to the finality of the judgment of the High Court in deciding the appeal from the conviction and sentence, *In re the Petition of Macrea* (I. L. R., 13 All. 310; L. R., 20 I. A. 90) was referred to.—IN THE MATTER OF RAJENDRO NATH MUKERJI I. L. R., 22 All. 49. [Hobhouse, Macnaghten, and Couch, JJ. April 27, and June 21, 1899.]

*Held* that a person who, being himself the forger thereof, has used as genuine a forged document, cannot be punished as well under s. 471 of the Indian Penal Code for the use as under s 466 for the forgery.—QUEEN-EMPRESS v. UMRAO LAL, I. L. R., 23 All. 84. [Aikman, J. Nov. 1, 1900.]

IF a Court of Session proceeds to take action under s. 477 of the Code of Criminal Procedure, it must, in the first instance, frame a charge so as to enable the accused to know the exact nature of the offence he is alleged to have committed. A charge is a precise formulation of the specific accusation made against a person who is entitled to know its nature at the earliest stage. After the accusation has been formulated in the shape of a charge, the Sessions Court may then either commit the accused for trial before itself upon the charge so framed, or admit him to bail for the same purpose. R was examined as a witness by the Sessions Judge in a case. On the 15th of February the Sessions Judge delivered judgment in that case, and on the same day purporting to act under s. 477 of the Code of Criminal Procedure, had R arrested and committed to jail on charges under ss. 193, 466, and 471 of the Penal Code. The 25th of February was fixed for commencing the preliminary inquiry. No proceeding was drawn up or charges framed on the 15th. On the 16th of February an order was recorded by the Sessions Judge as follows: "In the course of the Sessions trial decided yesterday, I came to the opinion, for reasons stated in my judgment then delivered, that R has committed offences under

ss. 193, 465, and 471 of the Penal Code and, that it is my duty to hold an inquiry preliminary to committing him to the High Court to be tried for those offences. R was yesterday arrested and committed to jail. There was then no time owing to the lateness of the hour to draw up this formal proceeding. He will be produced before me, as directed in the warrant, on the 25th of February, when evidence will be taken." *Held* that the proceeding of the 16th of February contained no particulars of the statements made and acts done by R upon which perjury and forgery were charged against him, and was not in any sense a charge or order of commitment, and was not warranted by law.—REILY v. KING-EMPEROR, I. L. R., 28 Cal. 434. Ameer Ali and Pratt, JJ. April 26, 1901.]

Ct. of Ses. Uncog. Warrant. Bailable. Not comp.

**472.** Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 467 of this Code, or with such intent has in his possession any such seal, plate, or other instrument, knowing the same to be counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or possessing counterfeit seal, &c., with intent to commit a forgery punishable under section 467.

Ditto.

**473.** Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this chapter other than section 467, or with such intent has in his possession any such seal, plate, or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or possessing counterfeit seal, &c., with intent to commit forgery punishable otherwise.

COUNTERFEIT seals and forged documents were found in the prisoner's possession, and as he could give no satisfactory information as to how he became possessed of them it was inferred that he kept them with the intention of using them fraudulently.—QUEEN v. KRISTO SOONDER DEB, 2 W. R. 5. Kemp and Glover, JJ. Jan. 10, 1865.

A PERSON who uses in Court false documents as true, besides swearing to their authenticity, may be convicted under s. 196 of the Penal Code only and not under s. 471 also.—QUEEN v. OODEY LALL, 3 W. R. 17. [Glover, J. May 23, 1865.]

WHERE several seals of different descriptions were found in the possession of the accused with intent to commit forgery, it was held that, under s. 473 of the Penal Code, there was a complete and separate offence committed in respect of every seal found, and that the prisoners could be legally convicted of a separate offence in regard to each seal, unless it appeared that several such seals were in their possession for the purpose of committing one particular forgery.—QUEEN v. GOLUCK CHUNDER, 13 W. R. 16. Jackson and Markby, JJ. Jan. 18, 1870.

Ditto.

**474.** Whoever has in his possession any document knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the description mentioned in section 466 of this Code, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and, if the document is one of the description mentioned in section 467, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having possession of document described in section 466 or 467, knowing it to be forged, and intending to use it as genuine.

It is not sufficient for a conviction, under s. 474 of the Penal Code, to say that the prisoner might possibly have used an altered document. The guilty intent must be proved, not inferred.—QUEEN *v.* LOKENATH SAHA, W. R. Gap., 1864, 12. [Steer and Seton-Karr, JJ. Feb. 22, 1864.]

To support a charge under s. 474 of the Penal Code, it is necessary for the prosecution to prove (1) that the documents in respect of which the charge is brought are forged; (2) that the accused knew them to be forged; (3) that he was in possession of them; (4) that he intended that they should be fraudulently or dishonestly used as genuine; and (5) that each of the documents is of the description mentioned in s. 466 or s. 467 of the Penal Code. To support a charge under the latter part of s. 475 of the Penal Code, it is necessary for the prosecution to prove (1) that the accused was in possession of the papers referred to in the charge, (2) that the devices or marks were counterfeited on them; (3) that the marks were such as are used for the purpose of authenticating any document described in s. 467; and (4) that the accused intended that the marks should be used for the purpose of giving the appearance of authenticity to documents either then forged or thereafter to be forged. The accused was charged with being in possession of forged documents, an offence punishable under ss. 474 and 475 of the Penal Code. In his summing up, the Sessions Judge, after stating that the documents were admitted by the defence to be forgeries, told the jury that the only issue they had to decide was whether the forged documents were in the possession of the accused, and whether the nature of one, at all events, of the documents was such as to connect them with the accused, being the kind of document he would be likely to have in his house, and he alone, and that if they found this issue in the affirmative, they must return a verdict of guilty. *Held* that the charge to the jury was defective and misleading, and insufficiently complied with the requirements of s. 297 of the Code of Criminal Procedure (Act X. of 1882).—QUEEN-EMPRESS *v.* ABAJI RAMCHANDRA, I. L. R., 16 Bom. 165. [Birdwood and Parsons, JJ. Feb. 18, 1891.]

**475.** Whoever counterfeits upon or in the substance of any material any device or mark used for the purpose of authenticating any document described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses. Uncog. Warrant. Bailable. Not comp. Sanction if offence committed in Court.

Counterfeiting a device or mark used for authenticating documents described in section 467, or possessing counterfeit-marked material.

IN order to a conviction under s. 475 of the Penal Code, the document which the accused has in his possession must have some counterfeit device or mark upon it; and it must be proved that the accused has the document in his possession with intent to use such device or mark for the purpose of giving the appearance of authenticity to the document. The document must be of the nature mentioned in s. 467 of the Penal Code.—QUEEN *v.* RUGHOONUNDUN PATTRONUVEES, 15 W. R. 19. [Kemp and Glover, JJ. Feb. 18, 1871.]

DURING the course of a police-investigation into a complaint of theft, the house of the accused was searched, and a bundle of papers, about 58 in number, were found, which were alleged to be forgeries, or preparations for forgeries. The accused was thereupon committed to the Court of Session on a charge under s. 475 of the Penal Code. A few days before the trial of the accused, the police searched the house of one Shivlingapa, who was a witness for the defence, and there discovered a batch of suspicious papers, which were produced at the trial, and put in as evidence against the accused. The accused was convicted of the offence under s. 475 of the Penal Code, and sentenced to transportation for life. *Held*, reversing the conviction and sentence, that the suspicious papers found in Shivlingapa's house were not admissible in evidence against the accused. *Held*, further, that the Judge's direction to the jury regarding those papers—that they established a connection between the accused and many of the witnesses belonging to the same faction, and that they showed the extent to which the practice of forgery had gone in the village, and that in this way they were relevant to the question of guilty knowledge and intention—was a misdirection which prejudiced the ac-

cused. In the trial of an accused person on a charge under s. 475 of the Penal Code, the charge should be so framed as to specify distinctly that part of the section which is applicable to the case, and should distinctly specify the particular papers bearing a counterfeit mark or device which the accused was alleged to have had in his possession with the intent mentioned in the section.—QUEEN-EMPRESS v. ABAJI RAMCHANDRA, I. L. R. 15 Bom. 189. [Birdwood and Parsons, JJ. Sep. 3, 1890.]

To support a charge under s. 474 of the Penal Code, it is necessary for the prosecution to prove (1) that the documents in respect of which the charge is brought are forged, (2) that the accused knew them to be forged, (3) that he was in possession of them; (4) that he intended that they should be fraudulently or dishonestly used as genuine; and (5) that each of the documents is of the description mentioned in s. 466 or s. 467 of the Penal Code. To support a charge under the latter part of s. 475 of the Penal Code, it is necessary for the prosecution to prove (1) that the accused was in possession of the papers referred to in the charge, (2) that the devices or marks were counterfeited on them: (3) that the marks were such as are used for the purpose of authenticating any document described in s. 467; and (4) that the accused intended that the marks should be used for the purpose of giving the appearance of authenticity to documents either then forged or thereafter to be forged. The accused was charged with being in possession of forged documents, an offence punishable under ss. 474 and 475 of the Penal Code. In his summing up, the Sessions Judge, after stating that the documents were admitted by the defence to be forgeries, told the jury that the only issue they had to decide was whether the forged documents were in the possession of the accused, and whether the nature of one, at all events, of the documents was such as to connect them with the accused, being the kind of documents he would be likely to have in his house, and he alone, and that if they found this issue in the affirmative, they must return a verdict of guilty. *Held* that the charge to the jury was defective and misleading, and insufficiently complied with the requirements of s. 297 of the Code of Criminal Procedure (Act X. of 1882.)—QUEEN-EMPRESS v. ABAJI RAMCHANDRA, I. L. R., 16 Bom. 165. [Birdwood and Parsons, JJ. Feb. 18, 1891.]

Ct. of Ses. Uncog. Warrant. Not bailable. Not comp. Sanction.

Counterfeiting a device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit-marked material.

**476.** Whoever counterfeits upon or in the substance of any material any device or mark used for the purpose of authenticating any document other than the documents described in section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon, or in the substance of, which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses. Uncog. Warrant. Not bailable. Not comp.

Fraudulent cancellation, destruction, &c., of will, authority to adopt, or valuable security.

**477.** Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys, or defaces, or attempts to cancel, destroy, or deface, or secretes or attempts to secrete, any document which is, or purports to be, a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect to such document, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

THE tearing-up of a patta is the destruction of a valuable security within the meaning of s. 477, Penal Code.—QUEEN v. NITAR MUNDLE, 3 W. R. 38. [Steer, J. July 4, 1865.]

THE fact that a document has not been stamped, and is not, therefore, receivable in evidence, does not prevent its being a "valuable security" within the meaning of s. 477 of the Penal Code.—PRO., Aug. 5, 1873, 7 Mad. H. C. R. Ap. 26.

P M was convicted by a Magistrate under s. 426 of the Penal Code on a charge of mischief by tearing up a promissory note for Rs.

20. *Held* that the offence charged fell under s. 477 of the Penal Code, and was therefore triable by a Sessions Court only.—*In re* MADURAI, I. L. R., 12 Mad. 54. [Wilkinson and Shephard, JJ. Sep. 11, 1888.]

A, HAVING had certain transactions with B, wrote out a rough account, showing his indebtedness to B, and signed the total. The paper was not stamped. B afterwards presented it to A, and demanded payment of the total amount. A paid part only, and after an altercation tore up the paper. *Held* that the act of tearing up the paper constituted the offence of destroying a valuable security, and the harm caused was such that a person of ordinary sense and temper would complain of it.—QUEEN-EMPRESS *v.* RAMASAMI, I. L. R., 12 Mad. 148. [Collins, C.J., and Wilkinson, J. Nov. 15, 20, 1888.]

CERTAIN persons were charged before a Magistrate of the first class under s. 379 of the Indian Penal Code with the theft of a promissory note. The prosecution applied for a further charge to be framed under s. 477 of the Indian Penal Code, but this the Magistrate declined to do, as, in his opinion, there was no direct evidence that the accused had destroyed or secreted the note. After hearing the evidence for the defence the Magistrate acquitted the accused under s. 258 of the Code of Criminal Procedure. Application was then made to the Sessions Court to call for the records, and direct the committal of the accused for trial for an offence under s. 477 of the Indian Penal Code. The Sessions Court ordered that a further enquiry be made, and that the accused be committed for trial. On its being contended, on revision, that the order of the Sessions Court was illegal on the ground that the accused had been acquitted and not discharged. *Held* that the order of the Magistrate was, in substance, an order discharging the accused in respect of an alleged offence under s. 477, Indian Penal Code, and that the Sessions Judge had jurisdiction to make the order sought to be revised. *Queen-Empress* v *Hanumantha Reddi* (I. L. R., 23 Mad. 225), considered.—KRISHNA REDDI *v* SUBBAMMA, I. L. R., 24 Mad. 136. [White, C.J., and Subramania Ayyar and Davies, JJ. Mar. 16, and Sep. 27, 1900.]

**477A.*** Whoever, being a clerk, officer, or servant, or employed or acting in the capacity of a clerk, officer, or servant, wilfully, and with intent to defraud, destroys, alters, mutilates, or falsifies any book, paper, writing, valuable security, or account which belongs to, or is in the possession of, his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters, or abets the omission or alteration of, any material particular from or in any such book, paper, writing, valuable security, or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Falsification of accounts.

Ct. of Ses. Uncog. Warrant. Not bailable. Not comp.

*Explanation.*—It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded, or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed.

THE alteration in the law by s. 222 (2) of the Criminal Procedure Code (Act V. of 1898) does not apply to a charge under s. 477A of the Penal Code; it applies only to criminal breach of trust or dishonest misappropriation of money.—QUEEN-EMPRESS *v.* MATI LAL LAHIRI, I. L. R., 26 Cal. 560. [Prinsep and Stanley, JJ. Mar. 2, 1899.]

* S. 477A has been added by the Indian Criminal Law Amendment Act (III. of 1895), s. 4.

### *Of Trade, Property, and Other Marks.**

**478.** A mark used for denoting that goods are the manufacture or merchandise of a particular person is called a trade-mark, and, for the purposes of this Code, the expression "trade-mark" includes any trade-mark which is registered in the register of trade-marks kept under the Patents, Designs, and Trade-marks Act, 1883,† and any trade-mark which, either with or without registration, is protected by law in any British possession or foreign State to which the provisions of the one hundred and third section of the Patents, Designs, and Trade-marks Act, 1883,† are, under order in Council, for the time being applicable.

Trade-mark.

THE complainant, as a descendant of one Shri Chandu, had for many years prepared calendars bearing the name of "Shri Chandu Panchang" at Jodhpur, and had sent each year a copy of such calendar to publishers in different parts of India, and from the copy so furnished, these publishers issued and published calendars bearing the name "Shri Chandu Panchang," thus denoting them as calendars prepared in Jodhpur by the descendants of Chandu. The defendant, a publisher in Bombay, prepared a calendar and put the name "Shri Chandu Panchang" on the outside, although the calendar was not prepared by the decendants of Shri Chandu. The complainant thereupon filed an information against the defendant under s. 482 of the Penal Code (Act XLV. of 1860) and s. 6 of the Merchandise Marks Act (IV. of 1889). *Held* (1) that the defendant had committed no offence under s. 482 of the Penal Code (Act XLV. of 1860), for the title "Shri Chandu Panchang" did not come within the definition of "trade-mark" given in s 478 of the Code; (2) that the defendant's act did not fall under s 6 of the Merchandise Marks Act (IV. of 1889), as it was not alleged that the defendant's calendars differed as to text from the complainant's or were compiled on different principles; the allegation was simply that they were unauthorized.—RADHA KRISHNA JOSHI *v.* KISSONLAL SHRIDHAR, I. L. R., 26 Bom. 289. Candy and Fulton, JJ. Nov. 25, 1901.

**479.** A mark used for denoting that moveable property belongs to a particular person is called a property-mark.

Property-mark.

**480.** Whoever marks any goods, or any case, package, or other receptacle containing goods, or uses any case, package, or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any goods contained in any such receptacle so marked, are the manufacture or merchandise of a person whose manufacture or merchandise they are not, is said to use a false trade-mark.

Using a false trade-mark.

**481.** Whoever marks any movable property or goods, or any case, package, or other receptacle containing movable property or goods, or uses any case, package, or other receptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property-mark.

Using a false property-mark.

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* This part of Ch. XVIII. (*i.e.*, ss. 478-489) has been substituted for the original by the Indian Merchandise Marks Act (IV. of 1889), s. 3.

As to costs of defence or prosecution, and limitation of prosecutions, under ss. 478-489, see Act IV. of 1889, ss. 14, 15.

As to unintentional contravention of ss. 480-482 or 485, see Act IV. of 1889, s. 8.

As to forfeiture of goods on contravention of ss. 482 or 486-488, see Act IV. of 1889, s. 9.

† 46 & 47 Vict., c. 57.

**482.** Whoever uses any false trade-mark or any false property-mark shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Punishment for using a false trade-mark or property-mark.

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Not comp.

A COMPLAINANT, having, in 1893, discovered that goods were being sold marked with what was alleged to be a counterfeit trade-mark, called upon the persons so selling to discontinue the use of the said alleged counterfeit trade-mark, and to render an account of sales. The right to proceed further was reserved, but no action was then taken. In 1898, upon its being ascertained that the same trade-mark was being used, a prosecution was commenced. *Held* that, inasmuch as the complainant had not shown that he believed the use of the alleged counterfeit trade-mark had been discontinued after his first discovery, and complaint in 1893, the prosecution was time-barred under s. 15 of the Indian Merchandise Marks Act 1889; and that the complainant must enforce his remedy by civil process.—RUPPELL *v.* PONNUSAMI TEVAN, I. L. R., 22 Mad. 488. [Collins, C.J., and Benson, J. Mar 24, 1899.]

THE complainant, as a descendant of one Shri Chandu had for many years prepared calendars bearing the name of "Shri Chandu Panchang" at Jodhpur and had sent each year a copy of such calendar to publishers in different parts of India, and from the copy so furnished these publishers issued and published calendars bearing the name "Shri Chandu Panchang," thus denoting them as calendars prepared in Jodhpur by the descendants of Chandu. The defendant, a publisher in Bombay, prepared a calendar and put the name "Shri Chandu Panchang" on the outside, although the calendar was not prepared by the descendants of Shri Chandu. The complainant thereupon filed an information against the defendant under s. 482 of the Penal Code (Act XLV. of 1860) and s. 6 of the Merchandise Marks Act (IV. of 1889). *Held* (1) that the defendant had committed no offence under s. 482 of the Penal Code (Act XLV. of 1860), for the title "Shri Chandu Panchang" did not come within the definition of "trade-mark" given in s. 478 of the Code; (2) that the defendant's act did not fall under s. 6 of the Merchandise Marks Act (IV. of 1889), as it was not alleged that the defendant's calendars differed as to text from the complainant's or were compiled on different principles; the allegation was simply that they were unauthorized.—RADHA KRISHNA JOSHI *v.* KISSONLAL SHRIDHAR, I. L. R., 26 Bom. 289. [Candy and Fulton, JJ. Nov. 25, 1901.]

**483.** Whoever counterfeits any trade mark or property mark used by any other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

Counterfeiting a trade-mark or property-mark used by another.

Ditto.

**484.** Whoever counterfeits any property-mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person, or at a particular time or place, or that the property is of a particular quality, or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Counterfeiting a mark used by a public servant.

*Ct. of Ses.*, Presy. Mag., or Mag. of 1st class. Uncog. Summons. Bailable. Not comp.

**485.** Whoever makes or has in his possession any die, plate, or other instrument for the purpose of counterfeiting a trade-mark, or property-mark, or has in his possession a trade-mark or property-mark for the purpose of denoting that any goods are the manufacture or merchandise of a person whose manufacture or merchandise they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Making or possession of any instrument for counterfeiting a trade-mark or property-mark.

Ditto.

A MARK to be a trade-mark must be a mark used for denoting that the goods are the manufacture or the merchandise of a particular person. The mere fact that a Bank imported and sold gold bars with a particular mark impressed upon them, a mark which was not originally theirs but belonged to a Bank that had ceased to exist and where there was no proof of any transfer or assignment of the mark, or that the new Bank succeeded the other in the sense either that it was a continuation of that Bank under another name, or that it succeeded to the business or acquired the good-will of that Bank, was held not to be sufficient to establish that the mark was the trade-mark of the new Bank.—ANOOKOOL CHUNDER NUNDY *v.* QUEEN-EMPRESS, I. L. R., 27 Cal. 776. [Macpherson and Hill, JJ. Feb. 20, 21, 1900.]

Presy. Mag., or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

**Selling goods marked with a counterfeit trade-mark or property-mark.**

**486.** Whoever sells or exposes, or has in possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade-mark or property-mark affixed to, or impressed upon, the same, or to or upon any case, package, or other receptacle in which such goods are contained, shall, unless he proves—

(*a*) that, having taken all reasonable precautions against committing an offence against this section, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark, and

(*b*) that, on demand made by, or on behalf of, the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(*c*) that otherwise he had acted innocently,

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

THE accused had been prosecuted and convicted under s. 61 of the Bengal Excise Act (Ben. Act VII. of 1878), and the proceedings were instituted against him under ss. 486 and 487 of the Penal Code, and ss. 6 and 7 of the Merchandise Marks Act (IV. of 1889). On an application to quash the proceedings on the ground that the accused had been at the first trial put in peril of a conviction for the latter offences, and therefore the first trial operated as a bar to the institution of the present proceedings: *Held* that the provisions of s. 403 of the Criminal Procedure Code did not operate as a bar to the institution of the present proceedings. Under the second part of that section the fact of the accused having been charged at the first trial with one offence only did not prevent the institution of a separate proceeding in respect of some other offence which was disclosed during the course of the first trial.—QUEEN-EMPRESS *v.* CROFT, I. L. R., 23 Cal. 174. [Ghose and Hill, JJ. Sep. 16, 1895.]

A MAGISTRATE has jurisdiction to try an offence under s. 486 of the Penal Code if the accused be shown to be in possession of goods with a counterfeit trade-mark for sale or any purpose of trade or manufacture, though the sale or the trade or the manufacture for the purpose of which the accused has the goods in his possession be not intended to take place within the jurisdiction of the Court in which the complaint is lodged.—YUSUF MAMOMED ABARUTH *v.* BANSIDHUR SIRAOGI, I. L. R., 25 Cal. 639. [Banerjee and Wilkins, JJ. Feb. 16, 1898.]

BOOKS are the subject of trade, and are goods within the meaning of s. 2, cl. (4), of the Indian Merchandise Marks Act (IV. of 1889). Therefore, when a person sells books with a counterfeit property-mark, he commits an offence under s. 486 of the Penal Code. The judgment of the High Court (O'Kinealy and Banerjee, JJ.) was as follows: "This is a rule calling upon the District Magistrate of Dacca to show cause why the convictions and sentences in this case should not be set aside on the ground that the facts do not amount to the offences of which the petitioners have been convicted, or why the sentences passed should not be reduced or otherwise altered. It appears that there is a well-known Bengali Primer by one Ram Sunder Basack, and it has been found that this book has a property-mark. The applicants are found to have sold large numbers of this book with a perfect knowledge that the book they sold was not the real book, but a book purporting to be the real one; and they were convicted of offences under ss. 482 and 486 of the Penal Code, and

also of abetment of those offences under s. 109. It has been argued in this Court that books are not goods under Act IV. of 1889. 'Goods' is defined in that Act to be anything which is the subject of trade or manufacture, and although it was not argued that, in ordinary language, books are not the subject of trade, yet it was said that they were not the subject of trade within the meaning of that Act. 'Trade' is not defined, and we must, therefore, take the ordinary dictionary meaning of that word. That being so, there can hardly be any doubt that books are the subject of trade, and of a very large trade in Bengal, therefore books are covered by the word 'goods.' The convictions entered up against the accused are of three kinds: one for using a counterfeit trade-mark; the second for selling the book with a counterfeit property-mark, and the third for abetment of those offences. But we think that the conviction in this case ought simply to be a conviction under s 486, and we accordingly set aside the convictions under ss. 482 and 109. The result, therefore, is, that the applicants will remain convicted under s. 486, and will suffer rigorous imprisonment for three months, and they will have to be taken into custody, and serve out the remainder of the sentence."—KANAI DAS BAIRAGI *v.* RADHA SHYAM BASACK, I. L. R., 26 Cal. 232. [O'Kinealy and Banerjee, JJ. Dec. 5, 1898.]

A COMPLAINANT, having, in 1893, discovered that goods were being sold marked with what was alleged to be a counterfeit trade-mark, called upon the persons so selling to discontinue the use of the said alleged counterfeit trade-mark, and to render an account of sales. The right to proceed further was reserved, but no action was then taken. In 1898, upon its being ascertained that the same trade-mark was being used, a prosecution was commenced: *Held* that, inasmuch as the complainant had not shown that he believed the use of the alleged counterfeit trade-mark had been discontinued after his first discovery and complaint in 1893, the prosecution was time barred under s. 15 of the Merchandise Marks Act, 1889, and that the complainant must enforce his remedy by civil process. —RUPPELL *v.* PONNUSAMI TEVAN, I. L. R., 22 Mad. 488. [Collins, C.J., and Benson, J. Mar. 24 1899.] See *Anookool Chunder Nundy* v. *Queen-Empress*, I. L. R, 27 Cal. 776, under s. 485

A MARK, to be a trade-mark, must be a mark used for denoting that the goods are the manufacture or the merchandise of a particular person. The mere fact that a Bank imported and sold gold bars with a particular mark impressed upon them, a mark which was not originally theirs, but belonged to a Bank that had ceased to exist, and where there was no proof of any transfer or assignment of the mark, or that the new Bank succeeded the other in the sense either that it was a continuation of that Bank under another name, or that it succeeded to the business or acquired the good-will of that Bank, was held not to be sufficient to establish that the mark was the trade-mark of the new Bank.—ANOOKOOL CHUNDER NUNDY *v.* QUEEN-EMPRESS, I. L. R., 27 Cal 776 [Macpherson and Hill, JJ. Feb. 20, 21, 1900.]

**487.** Whoever makes any false mark upon any case, package, or other receptacle containing goods, in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain, or that it does not contain goods which it does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

**Making a false mark upon any receptacle containing goods.**

THE accused had been prosecuted and convicted under s. 61 of the Bengal Excise Act (Ben. Act VII. of 1878), and the proceedings were instituted against him under ss. 486 and 487 of the Penal Code, and ss. 6 and 7 of the Merchandise Marks Act (IV. of 1889). On an application to quash the proceedings on the ground that the accused had been at the first trial put in peril of a conviction for the latter offences, and therefore the first trial operated as a bar to the institution of the present proceedings: *Held* that the provisions of s. 403 of the Criminal Procedure Code did not operate as a bar to the institution of the present proceedings. Under the second part of that section the fact of the accused having been charged at the first trial with one offence only did not prevent the institution of a separate proceeding in respect of some other offence which was disclosed during the course of the first trial —QUEEN-EMPRESS *v.* CROFT, I. L. R., 23 Cal. 174. [Ghose and Hill, JJ. Sep. 16, 1895.]

Ct. of Sess., Presy. Mag., or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

Punishment for making use of any such false mark.

**488.** Whoever makes use of any such false marking in any manner prohibited by the last foregoing section shall, unless he proves that he acted without intent to defraud, be punished as if he had committed an offence against that section.

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

Tampering with property-mark with intent to cause injury.

**489.** Whoever removes, destroys, defaces, or adds to, any property-mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

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*'Of Currency-notes and Bank-notes.'* *

Ct. of Sess., Cognizable. Warrant. Not bailable. Not comp.

Counterfeiting currency-notes or bank-notes.

'**489A.** Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

'*Explanation.*—For the purposes of this section and of sections 489B, 489C, and 489D, the expression "bank-note" means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for, money.

Ditto.

Using as genuine forged or counterfeit currency-notes or bank-notes.

'**489B.** Whoever sells to, or buys or receives from, any other person or otherwise traffics in, or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Sess., Cognizable. Warrant. Bailable. Not comp.

Possession of forged or counterfeit currency-notes, or bank-notes.

'**489C.** Whoever has in his possession any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, and intending to use the same as genuine, or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

DURING the trial of a case the accused obtained a process for the attendance of a witness. Before the witness appeared the accused asked the Court to countermand the order for his attendance, but the Court refused to do so. When the witness attended the accused declined to examine him He was thereupon examined by the Court, and upon the accused claiming the right to cross-examine the witness, the Court refused to allow him to do so. *Held*, that under the circumstances the witness could not be regarded as a witness for the defence, and that the accused should have been given an opportunity to cross-examine him. *Held*, also, that offences under ss. 411 and 489 (*c*) of the Penal Code are distinct offences, and should be tried separately. — MOHENDRO NATH DAS GUPTA *v.* EMPEROR, I. L. R., 29 Cal. 387. [Prinsep and Stephen, JJ. Feb. 7, 1902.

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* Ss. 489A, 489B 489C, and 489D, have been added after s 489 by the Currency Notes Forgery Act (XII. of 1899), s. 2.

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

**489D.** Whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument, or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.'

*Making or possessing instrument, or materials for forging or counterfeiting currency-notes or bank-notes.*

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## CHAPTER XIX.*

### OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

Proc. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Comp.

**490.** Whoever, being bound by a lawful contract to render his personal service in conveying or conducting any person or any property from one place to another place, or to act as servant to any person during a voyage or journey, or to guard any person or property during a voyage or journey, voluntarily omits so to do, except in the case of illness or ill-treatment, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

*Breach of contract of service during a voyage or journey.*

*Illustrations.*

(*a*.) A, a palanquin-bearer, being bound by legal contract to carry Z from one place to another, runs away in the middle of the stage. A has committed the offence defined in this section.

(*b*.) A, a cooly, being bound by lawful contract to carry Z's baggage from one place to another, runs away in the middle of the stage. A has committed the offence defined in this section.

(*c*.) A, a proprietor of bullocks, being bound by legal contract to convey goods on his bullocks from one place to another, illegally omits to do so. A has committed the offence defined in this section.

(*d*.) A, by unlawful means, compels B, a cooly, to carry his baggage. B, in the course of the journey, puts down the baggage and runs away. Here, as B was not lawfully bound to carry the baggage, he has not committed any offence.

*Explanation.*—It is not necessary to this offence that the contract should be made with the person for whom the service is to be performed. It is sufficient if the contract is legally made with any person, either expressly or impliedly, by the person who is to perform the service.

*Illustration.*

A contracts with a dâk company to drive his carriage for a month. B employs the dâk company to convey him on a journey, and during the month the company supplies B with a carriage which is driven by A. A, in the course of the journey, voluntarily leaves the carriage. Here, although A did not contract with B, A is guilty of an offence under this section.

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* Cognizance may be taken of an offence under Ch. XIX. only on complaint by an aggrieved party.—See the new Code of Criminal Procedure (Act V. of 1898), s. 198.

Offences punishable under Ch. XIX. are compoundable.—See the new Code of Criminal Procedure (Act V. of 1898), s. 345. As to stage of proceedings at which no composition is allowable without the leave of the Court, see *ibid*, sub-s. (5).

S. 490 does not apply to servants hired by the month, and under a continuing implied contract to serve until the engagement is terminated by a month's notice.—RULINGS OF THE MAD. H. C., 1864, ON S. 490.

AN agreement for personal service in conveying indigo from the field to the vats is not a contract, the breach of which is punishable by s. 490 of the Penal Code.—IN THE MATTER OF NOWA TEWAREE, 6 W. R. 80. [Kemp and Pundit, JJ. Oct. 3, 1866.]

*Quære.*—Whether the words, "during a voyage or journey," in s. 490 of the Penal Code, do not limit the offence made under that section to offences against travellers. That section, however, does not apply to a contract to place the defendant's carts at the complainant's disposal for a specified time to convey a thing from where he pleases to where he pleases.—SAGE *v.* NIRUNJUN CHATTERJEE, 9 W. R. 12. [Kemp and Jackson, JJ. Feb. 3, 1868.]

IN *Unwin* v. *Clarke* (1 L. R., Q. B., 417) the contract was held not to be terminated by conviction and punishment; but the Calcutta High Court has ruled the contrary.—2 Rev., Jud., and Pol. Jour. 24.

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Comp.

**491.** Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth or of unsoundness of mind, or a disease or bodily weakness, is helpless or incapable of providing for his own safety, or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

Breach of contract to attend on and supply wants of helpless person.

THE Indian Law Commissioners give the following reasons for framing the above section: "Persons who contract to take care of infants, of the sick and helpless, lay themselves under an obligation of a peculiar kind, and may, with propriety, be punished if they omit to discharge their duty. They generally come from the lower ranks of life, and would be unable to pay anything. They therefore proposed to add to this class of contracts the sanction of the penal law."

Ditto.

**492.** Whoever, being bound by lawful contract in writing to work for another person as an artificer, workman, or labourer, for a period not more than three years, at any place within British India, to which, by virtue of the contract, he has been, or is to be, conveyed at the expense of such other, voluntarily deserts the service of that other during the continuance of his contract, or without reasonable cause refuses to perform the service which he has contracted to perform, such service being reasonable and proper service, shall be punished with imprisonment of either description for a term not exceeding one month, or with fine not exceeding double the amount of such expense, or with both, unless the employer has ill-treated him, or neglected to perform the contract on his part.

Breach of contract to serve at distant place to which servant is conveyed at master's expense.

S. 492, which makes it an offence for "an artificer, workman, or labourer" to break his contract of service under the circumstances specified in the section, does not apply to domestic servants.—CROWN *v.* KALLU, Panj. Rec., No. 20 of 1876.

WHERE a labourer has once been punished under s 492, it has been held that his refusal to fulfil the terms of the contract on his release from imprisonment does not render him liable to a second punishment.—2 Rev., Jud. and Pol. Jour. 24.

## CHAPTER XX.*

### OF OFFENCES RELATING TO MARRIAGE.

Ct. of Ses. Uncog. Warrant. Not bailable. Not comp.

**493.** Every man who by deceit causes any woman who is not lawfully married to him, to believe that she is lawfully married to him, and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.**

A HINDU Christian convert relapsing into Hinduism, and marrying a Hindu woman, cannot be convicted of bigamy, on the ground that he has another wife living whom he married while a professing Christian.—PRO., Nov. 8, 1866, 3 Mad. H. C. R. Ap. 7. [Holloway and Innes, JJ. Nov. 8, 1866.]

MARRIAGE must be presumed from the fact of a man and woman living together and from their own evidence (altogether unrebutted) that she is his legally married wife.—QUEEN v. WUZEERAH, 17 W. R. 5; 8 B. L. R. Ap. 63. [Loch and Ainslie, JJ. Jan. 6, 1872.] Overruled by *Empress* v. *Pitambur Singh*, I. L. R., 5 Cal. 566; 5 C. L. R. 597, *infra*.

THE provisions of s. 50 of the Evidence Act show that, where marriage is an ingredient in an offence, as in bigamy, adultery, and the enticing of married women, the fact of the marriage must be strictly proved.—EMPRESS v. PITAMBUR SINGH, I. L. R., 5 Cal. 566; 5 C. L. R. 597. [Garth, C.J., and Jackson, Pontifex, Morris, and McDonell, JJ. Dec. 8, 1879.] Follows *Queen* v. *Smith*, 4 W. R. 31. Overrules *Queen* v. *Wuseerah*, 17 W. R. 5; 8 B. L. R. Ap. 63. Discussed in *Queen-Empress* v. *Subbarayan*, I. L. R., 9 Mad. 9. Followed in *Empress of India* v. *Kallu*, I. L. R., 5 All. 233; *Empress* v. *Arshed Ali*, 13 C. L. R. 125.

S. 50 of the Evidence Act (I. of 1872) runs as follows:—

WHEN the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct as to the existence of such relationship of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact, provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, or in prosecutions under s. 494, 495, 497, or 498 of the Indian Penal Code.

*Illustrations.*

(*a*) The question is, whether A and B were married.

The fact that they were usually received and treated by their friends as husband and wife is relevant.

(*b*.) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family is relevant.

Ct. of Ses. Uncog. Warrant. Bailable. Not comp.

**494.** Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Marrying again during lifetime of husband or wife.**

*Exception.*—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent

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* Cognizance may be taken of an 'offence' under s. 493, 494, 495, or 496, only on complaint by an aggrieved party, and of an offence under s. 497 or 498 only on complaint by the husband or guardian of the woman.—See the new Code of Criminal Procedure (Act V. of 1898), ss. 198, 199.

Offences punishable under ss. 497 and 498 are compoundable.—See *ibid*, s. 345. As to stage of proceedings under ss. 497 and 498 at which no composition is allowable without the leave of the Court, see *ibid*, sub-s. (5).

As to punishment for offences under ss. 497 and 498, enquired into by a Council of Elders in a Punjab Frontier District or in Baluchistan, see the Punjab Frontier Crimes Regulation (IV. of 1887), s. 14.

**jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts, so far as the same are within his or her knowledge.**

A MAHOMEDAN, having four lawful wives alive and undivorced, commits bigamy when he marries a fifth.—Mac. M. Law, p. 255.

HELD that a custom of the Talapoda Koli caste, that a woman should be permitted to leave the husband to whom she has been first married, and to contract a second marriage (natra) with another man during the lifetime of her first husband and without his consent, was invalid, as being entirely opposed to the spirit of the Hindu law, and that such marriage was "void by reason of its taking place during the life of such husband," and, therefore, punishable as regards the woman under s. 494 of the Penal Code, and that the man with whom the woman so married, having had sexual intercourse with her, and it being found that he did not honestly believe that she had become his wife, was guilty of adultery under s. 497.—REG. v. KARSAN GOJA, REG. v. BAI RUPA, 2 Bom. H. C. R. 117. [Forbes and Couch, JJ. April 22, 1864.]

A HINDU Christian convert relapsing into Hinduism, and marrying a Hindu woman, cannot be convicted of bigamy, on the ground that he has another wife living whom he married while a professing Christian.—PRO., Nov. 8, 1866, 3 Mad. H. C. R. Ap. 7. [Holloway and Innes, JJ. Nov. 8, 1866.]

ON a trial for bigamy, the defence was that the marriage of the woman (the accused) with the prosecutor was null and void, as the woman was a minor at the time, and married without the consent of her relations. She was a widow when she married the prosecutor. *Held* that her marriage with the prosecutor was legal.—MADHA v. MUSSAMMAT JEEWEE, Panj. Rec., No. 2 of 1869.

HELD on a trial for bigamy, that the apostacy of a Hindu wife does not dissolve the marriage union.—CROWN v. MUSSAMMAT GHOLAM FATIMA, Panj. Rec., No. 32 of 1870.

A NIKA-MARRIAGE falls within the purview of ss. 494 and 495; it is a well-known and well-established form of marriage amongst Mahomedans.—QUEEN v. JUDDO MUSSULMANEE, 6 W. R. 60. [Seton-Karr, J. Aug. 27, 1868.] And the issue of a nika-marriage would be legitimate under the Mahomedan law.—SHEIKH MONEEROODDEEN v. RAMDHUN BAJEEKUR, 18 W. R. 28. [Kemp and Glover, JJ. July 17, 1872.]

COURTS of law will not recognize the authority of a caste to declare a marriage void, or to give permission to a woman to re-marry. *Bond-fide* belief that the consent of the caste made the second marriage valid does not constitute a defence to a charge, under s. 494 of the Penal Code, of marrying again during the lifetime of the first husband, or to a charge of abetment of that offence under that section combined with s. 109.—REG. v. SAMBHU RAGHU, I. L. R., 1 Bom. 347. Melvill and Nanabhai Haridas, JJ. Sep. 7, 1876.

IF the first marriage is valid, it is bigamy to marry again (*i.e.*, to go through a form of marriage known to the law as capable of producing a valid marriage), though the second marriage be void on another ground besides that of its being bigamous.—GURBAKSH SINGH v. SHAMA SINGH, Panj. Rec., No. 19 of 1876.

A MAHOMEDAN guardian of a married female infant who, while her husband is living, causes a marriage ceremony to be gone through by her name with another man, but without her taking any part in the transaction, does not commit the offence of abetment under ss. 109 and 494 of the Penal Code. The practice of instituting criminal proceedings with a view to determining disputes arising in cases of this class condemned.—IN THE MATTER OF THE EMPRESS v. ABDOOL KURREEM, I. L. R., 4 Cal. 10. [White and Prinsep, JJ. July 9, 1878.]

A CRIMINAL Court is bound to decide the question of marriage when it is essential to the decision of the question whether an offence has been committed or not. The doctrine of a certain school of Mahomedan divines in regard to the competency of a woman to marry again after the absence of her husband for four years does not entitle a woman so re-marrying to the benefit of the exception to s. 494.—ALAM SHAH v. JEWAN, Panj. Rec., No. 57 of 1878.

**THE accused were charged before a Magistrate of the first-class with enticing away a**

married woman (s. 498). The inquiry having shown that an offence under s. 494 had apparently been committed, the proceedings were forwarded under s. 45, Criminal Procedure Code, for disposal to the Magistrate of the District, who tried the case *de novo*, and convicted the accused under ss. 109 and 494. *Held* that the preferring a complaint was an essential condition of the Magistrate's jurisdiction to inquire into and try an offence falling under ch. 20 of the Penal Code, and the extent of the jurisdiction so founded was limited to offences covered by the facts complained of; that there had been no complaint of an offence under s. 494, and that the conviction was therefore illegal. *Held* also that the Magistrate, before whom the complaint was made of an offence under s. 498, had jurisdiction to try it, and therefore that it was not competent for him to proceed under s. 45, Criminal Procedure Code. —FAIZ AHMED *v.* EMPRESS, Panj. Rec., No 5 of 1879.

THE conversion of a Hindu wife to Mahomedanism does not, *ipso facto*, dissolve her marriage with her husband, she cannot, therefore, during his lifetime, enter into any other valid marriage contract Her going through the ceremony of nika with a Mahomedan is consequently an offence under s. 494 of the Penal Code.—GOVT. OF BOMBAY *v.* GANGA, I. L. R., 4 Bom. 330. [Pinhey and Melvill, JJ. Jan. 26, 1880.]

A CONVICTION under s. 494 of the Penal Code for marrying again during the lifetime of a husband or wife cannot be upheld where there is evidence to show that such marriages are not unusual among persons of the same caste as the accused, and it is not proved that such marriages are void.—IN THE MATTER OF MUSSAMUT CHAMIA, 7 C. L. R. 354. [Garth, C J., and Field, J. Nov. 23, 1880. Followed in *Jukni* v. *Queen-Empress*, I. L R., 19 Cal. 627, *infra*.

A MEMBER of the caste of Ajanya Rajput Guzars, residing in Khandesh, executed a deed of divorce to his wife. The Court held on the evidence that the deed was proved, and that in this caste a husband was, for a sufficient reason, such as incontinence, allowed to divorce his wife; that the deed in the present case had not been executed for a sufficient reason; and that, consequently, the parties entering into a second marriage were guilty of an offence under s. 494 of the Penal Code, and that the priest who officiated at that marriage was an abettor under ss. 494 and 109. Mere consent of persons to be present at an illegal marriage, or their presence in pursuance of such consent, or the grant of accommodation in a house for the marriage, does not necessarily constitute abetment of such marriage.—EMPRESS *v.* UMI, I. L. R., 6 Bom. 126. [Melvill and Kemball, JJ. Jan. 11, 1882.]

WHERE the wife of a lunatic was prosecuted for bigamy on the complaint of the lunatic's brother, *held* that the complainant, merely as brother of the lunatic, was not a "person aggrieved by such offence" within the meaning of s. 198 of the Criminal Procedure Code (Act X. of 1882), and that the complaint could not be entertained —QUEEN-EMPRESS *v.* BAI RUKSHMONI, I. L. R., 10 Bom. 340. [Birdwood and Jardine, JJ. Jan. 21, 1886.] Referred to in *The Deputy Legal Remembrancer* v. *Sarna Kahmi*, I. L. R., 26 Cal. 336, *infra*.

A WAS baptized in infancy into the Roman Catholic Church but subsequently relapsed, with the rest of the family into Hinduism, and was married to a Hindu Her Hindu husband since discarded her, and alleged that he would not have married her if he had known that she had been baptized A was subsequently re-admitted into the Roman Catholic Church, and married by B, a priest, to a Roman Catholic during the lifetime of her Hindu husband. *Held* that A's marriage with the Hindu was subsisting and valid at the time of her Christian marriage, that she was guilty of the offence of bigamy and that B was guilty of abetting that offence. *Lopes* v. *Lopes* (I L. R, 12 Cal. 706) discussed.—*In re* MILLARD, I L. R. 10 Mad. 218. [Collins, C.J., and Parker J. April 1, 1887.]

THE petitioner originally a Hindu woman, and the illegitimate offspring of Chattri parents was duly married according to Hindu rites to D, who was also by caste a Chattri. Subsequent to the marriage the petitioner became a convert to Mahomedanism, and then married a Mahomedan. She was charged with, and convicted of, an offence under s. 494 of the Penal Code. It was contended on her behalf that—(1) the marriage between her and D was invalid under Hindu law by reason of her illegitimacy and the consequent difference of caste between the contracting parties; (2) the marriage between her and D became dissolved under the Hindu law on her conversion to Mahomedanism; and (3) the second marriage was not void under the Mahomedan law by reason of its taking place in the lifetime of D, and that the conviction was therefore erroneous. There was no evidence of any notice having been given to D previous to the second marriage calling on him to become a Mahomedan. *Held* that illegitimacy under Hindu law is no absolute disqualification for marriage, and that, when one or both contracting parties to a marriage are illegitimate, the marriage must be regarded as valid, if they are recognized by their caste people as belonging to the same caste. *Held*

also that there is no authority in Hindu law for the proposition that an apostate is absolved from all civil obligations, and that, so far as the matrimonial bond is concerned, such a view would be contrary to the spirit of that law, which regards it as indissoluble, and that accordingly the marriage between the petitioner and D was not, under the Hindu law, dissolved by her conversion to Mahomedanism. *Rahmed Beebee* v. *Rokeya Beebee* (1 Norton's Leading Cases on Hindu Law, p. 12) dissented from. *Held* further that, as the validity of the second marriage depended on the Mahomedan law, and as that law does not allow a plurality of husbands, it would be void or valid according as the first marriage was or was not subsisting at the time it took place. That no notice having been given to D as required by Mahomedan law previous to the second marriage, and no recourse having been had to the Courts for the purpose of obtaining a declaration that the former marriage was dissolved, and as British India cannot be held to be a foreign country for the purpose of rendering such notice unnecessary, the previous marriage was not dissolved under Mahomedan law, and the subsequent marriage was therefore void. *Held* accordingly that the conviction was right.—*In re* RAM KUMARI, I. L. R., 18 Cal. 264. [Macpherson and Banerjee, JJ. Feb. 18, 1891.]

B, a Mahomedan girl, whose father was dead, was alleged to have been given in marriage by her mother to J some years before she attained puberty. Prior to her attaining puberty, J was sentenced to a term of imprisonment for theft. While he was in jail, B, after she had attained puberty, contracted a marriage with P. The marriage with J was never consummated. On J being released from jail, he proceeded to prosecute B and P for bigamy and abetment of bigamy, and also charged P with adultery. It appeared that before taking proceedings, J requested B to return to him, but she refused to do so. The marriage between B and J was sought to be proved by the evidence of J, B's mother, and two witnesses who were said to have been present. B and P were both convicted. *Held*, on appeal, that the evidence of the marriage between B and J was insufficient to justify a conviction in the absence of proof that a Mollah was present at the ceremony, or that the *sigha* required to be recited at the marriage of minors was recited, or the *akd* performed. *Held*, further, that, assuming B to have been given in marriage to J when a mere child by her mother, she had the option of either ratifying or repudiating such marriage on attaining puberty. Under the *Shia* law, such a marriage is of no effect until it has been ratified by the minor, and under the *Sunni* law it is effective till cancelled by the minor. Under both schools of law, the minor has the absolute power, on attaining puberty, to ratify or cancel unauthorized marriage, though under the *Sunni* law ratification is presumed if the girl remains silent after attaining puberty, and allows the marriage to be consummated. *Held*, on the facts of the case, that the circumstances afforded sufficient indication, even assuming the girl to be governed by the *Sunni* law, that she never ratified the marriage. *Held*, also, that a judicial order was not necessary to effect the cancellation of the marriage.—BADAL AURAT *v.* QUEEN-EMPRESS, I. L. R., 19 Cal. 79. [Beverley and Ameer Ali, JJ. Sep. 21, 1891.]

A CONVICTION under s 494 of the Penal Code cannot be supported where there is evidence to show that, by the custom of the caste, *sagai* or *nikka* marriage was admissible, and that the husband had relinquished his wife. *In re Mussamut Chamia* (7 C. L. R. 354) followed.—JUKNI *v.* QUEEN-EMPRESS, I. L. R., 19 Cal. 627. [O'Kinealy and Ameer Ali, JJ. June 7, 1892.]

THE husband is a "person aggrieved" within the meaning of s. 198 of the Criminal Procedure Code upon whose complaint the Court should take cognizance of an offence under s. 494 of the Penal Code. *Queen-Empress* v. *Rukshmoni* (I. L. R., 10 Bom. 340) and *In the Matter of Ujjala Bewa* (1 C. L. R. 523) referred to.—THE DEPUTY LEGAL REMEMBRANCER *v.* SARNA KAHMI, I. L. R., 26 Cal. 336. [O'Kinealy and Stanley, JJ. Jan. 26, 1899.]

Ct. of Ses. Uncog. Warrant. Not bailable. Not comp.

Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.

**495.** Whoever commits the offence defined in the last preceding section, having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

A WOMAN, who does not use all reasonable means in her power to inform herself of the fact of her first husband's alleged demise, and contracts a second marriage within 16 months after cohabitation with her first husband without disclosing the fact of the former marriage to her second husband, is liable to enhanced punishment under s. 495, Penal Code.

—QUEEN *v.* ENAI BEEBEE, 4 W. R. 25. [Loch, Kemp, and Glover, JJ. Nov. 20, 1865.]

A NIKA MARRIAGE falls within the purview of ss. 494 and 495 of the Penal Code. It is a well-known and well-established form of marriage amongst Mahomedans.—QUEEN *v.* JUDOO MUSSULMANEE, 6 W. R. 60. [Seton-Karr, J. Aug. 27, 1866.]

THE nika form of marriage is well-known and established among Mahomedans. The issue of a nika-marriage would be legitimate under the Mahomedan law—SHEIK MONEEROODEEN *v.* RAMDHUN BAJEEKUR, 18 W. R. 28. [Kemp and Glover, JJ. July 18, 1872.]

THE act of causing the publication of banns of marriage is an act done in the preparation to marry, but does not amount to an attempt to marry. Where, therefore, a man, having a wife living, caused the banns of marriage between himself and a woman to be published, he could not be punished for an attempt to marry again during the lifetime of his wife.—REG. *v.* PETERSON, I. L. R., 1 All. 316. [Pearson, J. Dec. 6, 1876.]

THE elder paternal uncle of a Mahomedan girl, a minor, disposed of her in marriage, after he knew she had previously been given in lawful marriage by his younger brother. *Held* that the act did not, *per se*, constitute a criminal offence, even though the second-marriage were valid, it appearing that the accused was the only person concerned in the second marriage who knew of the first, and that the girl was not present. A and B were indicted under ss. 109 and 495 of the Penal Code.—A for giving his niece (a minor) in marriage, she being then married, and B for aiding therein. The girl was not present at the marriage, and there was no evidence to show A had conspired with any person but B, whom the jury acquitted. *Held* that the acquittal of B involved the acquittal of A.—ABDOOL KURREEM *v.* EMPRESS, 3 C. L. R. 81. [White and Prinsep, JJ. July 19, 1878.]

**496.** Whoever dishonestly or with a fraudulent intention goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses. Uncog. Warrant. Not bailable. Not comp.

**Marriage-ceremony fraudulently gone through without lawful marriage.**

PROOF of dishonest or fraudulent intent is necessary for a conviction under s. 496 of the Penal Code of falsely going through the ceremony of marriage. The mere act of allowing the marriage to take place at one's house does not amount to the abetment of an illegal marriage—QUEEN *v.* KUDUM, W. R. Gap., 1864, 13. [Steer and Morgan, JJ. Feb. 24, 1864.]

**497.** Whoever has sexual intercourse with a person who is, and whom he knows or has reason to believe to be, the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife* shall not be punishable as an abettor.

Presy. Mag. or Mag. of 1st class. Uncog. Warrant. Bailable. Comp.

**Adultery.**

HELD that a custom of the Talapoda Koli caste, that a woman should be permitted to leave the husband to whom she has been first married, and to contract a second marriage (*natra*) with another man during the lifetime of her first husband, and without his consent, was invalid, as being entirely opposed to the spirit of the Hindu law, and that such marriage was "void by reason of its taking place during the life of such husband," and therefore punishable, as regards the woman, under s. 494 of the Penal Code; and that the man with whom the woman so married, having had sexual intercourse with her, and it being found that he did not honestly believe that she had become his wife, was guilty of adultery under s. 497.—REG. *v.* KARSAN GOJA; REG. *v.* BAI RUPA, 2 Bom. H. C. R. 117. [Forbes and Couch, JJ. April 22, 1864.]

A PERSON convicted of adultery under s. 497 of the Penal Code need not be convicted also

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* In the Punjab Frontier Districts and Baluchistan a married woman is punishable for adultery.—See the Punjab Frontier Crimes Regulation (IV. of 1887), s. 32. As to punishment, see also s. 14 of that Regulation.

under s. 498; far less where there is no taking or enticing away of the woman.—QUEEN *v.* POCHUN CHUNG, 2 W. R. 35. [Kemp and Glover, JJ. Feb. 14, 1865.]

THE offence of adultery may be compounded. In proceedings founded on a charge of adultery, strict proof is necessary of the marriage of the woman with whom adultery is alleged, and the charge should be instituted by the husband of the woman. The Appellate Court will not uphold a conviction for adultery when the husband has shown that he has condoned the offence.—QUEEN *v.* SMITH (G R.), 4 W. R. 31; 1 Ind. Jur. N. S. 8. [Kemp and Seton-Karr, JJ. Dec. 5, 1865.]

WHERE the husband of a woman, with whom the accused was alleged to have committed adultery, professed himself unwilling to proceed with the prosecution, and the Assistant Sessions Judge thereupon ordered the accused to be discharged, the Court, in the exercise of its discretion, declined to interfere.—REG. *v.* RAMLO JERIO, 5 Bom. H. C R. 27. [Couch, C.J., and Newton J. Jan 14, 1868.]

WHERE a person accused of adultery sets up in defence a *natra*, contracted with the woman with whom he is alleged to have committed adultery, in accordance with the custom of his caste, the question the Court has to determine is, whether or not the accused *honestly believed* at the time of contracting the *natra*, that the woman was the wife of another man.—REG. *v.* MANOHAR RAIJI, 5 Bom. H. C R. 17. [Couch, C.J., and Newton, J. Feb. 22, 1868.]

THE death of the husband does not necessarily put an end to a prosecution for adultery under s. 497 of the Penal Code. The law only requires that the prosecution should be instituted by the husband.—PRO., July 13, 1869, 4 Mad. H C. R. Ap 55.

THE accused committed house-trespass with intent to commit adultery. The husband refused to make a charge of house-trespass with intent to commit adultery, but made a charge of house-trespass with intent to commit theft, which was disproved. It was held that the Magistrate had acted rightly in refusing to convict on the charge laid by the husband, though the accused admitted that he had trespassed to carry on an intrigue.—PRO., Nov. 15, 1869, 5 Mad. H. C. R. Ap 5.

A ENTERED the house of B without the latter's permission, and committed adultery with B's wife. *Held* that A could be separately convicted of and punished for both the adultery and house-trespass, as they were distinct offences, but that, under the circumstances, B's wife was by law incapable of committing abetment of the house-trespass.—CROWN *v.* SHEIKH MUNGLI, Panj Rec No. 5 of 1871.

WHERE the husband brought a specific complaint for adultery under s. 497, and the Magistrate framed a charge and convicted under s. 498, the Chief Court quashed the conviction.—SHER SING *v.* CROWN, Panj. Rec. No. 18 of 1873.

PROOF of adultery required by a Criminal Court must not be less than that required in a divorce suit. There must be, where the wife and the alleged adulterer are not caught in the act, evidence of criminal intention and opportunity. And there must be no consent or connivance on the part of the husband.—SHER ALI *v.* CROWN, Panj. Rec. No. 1 of 1874.

THE fact that a charge under the Penal Code, s. 497, was triable with assessors, and not by a jury, would not affect the legality of a conviction of adultery before a jury. *Quære.*—Is the formal assent of a husband to a charge of adultery, added at the end of his deposition, a proper compliance with Act X. of 1872, s. 478 (corresponding with Act V. of 1898, s. 199)—QUEEN *v.* LUCKHY NARAIN NAGORY, 24 W. R. 18. [Glover and Mitter, JJ. June 28, 1875.]

THE complainant, a Mahomedan, alleged that he had been married six times; that all the women were living, but that he kept two of the first four partially divorced (*i.e.*, by pronouncing the words of divorce only once or twice, and not thrice) in order to legalize his marriage with the fifth and sixth, and so keep within the law, which permitted him to have four wives. Accused was charged with abducting or committing adultery with complainant's sixth wife. *Held* that the woman in question was not the wife of the complainant. Conviction quashed.—RAHNAWAZ KHAN *v.* CROWN, Panj. Rec., No. 1 of 1875.

SAGAI wives, *i.e.*, widows married in accordance with the custom of *Sagai* prevailing amongst the Koirees and other low castes of Behar, are so far the legal wives of either husbands as to justify the punishment of persons committing adultery with them.—BISSURAM KOIREE *v.* EMPRESS, 3 C. L. R. 410. [Ainslie and Maclean, JJ. Aug. 16, 1878.]

K was accused by D and P, alleged to be D's wife, of raping P, and was committed for trial, charged in the alternative with rape or adultery. The evidence of marriage between D and P consisted of their statements that they were married to each other, and of a statement by K that P was D's wife. K was convicted on the charge of adultery. *Held* that such evidence, having regard, not only to s. 50 of the Evidence Act, 1872, but to the principle that strict proof should be required in all criminal cases, was not sufficient to establish the vital incident to the charge of adultery, namely, the marital relation of D

and P. *Empress* v. *Pitambur Singh* (I. L. R., 5 Cal. 566) concurred in. Also that, as no complaint had ever been actually instituted by D against K for the offence of adultery, as contemplated by s. 478 of Act X. of 1872, the circumstance of D's appearing as a witness for the prosecution for the offence of rape not amounting to the institution of a complaint within the meaning of that section), K's conviction for adultery must be quashed.—EMPRESS v KALLU, I. L. R., 5 All. 233. [Straight, J. Dec. 8, 1882.] Followed in *Chemon Garo* v. *Emperor*, I. L. R., 29 Cal. 415, *infra*

A MAN may be convicted of house-trespass with intent to commit adultery, even though the charge is made by a person other than the husband, provided there is no consent or connivance on the part of the husband.—3 Mad Jur 285.

A WIFE petitioned for maintenance for herself and child against her husband under s. 488 of the Criminal Procedure Code. The husband did not refuse to maintain his wife but the petitioner refused to live with him, as he kept a concubine. *Held* that the word 'adultery' in s. 488 of the Criminal Procedure Code must, by virtue of s 4 of the Code be construed with reference to the definition of the term in s. 497 of the Penal Code. Consequently, a husband's immorality, which does not amount to 'adultery,' or involve the degradation of a married woman being brought into the society of a concubine, is not sufficient ground for a wife's refusal to live with her husband. An offer to maintain a wife must be an offer to maintain with the consideration due to her position as a wife. *Vazal-kal* v. *Kandappa* (I. L. R., 6 Mad. 371) cited. *Per* Best, J.—It is very doubtful if the framers of s. 488 of the Code of Criminal Procedure intended the word 'adultery,' as used therein, to have the limited meaning given to it in the Penal Code. The wrong done to the wife is in no way affected by the circumstance of her husband's concubine being married or unmarried, or, in case of her being married, whether it is with or without her husband's consent or collusion that she is living in such concubinage. In fact, however, of s. 4 of the Criminal Procedure Code, no other interpretation of the term 'adultery' is possible than the limited interpretation contained in the Penal Code.—QUEEN-EMPRESS v MANNATHA ACHARI, I. L. R., 17 Mad 260. [Muttusami Ayyar and Best, JJ. Oct 27, 1893.]

BEFORE a criminal charge of adultery can be preferred a formal complaint of that offence must be instituted in the manner provided by s 199 of the Criminal Procedure Code. Therefore, where an accused person was committed to the Sessions to stand his trial on a charge preferred by a husband of rape under s. 376 of the Penal Code, and the Sessions Judge at the trial added a charge of adultery under s. 497, and acquitted the accused under s. 376, but convicted him of rape under s. 497. *Held* that the Sessions Judge had acted without jurisdiction. The fact that the husband appeared as a witness in the prosecution of the offence of rape cannot be regarded as amounting to the institution of a complaint for adultery. *Empress* v *Kallu* (I. L. R., 5 All. 233) followed.—CHEMON GARO v EMPEROR, I. L. R., 29 Cal. 415. [Prinsep and Stephen, JJ. Feb. 5, 1902.]

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Comp.

**498.** Whoever takes or entices away any woman who is, and whom he knows or has reason to believe to be, the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both

Enticing or taking away or detaining with a criminal intent a married woman.

THE prisoners having been sentenced for abetment of abduction of a woman under ss. 109 and 498 of the Penal Code, and for wrongful confinement of her under s 343, *held* that both sentences could not stand, and that, as the essence of the case was abduction, the prisoners, as abettors therein, should be punished for it alone.—QUEEN v. ISHWAR CHUNDER JOGI, W R Gap., 1864, 21. [Loch and Seton-Karr, JJ. April 12, 1864.]

WHERE a procuress was convicted for inducing a married woman of 20 to leave her husband's house, and the fact showed that the wife had made her deliberate choice (she being of mature age), and was determined of her own free will to leave her husband, and become a prostitute in Calcutta, the High Court altered the conviction from abduction to enticement, remarking that, whatever the wife's secret inclinations were, she would have had no opportunity of carrying them out had not the prisoner interposed.—QUEEN v. SRIMOTEE PODDEE, 1 W. R. 45. [Kemp and Glover, JJ. Dec 16, 1864.] But according to the case of *Empress* v *Kallu* (I. L. R., 5 All. 233), and s 199 of the Code of Criminal Procedure, neither the High Court nor

any other Criminal Court has any jurisdiction to alter a charge of abduction to one of enticement. There must be a formal complaint of enticement by the party aggrieved. —ED.

WHERE the man and the woman are perfectly agreed, the act of the third party, who merely accompanies the woman from her husband's house, amounts to abetment only. —RULINGS OF MAD. H. C., 1864, ON S. 498.

A PERSON convicted of adultery under s 497 of the Penal Code need not be convicted also under s. 498, far less where there is no taking or enticing away of the woman.—QUEEN *v.* POCHUN CHUNG, 2 W. R. 35. [Kemp and Glover, JJ Feb. 14, 1865.]

UPON an indictment under s 498 of the Penal Code, charging that the prisoner took away one A, who was then, and whom he then knew to be, the wife of one M, with the intent that he might have illicit intercourse with the said A. *held* that there was a taking within the meaning of the section, although the advances and solicitations had proceeded from the woman, and the prisoner had for some time refused to yield to her request — REG. *v.* KUMARASAMI, 2 Mad. H. C. R. 331. [Scotland, C.J., and Bittleston, J. Feb. 24, 1865.]

THE following remarks were made by the High Court, in upholding a conviction in a case in which an accused had eloped with a woman from a house in Calcutta, hired for her by her husband, who was absent in Assam "We cannot say (as the Sessions Judge said) that 'a wife is always the property of her husband, whether he is absent or present,' but we think it clear that a wife living in her husband's house or in a house hired by him for her occupation, and at his expense, is, during his temporary absence, living under his protection, so as to bring the case within the meaning of s 498, provided, of course, that the defendant knew, or had reason to believe, that she was the wife of the man from whose protection he took her, or on whose behalf the person from whom he took her had charge of her, and also provided he took her with the intent specified in the Act. To hold otherwise would be to declare the worst cases of seduction not punishable under the Penal Code."—MUTTY KHAN *v.* MUNGLOO KHANSAMA. 1 Wyman's Rev., Civ., and Crim. Rep. 45; 5 W R. 50. [Jackson and Glover, JJ Mar. 6, 1866.]

IN a charge under s. 498 of the Penal Code, the words of the section, "conceals or detains," must be taken to extend to the enticing or inducing a wife to withold or conceal herself from her husband, and assisting her to do so, as well as to physical restraint or prevention of her will or action. Depriving the husband of proper control over his wife for the purpose of illicit intercourse is the gist of the offence, and a detention occasioning such deprivation may be brought about simply by the influence of allurements and blandishments.—*In re* SUNDARA DASS TEVAN, 4 Mad. H. C. R. 20, 3 Mad. Jur., No. 5, 186, [Scotland, C J., and Ellis, J. Mar. 13, 1868.]

IN a charge under s. 498 of the Penal Code (of taking away a married woman), marriage must be presumed from the fact of a man and woman living together and from their own evidence (altogether unrebutted) that she is his legally married wife.—QUEEN *v.* WUZEERAH, 17 W. R. 5; 8 B. L. R. Ap. 63. [Loch and Ainslie, JJ. Jan. 6, 1872.] Overruled by *Empress* v. *Pitambur Singh*, I. L. R., 5 Cal 566; 5 C. L. R 597.

WHERE the husband brought a specific complaint for adultery under s. 497, and the Magistrate framed a charge and convicted under s. 498, the Chief Court quashed the conviction.—SHER SINGH *v.* CROWN, Panj. Rec., No 18 of 1873

A FINDING exactly in the words of s. 498 of the Penal Code, that the prisoner took or enticed away a married woman from her husband or some person having the care of her on his behalf with intent that she may have illicit intercourse with any person, or concealed or detained such woman with a like intent—though not actually illegal, when it is doubtful which of the several offences has been committed, is a finding which ought not to be resorted to if it can be avoided, and it can be determined under which part of the section the prisoner is guilty—QUEEN *v.* MUTHOORA NATH ROY, 22 W. R. 72. [Markby and Mitter, JJ Aug 24, 1874.]

THE accused were charged before a Magistrate of the first class with enticing away a married woman (s 498). The enquiry having shown that an offence under s. 494 had apparently been committed, the proceedings were forwarded, under s. 45, Criminal Procedure Code, for disposal to the Magistrate of the District, who tried the case *de novo*, and convicted the accused under ss 109 and 494. *Held* that the preferring a complaint was an essential condition of the Magistrate's jurisdiction to inquire into and try an offence falling under Ch. XX. of the Penal Code, and the extent of the jurisdiction so founded was limited to offences covered by the facts complained of; that there had been no complaint of an offence under s. 494; and that the conviction was therefore illegal. *Held* also that the Magistrate before whom the complaint was made of an offence under s. 498 had jurisdiction to try it, and, therefore,

that it was not competent for him to proceed under s. 45, Criminal Procedure Code.—FAIZ AHMED *v.* EMPRESS, Panj. Rec., No. 5 of 1879.

THE accused were convicted by the Magistrate of the District of Lahore, exercising enhanced powers under s. 36, Criminal Procedure Code of kidnapping a married woman (being a minor) from lawful guardianship for the purpose of prostitution, and sentenced under ss 363 and 372, Penal Code, to terms of imprisonment exceeding three years The proceedings were forwarded to the Sessions Judge, Lahore Division, for confirmation of the sentences. The Sessions Judge, holding that ss. 363 and 372, Penal Code, were inapplicable to married female minors, annulled the conviction, and directed the re-trial of the accused on a charge under s. 498, Penal Code *Held* that the order of the Sessions Judge was illegal. 1st, because ss. 363 and 372 were applicable to married as well as to unmarried female minors; 2nd, because the Sessions Judge was not competent under s 36, Criminal Procedure Code, to direct a new trial upon a new charge; and 3rd, because no complaint had been preferred of an offence falling under s. 498, Penal Code —CROWN *v.* KAMMU, Panj. Rec., No. 12 of 1879.

AN order of acquittal of an offence under s. 498 was upheld, where it was found that the complainant had divorced his wife previous to making his complaint.—HUKAM DIN *v.* ALLACHI, Panj Rec., No 27 of 1879

A PERSON was prosecuted before a Criminal Court in the Panjab for enticing away a married woman with a criminal intent an offence punishable under s. 498 of the Penal Code. Such prosecution was legally instituted in such Court, and such offence was properly triable by it. Such Court discharged such person under the provisions of s 215 of Act X. of 1872. Subsequently it appeared that such person was detaining such woman at a place in the North-Western Provinces, and he was prosecuted before a Criminal Court of the district in which such place was situated for the same offence as he had been prosecuted for before the Criminal Court in the Panjab, *viz.*, enticing away such married woman, and was convicted of that offence. *Held* that, although his previous discharge did not bar the revival of a prosecution for the same offence, such prosecution could only be revived in the Panjab Court, and he could not be convicted under the latter part of s. 498 of the Penal Code for detaining an enticed woman until the enticing had been proved, and such conviction had been properly set aside by the Court of Session.—EMPRESS *v.* TIKA SINGH, I. L. R., 3 All. 251. [Pearson and Oldfield, JJ. Sep. 1, 1880.]

IN the absence of very clear evidence of custom, which, if well founded, must be a matter of general notoriety, the cohabitation of a man and a woman under the Alyasantana system cannot be considered marriage so as to render punishable, under s. 498 of the Penal Code, a person who entices away the woman with the intents specified in that section.—KORAGA *v.* QUEEN, I. L. R., 6 Mad. 374. [Turner, C.J., and Muttusami Ayyar, J. Feb. 14, 1883.]

S AND G having been convicted of enticing away the wife of the complainant, the conviction was quashed on appeal, on the ground that, strict proof of marriage being necessary for a conviction under s. 498 of the Penal Code, the evidence adduced (*viz.*, of the complainant, the woman, and her mother, who swore to the fact of the marriage) was not sufficient to enable the Court to form an opinion whether the marriage took place as a fact, and if it did take place, whether it was according to law. The accused did not cross-examine the witnesses as to the fact or validity of the marriage, or otherwise impugn it. *Held* that the marriage was sufficiently proved. *Empress* v. *Pitambar Singh* (I. L. R., 5 Cal. 566, 5 C. L. R. 597) discussed —QUEEN EMPRESS *v.* SUBBARAYAN, I. L. R., 9 Mad. 9 [Muttusami Ayyar and Hutchins, JJ. Aug. 25, 1885.]

THE words "such woman" in s. 498 of the Indian Penal Code do not mean such a woman as has been so enticed as mentioned in that section, but mean such woman whom the accused knows or has reason to believe to be the wife of any other man; the detention of such a woman with the particular intent defined in the section is one of the offences made punishable under that section.—EMPRESS *v.* NIADAR, I. L. R., 10 All. 580. [Straight, J. July 7, 1888.]

THE complainant charged the accused with an offence under s 366 of the Penal Code in respect of his wife. The Deputy Magistrate convicted the accused of an offence under s. 498 of the Penal Code, and sentenced him to one month's rigorous imprisonment. The Sessions Judge, being of opinion that the Deputy Magistrate had no jurisdiction to convict the accused under s. 498, there being no complaint by the husband under s. 199 of the Criminal Procedure Code, and that the offence did not fall under s. 238 of the Criminal Procedure Code, referred the case to the High Court. *Held* that such a case is within the intention of s. 238. The intention of the law is to prevent Magistrates inquiring of their own motion into cases connected with

marriage, unless the husband or other person authorized moves them to do so But when the husband is complainant, and brings his complaint under s 366, a conviction under s. 498 may properly be had if the evidence be such as to justify a conviction for the minor offence, and yet insufficient for a conviction for the graver one.—JATRA SHEKH v. REAZAT SHEKH, I. L. R., 20 Cal. 483. [Pigot and Hill, JJ. Sep. 19, 1892.] But see, *contra*, *Empress* v. *Kallu*, I. L. R., 5 All. 233.

WHERE a charge is made under s. 498 of the Penal Code of enticing away a married woman, the Court should require some better evidence of the marriage than the mere statement of the complainant and the woman.—QUEEN-EMPRESS v. DAL SINGH, I. L. R., 20 All. 166. [Blair, J. Jan. 18, 1897.]

## CHAPTER XXI.*

### OF DEFAMATION.

INDIAN LAW COMMISSIONERS REPORT ON DEFAMATION.

THE essence of the offence of defamation consists in its tendency to cause that description of pain which is felt by a person who knows himself to be the object of the unfavourable sentiments of his fellow creatures, and those inconviences to which a person who is the object of such unfavourable sentiments is exposed.

According to the theory of the criminal law of England, the essence of the crime of private libel consists in its tendency to provoke breach of the peace; and though this doctrine has not, in practice, been followed out to all the startling consequences to which it would legitimately lead, it has not failed to produce considerable inconvenience.

It appears to us evident that, between the offence of defaming and the offence of provoking a breach of the peace, there is a distinction as broad as that which separates theft and murder. Defamatory imputations of the worst kind may have no tendency to cause acts of violence. Words which convey no discreditable imputation whatever may have that tendency in the highest degree. Even in cases where defamation has a tendency to cause acts of violence the heinousness of the defamation, considered as defamation, is by no means proportioned to its tendency to cause such acts nay, circumstances which are great aggravations of the offence, considered as defamation, may be great mitigations of the same offence, considered as a provocation to a breach of the peace. A scurrilous satire against a friendless woman, published by a person who carefully conceals his name, would be defamation in one of its most odious forms. But it would be only by a legal fiction that the satirist could be said to provoke a breach of the peace. On the other hand, an imputation on the courage of an officer, contained in a private letter, meant to be seen only by that officer and two or three other persons, might, considered as defamation, be a very venial offence. But such an imputation would have an obvious tendency to cause a serious breach of the peace.

On these grounds, we have determined to propose that defamation shall be made an offence, without any reference to its tendency to cause acts of illegal violence.

WE considered whether it would be advisable to make a distinction between the different modes in which defamatory imputations may be conveyed, and we came to the conclusion that it would not be advisable to make any such distinction.

By the English law, defamation is a crime only when it is committed by writing, printing, engraving, or some similar process. Spoken words reflecting on private character, however atrocious may be the imputations which those words convey, however numerous may be the assembly before which such words are uttered, furnish ground only for a civil action. Herein the English law is scarcely consistent with itself. For, if defamation be punished on account of its tendency to cause a breach of the peace, spoken

* Cognizance may be taken of an offence under Ch. XXI. only on complaint by an aggrieved party.—See the new Code of Criminal Procedure (Act V. of 1898), s 198.

Offences punishable under s. 500, 501, or 502, are compoundable.—See *ibid*, s. 345. As to stage of proceedings at which no composition is allowable without the leave of the Court, see *ibid*, sub-s. (5).

For power to order the destruction of copies of the thing in respect of which a conviction under s. 501 or 502 is had, see *ibid*, s 521.

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defamation ought to be punished even more severely than written defamation, as having that tendency in a higher degree. A person who reads in a pamphlet a calumnious reflection on himself, or on some one for whom he is interested, is less likely to take a violent revenge than a person who hears the same calumnious reflection uttered. Public men, who have, by long habit, become callous to slander and abuse in a printed form, often show acute sensibility to imputations thrown on them to their faces. Indeed, defamatory words spoken in the presence of the person, who is the object of them, necessarily have more of the character of a personal affront, and are, therefore, more likely to cause a breach of the peace than any printed libel.

The distinction which the English criminal law makes between written and spoken defamation is generally defended on the ground that written defamation is likely to be more widely spread and to be more permanent than spoken defamation. These considerations do not appear to us to be entitled to much weight. In the first place, it is by no means necessarily the fact that written defamation is more extensively circulated than spoken defamation. Written defamation may be contained in a letter intended for a single eye. Spoken defamation may be heard by an assembly of many thousands. It seems to us most unreasonable that it should be penal to say in a private letter that a man is dissipated, and not penal to stand up at the town hall, and there, before the whole society of Calcutta, falsely to accuse him of poisoning his father.

In the second place, it is not necessarily the fact that the harm caused by defamation is proportioned to the extent to which the defamation is circulated. Some slanders—and those slanders of a most malignant kind—can produce harm only while confined to a very small circle, and would be at once refuted if they were published. A malignant whisper addressed to a single hearer, and meant to go no further, may indicate greater depravity, may cause more intense misery, and may deserve more severe punishment than a satire which has run through twenty editions. A person, for example, who, in private conversation, should infuse into the mind of a husband suspicions of the fidelity of a virtuous wife, might be a defamer of a far worse description than one who should insert the lady's name in a printed lampoon.

It must be allowed that, in general, a printed story is likely to live longer than a story which is only circulated in conversation. But, on the other hand, it is far easier for a calumniated person to clear his character either by argument, or by legal proceedings, from a charge fixed in a printed form, than from a shifting rumour which nobody repeats exactly as he heard it. In general, we believe, a man would rather see in a newspaper a story discreditable to him which he had the means of refuting than know that such a story, though not published, was current in society.

On the whole, we are so far from being able to discover any reason for exempting any mode of defamation from all punishment, that we have not even thought it right to provide different degrees of punishment for different modes of defamation. We do not conceive that on this subject any general rule can, with propriety, be laid down. We have, therefore, thought it best to leave to the Courts the business of apportioning punishment with due regard to the circumstances of every case.

We have thought it necessary, under the peculiar circumstances of this country, to lay down for the guidance of the Courts a rule which, if we were legislating for a population, among whom there was a uniform standard of morality and honour, might appear superfluous. India is inhabited by races which differ widely from each other in manners, tastes, and religious opinions. Practices which are regarded as innocent by one large portion of society excite the horror of another large portion. A Hindu would be driven to despair if he knew that he was believed by persons of his own race to have done something which a Christian or a Mussulman would consider as indifferent or as laudable. Where such diversities of opinion exist, that part of the law which is intended to prevent pain arising from opinion ought to be sufficiently flexible to suit those diversities. We have, therefore, directed the Judge not to decide the question whether an imputation be or be not defamatory, by reference to any particular standard, however correct, of honour, of morality, or of taste; but to extend an impartial protection to opinions which he regards as erroneous, and to feelings with which he has no sympathy.

There are nine excepted cases in which we propose to tolerate imputations prejudicial to character.

The exception which stands first in order will probably be thought by many persons objectionable. It is opposed to the rules of the English criminal law. It goes, we fear, beyond what even the boldest reformers of English law have proposed. It is at variance with the provisions of the French Code,

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and with the sentiments of the most distinguished French jurists. It is at variance also with the provisions of the Code of Louisiana. It is, therefore, with some diffidence that we venture to lay before the Governor-General in Council the results of a long and anxious consideration of this question.

The question is whether the truth of an imputation prejudicial to character should, in all cases, exempt the author of that imputation from punishment as a defamer. We conceive that it ought to exempt him.

It will hardly be disputed, even by those who dissent from us on this point, that there is a marked distinction between true and false imputations as respects both the degree of malignity which they indicate, and the degree of mischief which they produce. The accusing a man of what he has not done implies, in a vast majority of cases, greater depravity than the accusing him of what he has done. The pain which a false imputation gives to the person who is the object of it, is clear, uncompensated evil. There is no set off whatever. The pain which a true imputation gives to the person who is the object of it is in itself an evil, and, therefore, ought not to be wantonly inflicted. But there is often some counterbalancing good. A true imputation may produce a wholesome effect on the person who has, by his misconduct, exposed himself to it. It may deter others from imitating his example. It may set them on their guard against his bad designs.

Not only do true imputations generally produce some good to counterbalance the evil caused by them, but in many cases this counterbalancing good appears to us greatly to preponderate. However, skilfully penal laws may be framed, however vigorously they may be carried into execution, many bad practices will always be out of reach of the tribunals. The state of society would be deplorable, if public opinion did not repress much that legislators are compelled to tolerate. The wisest legislators have felt this, and have assigned it as a reason for not visiting certain acts with legal punishment that those acts will be sufficiently punished by general disapprobation. It seems inconsistent and unwise to rely on public opinion in certain cases as a valuable auxiliary to the law, and, at the same time, to treat the expression of that opinion in those very cases as a crime.

It is easy to put cases about which there could scarcely be any difference of opinion. A person who has been guilty of gross acts of swindling at the Cape comes to Calcutta, and proposes to set up a house of agency. A person who has been forced to fly from England on account of his infamous vices repairs to India, opens a school, and exerts himself to obtain pupils. A captain of a ship induces natives to emigrate by promising to convey them to a country where they will have large wages and little work. He takes them to a foreign colony where they are treated like slaves, and returns to India to hold out similar temptations to others. A man introduces a common prostitute, as his wife, into the society of all the most respectable ladies of the Presidency. A person in a high station is in the habit or encouraging ruinous play among young servants of the Company. In all these cases, and in many others which might be named, we conceive that a writer who publishes the truth renders a great service to the public, and cannot, without a violation of every sound principle, be treated as a criminal.

There are undoubtedly many cases in which the spreading of true reports prejudicial to the character of an individual would hurt the feelings of that individual without producing compensating advantage in any other quarter. The proclaiming to the world that a man keeps a mistress, that he is too much addicted to wine, that he is penurious in his housekeeping, that he is slovenly in his person, the raking up of ridiculous and degrading stories about the youthful indiscretions of a man who has long lived irreproachably as a husband and a father, and who has attained some post which requires gravity and even sanctity of character, can seldom or never produce any good to the public sufficient to compensate for the pain given to the person attacked, and to those who are connected with him. Yet we greatly doubt whether, where the imputations are true, it will be advisable to inflict on the propagators of such miserable scandal any legal punishment in addition to that general aversion and contempt with which their calling and their persons are everywhere regarded. Even in such cases, the question whether the imputation be true or false is not an unimportant question. Those who would not allow truth to be in such cases, a justification would admit that it ought generally to be a mitigating circumstance. Indeed, we find it impossible to imagine any case in which we should punish a man who told no more than the truth respecting another, as severely as if what he told had been a lie invented to blast the reputation of that other.

These two propositions, then, we consider as established—first, that, in some cases of prosecution for defamation, the truth of the

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imputation alleged to be defamatory ought to be a justification; secondly, that in the vast majority of such cases, if not in all, truth, if it be not a justification, ought to be a mitigation.

From these two propositions, a third proposition necessarily follows: that in all cases of prosecution for defamation, if the defendant avers that the imputations complained of as defamatory are true, the Court ought to go into the question of the truth of those imputations.

This ought to be done, not only in justice to the public and to the defendant, but in justice to the innocent complainant. It must not be forgotten that one of the most important ends which a person proposes to himself in prosecuting a slanderer is the refuting of the slander. He generally considers the punishment of the offender as a secondary object, and, when there is no circumstance of peculiar aggravation in the case, is often willing to stay proceedings after obtaining a retractation and apology. To clear his fame is his first object. It is, we conceive, an object for the attaining of which, he is entitled to the assistance of the law. But it is an object which cannot be attained unless the Courts go into the question of truth.

The effect of a rule excluding evidence of the truth is to put on a par descriptions of persons between whom it is desirable to make the widest distinction. The public spirited man who warns the mercantile community against a notorious cheat, or advises families not to admit into their intimacy a practised seducer of innocence, is placed on the same footing with the slanderer, who invents the most infamous falsehoods against persons of the purest character. On the other hand, a man who has, without the slightest reason, been held up to the world as a seducer or a swindler, is placed in exactly the same situation with one who well deserves those disgraceful names. So defective is the investigation that it leaves a suspicion lying on the most innocent, and no more than a suspicion lying on the most guilty.

We therefore think that, in all cases of prosecution for defamation, the Courts ought to allow the question of truth to be gone into. But if, in all cases, the Courts allow the question of truth to be gone into, we are satisfied that no respectable person will venture to institute a prosecution for defamation in a case in which he knows that the truth of the defamatory matter is likely to be proved. He will feel that by prosecuting he should injure his own character far more deeply than any libeller can do. However disagreeable it may be to his feeling that a discreditable story concerning him should be repeated in society, and should furnish paragraphs for the news-papers, it must be much more disagreeable that such a story should be proved in open Court by legal evidence. By prosecuting, he turns what was at most a strong suspicion into an absolute certainty. While he forbears to prosecute, many people will probably disbelieve the scandalous report; many will doubt about its truth. The mere circumstance that he abstains from prosecuting is no proof of guilt. It is notorious that slanders are often passed by with silent contempt by those who are the objects of them. Indeed, in a country where the press is free, a man whose station exposes him to remark would have nothing to do but to prosecute, if he should institute legal proceedings every time that he might be calumniated.

It seems to us, therefore, certain that a man on whose character imputations have been thrown which can be proved to be true will, if he possess ordinary prudence and ordinary sensibility, abstain from having recourse to a Court of law, which will fully investigate the truth of those imputations. By having recourse to a Court of law, he would show that he belonged to a class of persons who are the last that a legislator would wish to favour, to that class of persons in whom the sense of shame is weak, and the malicious passion strong, and who are content to incur dishonour for the chance of obtaining revenge.

Being therefore of opinion that, in all cases of prosecution for defamation, evidence of the truth of the imputations alleged to be defamatory ought to be received, and being of opinion that practically there is no difference between receiving evidence of truth and allowing truth to be a justification, we have thought it advisable to provide expressly that truth shall always be a justification. By framing the law thus, we have not, in the smallest degree, diminished the real security of private character, or the real risk of detraction. We have merely made the language of the Code correspond with its virtual operation.

As we are satisfied that no practical mischief will be produced by the rule which we have proposed, we think that its perfect simplicity and certainty are strong reasons for adopting it.

If it be not adopted, it will be necessary to take one of two courses—either to provide that truth shall in no case be a justification, or to provide that truth shall be a justifica-

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tion in some cases, and not in others. To the former course we feel, for reasons which we have already assigned, insurmountable objections. The effect of such a state of the law would be that eminent public services would often be treated as crimes. If the latter course be taken, we are convinced that it would be found impossible to draw any line approaching to accuracy. We are convinced that it would be necessary to leave to the Judges an almost boundless discretion—a discretion which no two Judges would exercise in the same manner.

It has been suggested to us, from quarters entitled to great respect, that it would be a preferable course to admit in every case the truth of matter alleged to be defamatory to be given in evidence, for the purpose of proving that the accused person had not acted maliciously, but not to allow the proof of the truth to be a justification, if it should appear that reputation had been maliciously assailed.

If a provision of this kind were adopted it would, for the reasons which we have already given, be in practice nugatory. For no respectable person would prosecute the author of an imputation which could be proved to be true. And we take it for granted that the law of procedure will not be framed in so cruel and unreasonable a manner as to permit a prosecution for defamation to be instituted in opposition to the wishes of the person defamed. Such a power of prosecution would scarcely ever be used by a friend of the person defamed; it would never be used by a judicious friend, and it would be a most formidable weapon in the hands of a malignant enemy.

But if the provision which we are considering were not certain to be in practice nugatory, we should think it a highly objectionable provision. When an act is of such a description that it would be better that it should not be done, it is quite proper to look at the motives and intentions of the doer for the purpose of deciding whether he shall be punished or not. But when an act which is really useful to society—an act of a sort which it is desirable to encourage—has been done, it is absurd to inquire into the motives of the doer for the purpose of punishing him if it shall appear that his motives were bad.

If A kills Z, it is proper to inquire whether the killing was malicious; for killing is *primâ facie* a bad act. But if A saves Z's life, no tribunal inquires whether A did so from good feeling or from malice to some person who was bound to pay Z an annuity. For it is better that human life should be saved from malice than not at all. If A sets on fire a quantity of cotton belonging to Z, it is proper to inquire whether A acted maliciously. For the destruction of valuable property by fire is *primâ facie* a bad act. But if Z's cotton is burning, and A puts it out, no tribunal inquires whether A did so from good feeling, or from malice to some other dealer in cotton, who, if Z's stock had been destroyed, would have been a great gainer. For the saving of valuable property from destruction is an act which it is desirable to encourage; and it is better that such property should be saved from bad motives than that it should be suffered to perish. Since then no act ought to be made punishable on account of malicious intention, unless it be in itself an act of a kind which it is desirable to prevent, it follows that malice is not a test which can with propriety be used for the purpose of determining what true imputations on character ought to be punished, and what true imputations on character ought not to be punished. For the throwing of true imputations on character is not *primâ facie* a pernicious act. It may, indeed, be a very pernicious act. But we are not prepared to say that in the majority of instances it is so. We are sure that it is often a great public service; and we are sure that it may be very pernicious when it is not done from malice, and that it may be a great public service when it is done from malice. It is perfectly conceivable that a person might from no malicious feeling, but from an honest though austere and injudicious zeal for what he might consider as the interests of religion and morality, drag before the public frailties which it would be far better to leave in obscurity. It is also perfectly conceivable that a person who has been concerned in some odious league of villainy, and has quarrelled with his accomplices, may, from vindictive feelings, publish the history of their proceedings, and may, by doing so, render a great service to society. Suppose that a knot of sharpers live by seducing young men to the gaming table, and pillaging them to their last rupee. Suppose that one of these knaves thinking himself ill-used in the division of the plunder, should revenge himself by printing an account of the transactions in which he has been concerned. He is prosecuted by the rest of the gang for defamation. He proves that every word in his account is true. But it is admitted that his only motives for publishing it were rancorous hatred and disappointed rapacity. It would surely be most unreasonable in the Court to say: "You

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have told the public a truth which it greatly concerned the public to know. You have been the saving of many promising youths. You have been the means of ridding society of a dreadful pest. You have done, in short, what it was most desirable that you should do. But as you have done this, not from public spirit but from dislike of your old associates, we pronounce you guilty of an offence, and condemn you to fine and imprisonment."

It is evident that society cannot spare any portion of the services which it receives. Far from scrutinizing the motives which lead people to render such services, and punishing such services when they proceed from bad motives, all societies are in the habit of offering motives addressed to the selfish passions of bad men for the purpose of inducing those men to do what is beneficial to the mass. We offer pardons and pecuniary rewards to the worst members of the community for the purpose of inducing them to betray their accomplices in guilt. That the quarrels of rogues are the security of honest men is an important truth which has passed into a proverb; and of that security we should, to a certain extent, deprive honest men if we were to make it an offence in one rogue to speak the truth about another rogue under the influence of passions excited in the course of a quarrel.

We have hitherto argued this point on the supposition that by malice is meant real malice, and not a fictitious, a constructive malice. We have the strongest objections to introducing into the Code such a kind of malice—a malice of which a person may be acquitted when it is clear that he has acted from the most deadly personal rancour, and found guilty when those who find him guilty are satisfied that he has acted only from the best feelings—a malice which may be only the technical name for benevolence.

On these grounds, we recommend to the Governor-General in Council that the first exception, as we have drawn it, be suffered to stand part of the Code.

The remaining exceptions will not require so long a defence. By cl 471, we allow the public conduct of public functionaries to be discussed, provided that such discussion be conducted in good faith. That the advantages arising from such discussion far more than compensate for the pain which it occasionally gives, will hardly be disputed by any English statesman.

But there are public men who are not public functionaries. Persons who hold no office may yet, in this country, take a very active part in urging or opposing the adoption of measures in which the community is deeply interested. It appears clear to us that every person ought to be allowed to comment, in good faith, on the proceedings of these volunteer servants of the public, with the same freedom with which we allow him to comment on the proceedings of the official servants of the public. We have provided for this by cl. 472.

By cl. 473, we have allowed all persons freely to discuss in good faith the proceedings of Courts of law, and the characters of parties, agents, and witnesses, as connected with those proceedings. It is almost universally acknowledged that the Courts of law ought to be thrown open to the public. But the advantage of throwing them open to the public will be small indeed, if the few, who are able to press their way into a Court, are forbidden to report what has passed there to the vast numbers who were absent, or if those who are allowed to know what has passed are not allowed to comment on what has passed. The only reason that the whole community is not admitted to hear every trial that takes place is that it is physically impossible that they should find room; and by cl 473, we do our best to counteract the effect of this physical impossibility.

Whether public writers ought to be allowed to publish comments on trials while those trials are still pending, is a question which, in the present state of India it is hardly worth while to discuss. We have not thought it necessary to insert any provision on that subject in the chapter of offences against public justice; and such a provision, even if it were necessary, would evidently not belong to the head of defamation, for the harm done by such comments, as respects public justice, is exactly the same when the comments are laudatory as when they are abusive.

By cl. 474, we allow every person to criticise, in good faith, published books, works of art which are publicly exhibited, and other similar performances.

By cl 475, we allow a person under whose authority others have been placed, either by their own consent, or by the law, to censure, in good faith, those who are so placed under his authority, as far as regards matter to which that authority relates.

By cl 476 we allow a person to prefer an accusation against another, in good faith, to any person who has lawful authority to restrain or punish the accused.

By cl 477, we have excepted from the definition of defamation private communications

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which a person makes in good faith, for the protection of his own interests; and by cl. 478, we have excepted private communications which a person makes in good faith for the benefit of others.

It will be observed that in the eight last exceptions we do not require that an imputation should be true. We require only that it should be made in good faith. For to require in these cases that the imputation should be true, would be to render these exceptions mere nullities. Whether a public functionary is or is not fit for his situation; whether a person who has bestirred himself to get up a petition in favour of a public measure ought to be considered as an enlightened and public-spirited citizen, or as a foolish meddler; whether a person who has been tried for an offence was or was not guilty; which of two witnesses who contradicted each other on a trial ought to be believed; whether a portrait is like; whether a song has been well sung; whether a book is well written: these are questions about which honest and discerning men may hold opinions diametrically opposite: and to require a man to prove to the satisfaction of a Court of law that the opinion which he has expressed on such a question is a right opinion, is to prohibit all discussion on such questions. The same may be said of those private communications which we propose to allow. It is plainly desirable that a merchant should disclose to his partners his unfavourable opinion of the honesty of a person with whom the firm has dealings. It is desirable that a father should caution his son against marrying a woman of bad character. But if the merchant is permitted to say to his partners, if the father is permitted to say to his son, only what can be legally proved before a Court, it is evident that the permission is worth nothing.

Whether an imputation be or be not made in good faith is a question for the Courts of law. The burden of the proof will lie sometimes on the person who has made the imputation, and sometimes on the person on whom the imputation has been thrown. No general rule can be laid down. Yet scarcely any case could arise respecting which a sensible and impartial Judge would feel any doubt. If, for example, a public functionary were to prosecute for defamation a writer who had described him in general terms as incapable, the Court would probably require the prosecutor to give some proof of bad faith.

If the prosecutor had no such proof to offer, the defendant would be acquitted. If the prosecutor were to prove that the defendant had applied to him for money, had promised to write in his praise if the money were advanced, and had threatened to abuse him if the money were withheld, the Court would probably be of opinion that the defendant had not written in good faith, and would convict him.

On the other hand, if the imputation were an imputation of some particular fact, or an imputation which, though general in form, yet implied the truth of some particular fact, which, if true, might be proved, the Court would probably hold that the burden of proving good faith lay on the defendant. Thus, if a person were to publish that a Collector was in the habit of receiving bribes from the zemindars of his district, and were unable to specify a single case, or to give any authority for his assertion, the Courts would probably be of opinion that the imputation had not been made in good faith.

Again, if a critic described a writer as a plagiarist, the Courts would not consider this as defamation without very strong proof of bad faith. But if it were proved that the critic had, like Lauder, interpolated passages in old books in order to bear out the charge of plagiarism, the Court would doubtless be of opinion that he had not criticised in good faith, and would convict him of defamation.

It will be necessary to provide in the Code of Procedure rules for pleading in cases of defamation, which may give to an innocent man who has been calumniated the means of clearing his character. It will be proper to provide that a defendant who is accused of defamation, and who rests his defence on the truth of the imputation alleged to be defamatory, shall be held strictly to the proof of the substance of the imputation if the imputation be particular and shall be compelled to descend to particulars in his plea, if the imputation be general. It will not be expected that we should here go into any details respecting the law of criminal pleading. It is sufficient here to say that the importance of framing that part of the law in such a manner as to give full protection to persons whose character has been unjustly aspersed has not escaped our attention.

We may here observe that an imputation which is not defamatory may, under certain circumstances, be punishable on other grounds. Such an imputation may be intended to excite disaffection. If so, though not punishable as defamation, it will be punishable as sedition. An attack made, in good faith, on the public administration of the Governor of a Presidency, will in no case be a defamation. But if the author of it designed to inflame the people against the

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Government, he will be liable to punishment under cl. 113.

Again, an imputation which is not defamatory may be intended to excite a mob to violence against an individual. If so, the author of the imputation is punishable under cl. 94.

Again, an imputation which is not defamatory may be uttered in the hearing of the person who is the object of it for the purpose of wantonly and maliciously annoying that person. If so, it is punishable under cl. 485. There are many cases in which it is fit that unpleasant truth should be told respecting an individual. But there is no case in which it is desirable that such truth should be told in such a way that the telling of it is a gross personal outrage A person who has detected, or thinks that he has detected, a dishonest misrepresentation in a book, has a right to expose it publicly. But he cannot be allowed to intrude into the presence of the author of the book, and to tell him to his face that he is a liar. A person who knows the mistress of a female school to be a woman of infamous character deserves well of society if he states what he knows. But he cannot be allowed to follow her through the streets, calling her by opprobrious names, though he may be able to prove that all those names were merited. A person who brings to notice the malversation of a public functionary deserves applause But a person who hangs a public functionary in effigy at that functionary's door, with an opprobrious label, does what cannot be permitted, even though every word on the label, and every imputation which the exhibition was meant to convey, may be perfectly true.

We do not apprehend that the clauses relating to the printers and publishers of defamatory matter require any explanation or defence.

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**499.** Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Defamation.

*Explanation 1.*—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

*Explanation 2.*—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

*Explanation 3.*—An imputation in the form of an alternative, or expressed ironically, may amount to defamation.

*Explanation 4.*—No imputation is said to harm a person's reputation unless that imputation, directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

*Illustrations.*

(*a*.) A says, "Z is an honest man; he never stole B's watch;" intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(*b*.) A is asked, who stole B's watch? A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

(*c*.) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

*First Exception.*—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good, is a question of fact.

Imputation of truth which public good requires to be made or published.

*Second Exception.*—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no farther.

Public conduct of public servants.

*Third Exception.*—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no farther.

Conduct of any person touching any public question.

*Illustrations.*

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such a meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

*Fourth Exception.*—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Publication of reports of proceedings of Courts.

*Explanation.*—A Justice of the Peace or other officer holding an inquiry in open Court preliminary to a trial in a Court of Justice is a Court within the meaning of the above section.

*Fifth Exception.*—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness, or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no farther.

Merits of case decided in Court; or conduct of witnesses and others concerned.

*Illustrations.*

(*a.*) A says, 'I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest.'' A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no farther.

(*b.*) But, if A says, "I do not believe what Z asserted at that trial, because I know him to be a man without veracity," A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's conduct as a witness.

*Sixth Exception.*—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author, as far as his character appears in such performance, and no farther.

Merits of public performance.

*Explanation.*—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

*Illustrations.*

(*a.*) A person who publishes a book submits that book to the judgment of the public.

(*b*) A person who makes a speech in public submits that speech to the judgment of the public.

(*c.*) An actor or singer who appears on a public stage submits his acting or singing to the judgment of the public.

(*d.*) A says of a book published by Z, "Z's book is foolish, Z must be a weak man; Z's book is indecent, Z must be a man of impure mind." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no farther.

(*e.*) But, if A says, "I am not surprised that Z's book is foolish and indecent, for he is a weak man, and a libertine." A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

*Seventh Exception.*—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Censure passed in good faith by person having lawful authority over another.

*Illustration.*

A Judge censuring in good faith the conduct of a witness or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

*Eighth Exception.*—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Accusation preferred in good faith to authorized person.

*Illustration.*

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this exception.

*Ninth Exception.*—It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Imputation made in good faith by person for protection of his or other's interests.

*Illustrations.*

(*a.*) A, a shop-keeper, says to B, who manages his business, "Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(*b.*) A, a Magistrate, in making a report to his superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith and for the public good, A is within the exception.

*Tenth Exception.*—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

Caution intended for good of person to whom conveyed or for public good.

CASE of defamation in which the complainant admitted all the more serious charges on which he based his complaint. Conviction and sentence quashed, as the gist of the offence (*viz.*, that the charge was not made in good faith) was entirely lost sight of. Compensation is not awardable in such cases. —ASSURUDDEE KHAN *v.* BALOO KHAN, 1 W. R. 6. [Kemp and Glover, JJ. Aug. 17, 1864.]

A SIMPLE assertion (nowhere disproved) regarding the way in which a sarishtadar had issued parwanas in an arbitration-suit does not amount to defamation.—QUEEN *v.* HEM CHUNDER MOOKERJEE, 1 W. R. 24. [Kemp and Glover, JJ. Nov. 18, 1864.]

A WROTE to B, informing him that he (B), was no gentleman. A question arose as to the remedy which B had against A. A charge of defamation would not lie under this section, because, under the fourth explanation, no imputation is said to harm a person's reputation, unless that imputation, directly or indirectly, lowers the character or credit of that person, and it could not be held that the mere writing of a letter to a person lowers his character or credit *in the estimation of others*. B's only remedy then was under s. 504, and whether A, by informing B that he was no gentleman, intended or knew it to be likely that the provocation would cause him to break the public peace, was a question of fact to be determined by the Magistrate who tried the case.—Book Circular VIII., Criminal Side, Feb. 3, 1865, Jud. Com., Oudh, Currie's Penal Code, p. 406.

A FALSE accusation not made in good faith renders the party making it liable to be charged with defamation. The fact that the complainant is a man of low caste will not debar him from prosecuting for defamation on his being falsely charged with theft.—QUEEN *v.* NOBIN DOME, 2 W. R. 35. [Trevor and Loch, JJ. Feb. 17, 1865.]

THE Penal Code makes no distinction between written and spoken defamation.—QUEEN *v.* MOHUNT PURSORAM DOSS, 2 W. R. 36. [Kemp and Glover, JJ. Feb. 22, 1865.]

A PERSON using defamatory expressions for the protection of his son's interests is not privileged unless the imputation is made in good faith, *i. e.*, with due care and attention. —QUEEN *v.* PURSURAM DOSS, 3 W. R. 45 [Kemp and Glover, JJ. July 12, 1865.] Referred to in *Isuri Prasad Singh* v. *Umrao Singh*, I. L. R., 22 All. 234, *infra*.

ACT XVIII. of 1862 refers only to the High Court in its Original Criminal Jurisdiction, and is not applicable to Mofussil Courts. S. 27 of that Act requires proof of the existence of the circumstances relied on as a defence before good faith can be presumed in a case of defamation. The onus of proving good faith is on the person making the imputation. Before such person can claim the benefit of excep. 9, s. 499 of the Penal Code, he must show that he has exercised due care and caution.—SEALY *v.* RAMNARAIN BOSE, 4 W. R. 22. [Glover, J. Nov. 8, 1865.]

IN a case of defamation, proof of despatch by post, to a certain district, of the paper containing a defamatory matter, is tantamount to proof of publication thereof in the district.—QUEEN *v.* KALLI DOSS MITTER, 5 W. R. 44. [Campbell and Glover, JJ. March 3, 1866.]

THE accused, an inspector of police, was sent to inquire if it was true that one Brojonath was a leader of dacoits. He reported that it was false, and that the baniyas of the village were trying to get him punished from an ill-feeling. He added, "I learnt from private inquiries that there is scarcely a woman in the houses of the baniyas who has not passed a night or two with the defendant Brojonath." Commitment of the accused for trial for defamation under s. 499 supported under the circumstances of the case. *Held* that, as the report was made by the police-officer in the execution of his duty, and contained imputations which did not appear to be made recklessly or unjustifiably, the report did not amount to defamation, but was covered by the 9th exception to s. 499 of the Penal Code.—*In re* RAJNARAIN SEN, 14 W. R. 22; 6 B. L. R. Ap., 42. [Phear and Mitter, JJ. July 23, 1870.]

THE act of filing in Court a petition, containing imputations, concerning a person calculated to harm his reputation, with the intention that it should be read by other persons, amounts to making or publishing the imputations within the meaning of s. 499 of the Penal Code. The criminal law of this country with regard to defamation depends on the construction of s. 499 of the Penal Code,

and not on what may be the English law on the same subject.—GREEN (DR. J. A.) *v.* DELANNEY (J. P.), 14 W. R. 27. [Phear and Jackson, JJ. Aug. 3, 1870.] Referred to in *Isuri Prasad Singh v. Umrao Singh*, I. L. R., 22 All. 234, *infra*.

A PLEADER or mukhtar, relying upon the statements of his client, and in good faith introducing into a pleading a defamatory averment, will be protected from liability for defamation by the 9th exception to s. 499 of the Penal Code; but the case is otherwise if the pleading be prepared by a person who has no such employment, and does not act in good faith.—QUEEN *v.* CHRESTIEN, 2 N.-W. P. 473. [Turner, J. Dec. 16, 1870.]

WHERE a person, while a defendant in a criminal case, used certain defamatory expressions, without due care and attention, against the prosecutor, *it was held that such* person was liable to a charge of defamation. —5 Rev., Jud., and Pol. Jour. 42.

A LETTER written by a Brahman to the Brahman community of the neighbourhood, with a view to obtain their decision on a matter affecting his own religious interests and that of the Brahman community, if written in good faith, falls within exceps. 8 and 10 of s. 499 of the Penal Code.—REG. *v.* KASHINATH BACHAJI BAGUL, 8 Bom. H. C. R. 168. [Melvill and Kemball, JJ. Aug. 31, 1871.]

THE gumashta of a guru or priest was convicted of defamation for having published an order of his master excommunicating the complainant from his caste. The letter publishing the excommunication was a statement that complainant disobeyed some one, and treated him with disrespect. *Held* that the letter contained no expressions defamatory *per se*. If the person so treated was in a position entitling him to demand submission, and to make non-submission an offence, then that position would render the communication privileged, and, if not, then the mere statement that the complainant did not obey one whom he was not bound to obey was not a defamatory imputation.—PRO, Dec. 20, 1871, 6 Mad. H. C. R. Ap. 46.

IN framing a charge of defamation it is not necessary to negative the exceptions contained in s. 499 of the Penal Code. It is not an error in law for a Judge to require a person accused of defamation to prove the several distinct imputations contained in a libellous article published by him, with the same strictness with which he would be required to prove them if he were the defendant in a civil action. The High Court, as a Court of Revision, cannot interfere with the findings of the Lower Appellate Court on questions as to the truth of the allegations contained in a libel or the *bona fides* of the accused, but upon such questions are bound by the findings of the lower Court.—REG. *v.* KIHABHAI PARBHUDAS, 9 Bom. H. C. R. 451. [Lloyd and Kemball, JJ. Dec. 5, 1872.]

To sustain a charge of defamation it is not necessary to prove that the complainant actually suffered, directly or indirectly, from the scandalous imputation alleged; it is sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of the complainant.—QUEEN *v.* THAKUR DOSS, 6 N.-W. P. 86. [Turner, J. Feb. 2, 1874.]

ACCUSED, a petition-writer, wrote for presentation to the Commissioner's Court a memorandum of appeal in which he alleged that the order appealed from was based on "conjectural grounds," and that a certain statement made in the order was "utterly false." The Commissioner directed the Deputy Commissioner to pass a proper order in the matter, whereupon the Deputy Commissioner treated the case as one under s. 500, and after inquiry convicted accused. *Held* that the conviction was illegal, no complaint having been made to the Deputy Commissioner within the meaning of s. 142 of the Criminal Procedure Code.—NABI SHAH *v.* CROWN, Panj. Rec., No. 15 of 1878.

THE accused person, an editor of a newspaper, published an article in which the following passage, admittedly referring to the complainant, occurred: "Has his (the complainant's) character been inquired into? Does no one remember that this very man was sent by the Subordinate Judge of Sholapur to be prosecuted? Are not the proceedings instituted by the Subordinate Judge to be found on the record?" The Magistrate found that it was literally true that the complainant had been sent to be prosecuted, but that it was also true that the prosecution had, to the accused's knowledge, been ordered to be withdrawn by the District Judge. *Held* that, although the statement contained only the truth, it was incomplete and misleading; and that, as the accused was well aware that the prosecution referred to had been withdrawn, and did not injuriously affect the complainant's character, he could not plead that the imputation made by him on the complainant's character was made in good faith or for the public good.—IMPERATRIX *v.* KAKDE (B), I. L. R., 4 Bom 298. [Melvill and Pinhey, JJ. Feb. 12, 1880.]

M, A MEDICAL man, and editor of a medical journal published monthly, said in such journal of an advertisement published by H, an-

other medical man, in which H solicited the public to subscribe to a hospital of which he was the surgeon in charge, stating the number of successful operations which had been performed. "The advertiser is certainly entitled to be congratulated on this marvellous success, but it is hardly consistent with the feelings and usages of the medical profession to herald them forth in this fashion. We are not surprised to find that the line he has elected to adopt has not met with the approval of his brother-officer serving in the same province, and we have no hesitation in pronouncing his proceedings in this matter unprofessional." *Held* that, inasmuch as such advertisement had the effect of making such hospital a "public question," and of submitting it to the "judgment of the public," and M had expressed himself in good faith, M was within the third and sixth exceptions, respectively, to s 499 of the Penal Code. *Held* also that M came within the ninth exception to that section The sending of a newspaper containing defamatory matter by post from Calcutta, where it is published, addressed to a subsciber at Allahabad, is a publication of such defamatory matter at Allahabad. The publisher of a newspaper is responsible for defamatory matter published in such paper, whether he knows the contents of such paper or not —EMPRESS v. McLEOD, I. L. R., 3 All 342. Stuart, C. J. Dec 7, 1880

WHERE the Magistrate convicted accused a police officer, on a charge of defamation, on account of a statement made by him in a report to his superior officer, which statement he had elicited from a third party in the course of a police-inquiry the Chief Court, on the revision side, set aside the conviction and sentence as unsustainable, holding that the accused was merely acting in the discharge of his duty, and that the report was clearly privileged.—EMPRESS v. SHER SINGH, Pan. Rec., No. 23 of 1880.

C was put out of caste by a panchayat of his caste-fellows, on the ground that there was an improper intimacy between him and a woman of his caste. Certain persons, members of such panchayat, circulated a letter to the members of their caste generally, in which stating that C and such woman had been put out of caste, and the reason for the same, and requesting the members of the caste not to receive them into their houses, or to eat with them, they made certain statements applying equally to C or such woman. Such statements were defamatory within the meaning of s 499 of the Penal Code. *Held* that, if such persons were careless enough to use language which was applicable to C, they did so at their peril, and they could not escape the responsibility of having defamed C by saying that they intended such language to apply to such woman. *Held* also, on the question whether such persons had acted in good faith, that, looking to the character of such letter, the circumstances under which it was written, and to the fact that C had been put out of caste for the reason alleged, had such persons contented themselves with announcing the determination of the panchayat, and the grounds upon which such determination was based, they would have been protected, but, inasmuch as they did not so content themselves, but went further and made false and uncalled-for statements regarding C, they had rightly been held not to have acted in good faith.—EMPRESS v. RAMANAND, I. L. R., 3 All 664. [Straight, J. Mar. 28, 1881.]

THE law of defamation which should be applied in suits in India for defamation is that laid down in the Indian Penal Code, and not the English law of libel and slander *Held*, therefore, that defamatory statements are not privileged merely because they are used in a petition preferred in a judicial proceeding. It is not essential that before a person can be held entitled to the privilege of having made a statement in good faith for the protection of his interests, he should establish that every word he has spoken or written is literally true. If, having regard to facts and circumstances within his knowledge, he might, as an ordinarily reasonable and prudent man, have drawn the conclusions which he has expressed in defamatory language for the protection of his own interests, he may fairly be held to have made out his good faith —ABDUL HAKIM v. TEJ CHANDAR MUKARJI, I. L. R., 3 All. 815. [Straight and Tyrrell, JJ. May 20, 1881] Referred to in *Empress* v. *Dhum Singh*, I. L. R., 6 All. 220, *infra*; and also in *Isuri Prasad Singh* v. *Umrao Singh*, I. L. R., 22 All. 234, *infra*.

N HAVING attended a Hindu widow marriage (legalized by Act XV. of 1856), S, his guru or spiritual superior, published a notice declaring N to be an outcaste, and forbidding the disciples of S and the public of the town in which N lived to associate with N, until he submitted to the prescribed penance and obtained a certificate of purification from S. S also sent by post a registered postcard of similar purport to N In consequence of the interdict of S, N was prevented from performing vows in the temple, lost the society of his relatives, and was otherwise damnified. N charged S with criminal intimidation, intimidation by attempt to induce a belief that by an act of the offender the person intimidated will become an object of divine displeasure and defamation. *Held*

that the first two charges were unfounded, but that S, by communicating the sentence of excommunication by a registered post-card to N, was guilty of defamation.—QUEEN *v.* SANKARA, I. L. R., 6 Mad. 381. [Turner, C.J., and Muttasami Ayyar, J. April 20, 1883.]

WHERE a person, called upon by a panchayat, convened by the complainant's relatives, to explain why he had made a defamatory remark concerning the complainant, made a statement by way of explanation, *held* that such statement being privileged, a conviction for defamation for making such statement was illegal.—*In re* GOVINDAPPA, I. L. R., 7 Mad. 36. [Turner, C.J. May 7, 1883.]

HELD, on the evidence in this case, in which the question was whether a person accused of defamation was protected by the eighth exception to s 499 of the Penal Code, that the accused had failed to establish that he acted in good faith. *Abdul Hakim v Tej Chandar Mukarji* (I. L. R., 3 All. 815) referred to. Where the accused in a case of defamation intends to bring evidence to prove the truth of the defamatory matter, his advocate should cross-examine the complainant upon every matter upon which evidence is intended to be brought. If he does not do so, it is a subject of serious consideration whether he should subsequently be allowed to tender proof of the material incident of which he has not cross-examined upon.—EMPRESS *v.* DHUM SINGH, I. L. R., 6 All. 229. [Straight, J. Feb. 15, 1884.]

HELD by the Full Bench (Duthoit, J., dissenting) that the action of a person who sent to a public officer by post, in a closed cover, a notice under s. 424 of the Civil Procedure Code, containing imputations on the character of the recipient, but which was not communicated by the accused to any third person, was not such a making or publishing of the matter complained of as to constitute an offence within the terms of s. 499 of the Penal Code.—QUEEN-EMPRESS *v.* TAKI HUSAIN, I. L. R., 7 All. 205. [Petheram, C.J., and Oldfield, Brodhurst, Mahmood, and Duthoit, JJ. Dec. 6, 1884.]

IN a prosecution for defamation under s 500 of the Penal Code, the alleged libel accused the complainant, who was a judicial officer, of (i) having, upon a particular occasion, used abusive language to certain respectable native litigants appearing before him in Court, and (ii) having, upon other occasions not specified, treated other respectable natives (not named) "in a similar manner." This latter accusation was contained in a postscript. The complaint filed by the complainant in the Court of the committing Magistrate, and the charge-sheet in which the Magistrate committed the defendant for trial, covered the whole of the document complained of, except the postscript. At the trial of the case the defendant pleaded not guilty, and also relied on the first, eighth, and ninth exceptions to s. 499 of the Penal Code. The prosecution gave evidence to prove that, in making the charges contained in the alleged libel, the defendant was actuated by express malice towards the complainant. *Held*, with reference to the terms of s. 499 of the Penal Code, that evidence of particular instances of abusive language applied by the complainant upon former occasions to natives appearing in his Court was admissible, first, as relating to the question what was the reputation which the defendant was said to have injured, and secondly, because it must be gathered from the document complained of *as a whole* whether it showed a malicious intention or not.—LAIDMAN *v.* HEARSEY, I. L. R., 7 All 906. [Petheram, C.J. July 21, 1885.]

WHERE a judge was charged with using defamatory language to a witness during the trial of a suit *held* that, under s. 197 of the Code of Criminal Procedure, the complaint could not be entertained by a Magistrate without sanction.—*In re* GOLAM MUHAMMAD SHARIF-UDDAULAH, I. L. R., 9 Mad. 439. [Parker J. Jan. 8, 1886.]

ON the prosecution of the editor of a newspaper for defamation under s. 500 of the Penal Code by publishing a libel in his paper, an attested copy of a declaration made by the editor under s 5 of Act XXV. of 1867, to the effect that he was the printer and publisher of the newspaper, was produced in evidence by the complainant. The editor having been convicted by the Magistate, the Sessions Court on appeal quashed the conviction on the ground there was no evidence that the editor was the writer of the libel, or permitted its publication. *Held* that, in the absence of proof to the contrary, the declaration was *primâ-facie* proof of publication by the editor. *Held* also that it would be a sufficient answer to the charge if the editor proved that the libel was published in his absence and without his knowledge, and that he had in good faith entrusted the temporary management of the newspaper during his absence to a competent person.—RAMASAMI *v.* LOKANADA, I. L. R., 9 Mad. 387. [Collins, C.J., and Muttusami Ayyar, J. April 12, 1886.]

AN advocate in India cannot be proceeded against civilly or criminally for words uttered in his office as advocate.—SULLIVAN *v.* NORTON, I. L. R, 10 Mad. 28. [Collins, C.J., and Kernan, Muttusami Ayyar, Brandt, and Parker, JJ. Sep. 24, 1886.]

EXPLANATION 4 of s. 499 of the Penal Code does not apply where the words used and forming the basis of charge are *per se* defamatory; though, when the meaning of words spoken or written is doubtful, and evidence is necessary to determine the effect of such words, and whether they are calculated to harm a particular person's reputation, it is possible that the principle enunciated in the explanation might and would with propriety be applied.—QUEEN-EMPRESS *v.* MCCARTHY, I. L. R., 9 All. 420. [Straight and Tyrrell, JJ. Feb. 7, 1887.]

A COMPLAINT was filed, under s. 499 of the Penal Code, against the proprietors, editor, and printer of a newspaper for publishing matter alleged to be defamatory. The Magistrate, before whom the complaint was lodged, found that the publication complained of was a mere reproduction or republication of what had been previously printed and published in another newspaper. He was, therefore, of opinion that unless and until criminal proceedings had been taken in respect of the earlier publication, a charge of defamation could not properly be brought with regard to the later publication. He, therefore, dismissed the complaint under s. 203 of the Code of Criminal Procedure (Act X. of 1882). *Held* that the order of dismissal was improper. The Penal Code (s. 499) makes no exception in favour of a second or third publication as compared with a first. If the complaint is properly laid in respect of a publication which is *primâ facie* defamatory, the Magistrate is bound to take cognizance of the complaint, and deal with it according to law.—*In re* HOWARD, I. L. R., 12 Bom. 167. [West and Birdwood, JJ. Aug. 25, 1887.]

IN order to substantiate a defence under the ninth exception to s. 499 of the Penal Code (Act XLV. of 1860), it is sufficient to show that the imputation was made in good faith, and for the protection of the interest of the accused. Any one in the transaction of business with another has a right to use language *bonâ fide* which is relevant to that business, and which a due regard to his own interest makes necessary, even if it should directly or by its consequences be injurious or painful to another. The complainant, Haji Jusub Pirbhoy, and his partner Baladina, were owners of the steam-ship "Tanjore." The ship was mortgaged to the Bank of Bengal for Rs. 50,000. In March 1890, the complainant desired to send the vessel to Jeddah with pilgrims and freight. For this purpose, he entered into an agreement with Mr. Slater, the Agent of the Bank, to pay Rs. 5,000 to the Bank as a condition precedent to the vessel being allowed by the mortgagees to go on her intended voyage. The sum was to be paid out of the freight and passage-money collected by the complainant. On the 9th April 1890, on which day the vessel sailed, the complainant promised to pay the sum in the evening. This he did not do. Thereupon Mr. Slater wrote to the complainant, demanding immediate payment of the amount, and also sent for him five or six times, but the complainant neither called at Mr. Slater's office, nor made the payment. On the 12th April Mr. Slater wrote to the complainant's partner as follows: "Haji Jusub Pirbhoy (*i.e.*, the complainant) has misappropriated the Rs 5,000 which were to have been paid to the Bank for allowing the 'Tanjore' to go to Jeddah, and is keeping out of the way." Immediately after the receipt of this letter, the complainant tendered the money to the Bank's solicitors. Thereupon Mr. Slater wrote to Baladina on the 13th April, withdrawing the statement made by him about the complainant in his letter of the 12th April On the 14th April, the complainant filed a complaint against Mr. Slater, charging him with defamation in his letter of the 12th April 1890. Mr. Slater was convicted by the Magistrate under s. 500 of the Penal Code, and sentenced to pay a fine of Rs. 200. *Held*, reversing, the conviction and sentence, that the imputations complained of were made in good faith, and for the protection of the interest of the accused, and, therefore, fell under the ninth exception to s. 499 of the Penal Code.—QUEEN-EMPRESS *v.* E M SLATER, I. L. R., 15 Bom. 351. [Birdwood and Candy, JJ. Aug. 5, 1890.]

THE editor and proprietor of a newspaper, who prints his paper containing a defamatory article in one city, and permits copies of the paper to be sent by the printer to persons in another city, is responsible, in the absence of proof to the contrary, for the publication of the defamatory article in that city.—QUEEN-EMPRESS *v.* GIRJASHANKAR KASHIRAM, I. L. R., 15 Bom. 286. [Birdwood and Parsons, JJ. Sep. 24, 1890.]

WHEN a married woman is defamed by the imputation of unchastity, her husband is a person aggrieved, upon whose complaint the Magistrate may take cognizance of a complaint under the Criminal Procedure Code, s. 198.—CHELLAM NAIDU *v.* RAMASAMI, I. L. R., 14 Mad. 379. [Muttusami Ayyar and Wilkinson, JJ. Jan 22, Feb. 3, 1891.]

B, THE *guru* or spiritual guide of the caste to which K belonged, issued a letter or *ajna patra* to K's fellow-villagers to the effect that, as K's wife had been caught with a man of a lower caste, no one of her co-religionists should have any social intercourse with her, and in effect that she should be outcasted. K proceeded against B for defamation, and

B pleaded that the statements contained in the letter were privileged, having been made in good faith and for the public good, and that the case came within one of the exceptions to s. 499. It was admitted by K that B had no enmity towards him or his wife, and that it was the custom of the *guru* to settle such matters as those that had arisen in connection with his wife, and it was proved that the letter was issued after B had made an enquiry into the truth of the allegation. The lower Court convicted. *Held* that the conviction was wrong, it being clear that the statements contained in the letter had been made in good faith for the protection of the social and spiritual interests of the community of which B was the *guru*, and that, so far as they implied a censure on the conduct of K's wife, they were justified by the authority with which B was vested as spiritual head of the community, and that therefore the case came within the seventh exception to s 499.—BASUMATI ADHIKARINI *v.* BUDHRAM KOLITA, I. L. R., 22 Cal. 46. [Beverley and Banerjee JJ. July 5, 1894.]

A PLEADER, in addressing a Mamlatdar on behalf of his client, who was charged under s. 125 of the Bombay Land Revenue Code (Bom Act V. of 1879) with wilfully removing boundary-marks, commented on some of the witnesses for the prosecution, and called them loafers. Thereupon one of those witnesses prosecuted the pleader for defamation. The Magistrate held that there was no justification for the offence, and convicted the pleader, and sentenced him to pay a fine of Rs. 15 under s. 500 of the Indian Penal Code. *Held*, reversing the conviction and sentence, that, in the absence of express malice (which was not to be presumed), the pleader was protected by excep. 9 to s. 499 of the Indian Penal Code. *Held* also that, in considering whether there was good faith (*i.e.*, due care and attention), the position of the person making the imputation must be taken into consideration. In the case of an advocate, where express malice is absent, a Court having due regard to public policy would be extremely cautious before depriving him of the protection of excep. 9 to s 499 of the Indian Penal Code. *Semble.*—S 499 of the Indian Penal Code should be construed without reference to the English law.—*In re* NAGARJI TRIKAMJI, I. L. R., 19 Bom. 340. [Jardine and Farran, JJ. Nov. 12, 1894.] Referred to in *Isuri Prasad Singh* v. *Umrao Singh*, I. L. R., 22 All. 234, *infra*.

UNDER s. 499 of the Penal Code, the person who publishes, and the person who makes, an imputation, are alike guilty of defamation. A Court may find that an imputation is true, and made for the public good; but, on considering the manner of the publication (*ex. gr*, in a newspaper), it may hold that the particular publication is not for the public good, and is, therefore, not privileged. —QUEEN-EMPRESS *v.* JANARDHAN DAMODHAR DIKSHIT, I. L. R., 19 Bom. 703. [Jardine and Ranade, JJ. Dec. 5, 1894.]

IN an application for the transfer of a criminal case the applicants alleged, with some apparent reason, that the case had been falsely got up against them by the complainant at the instigation of one Umrao Singh in order to prejudice them in their defence in a civil suit which Umrao Singh had caused to be brought against them. *Held* that this statement did not amount to defamation—not because of the application of any principles of English law, for such principles did not apply to prosecutions for defamation under the Indian Penal Code—but because the statement fell within the ninth exception to s. 499 of the Indian Penal Code. *Queen-Empress* v. *Balkrishna Vithal* (I. L. R., 17 Bom. 573), *In re Nagarji Trikamji* (I. L. R., 19 Bom. 340), *Queen* v. *Pursoram Doss* (3 W. R. 45), *Greene* v. *Delanney* (14 W. R 27), and *Abdul Hakim* v *Tej Chandar Mukarji* (I. L. R., 3 All. 815), referred to.—ISURI PRASAD SINGH *v.* UMRAO SINGH, I. L. R., 22 All. 234. [Aikman, J. Feb. 8, 1900.]

To constitute the offence of defamation as defined in s. 499 of the Penal Code, it is not necessary that the evidence should show that the complainant has been injuriously affected by such alleged defamation. The law requires merely that there should be an intent that the person who makes or publishes any imputation should do so intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person — GOBINDA PERSHAD PANDEV *v.* GARTH, I. L. R., 28 Cal. 63. [Prinsep and Stanley, JJ. Mar. 27, 1900.]

*Held* by the Full Bench (Ranade, J., dissenting) that under the provisions of the Criminal Procedure Code (Act V. of 1898) a husband is entitled to be complainant where the alleged offence is defamation, imputing unchastity to his wife.—CHHOTALAL *v.* NATHABHAI, I. L. R., 25 Bom. 251. [Jenkins, C.J., and Ranade, Fulton, Crowe, and Batty, JJ. Aug. 7, 1900.]

**500.** Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

**Punishment for defamation.**

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Warrant. Bailable. Comp.

M S was convicted under s. 500 of the Penal Code of defaming S S by making a certain statement when under cross-examination as a witness before a Court of criminal jurisdiction. *Held* that the conviction was bad. The statements of witnesses are privileged; if false, the remedy is by indictment for perjury, and not for defamation.—MANJAYA *v.* SESHA SHETTI, I. L. R., 11 Mad. 477. [Collins, C.J., and Shephard, J. April 11 and 24, 1888.]

THE terms "disaffection" and "disapprobation" explained, and s. 124A referred to, and explained to the jury.—QUEEN-EMPRESS *v.* JOGENDRA CHUNDER BOSE, I. L. R., 19 Cal. 35. [Petheram, C.J. Aug. 25, 1891.]

THE complainant, a Brahman, who had been put out of caste, was re-admitted by the executive committee of the caste after performing expiatory ceremonies. This re-admission was not approved by the accused, who formed a faction of the caste, and they, after an interval of six months, distributed in the bazaar to all classes of the public printed papers, in which the complainant was described as a "doshi," or sinner, which signified that he was a person unfit to be associated with. The accused were charged with the offence of defamation. They pleaded privilege, and it was admitted that they had acted without malice *Held* that the accused had not acted in good faith, and that the publication was not, under the circumstances, privileged and protected by the Penal Code, s. 499, excep. 10, and that the accused were accordingly guilty of defamation.—THIAGARAVA *v.* KRISHNASAMI I. L. R., 15 Mad 214. [Collins, C.J., and Parker, J. Feb. 3, 4 and 9, 1892.]

A PERSON who was being defended by counsel on a criminal charge interfered in the examination of a witness, and made a defamatory statement with regard to his character He was now charged with defamation, and convicted in the Resident's Court at Bangalore. On an appeal to the High Court, preferred more than sixty days after the conviction, *held* (1) that the appeal should be admitted, (2) that the occasion was not privileged, and the words complained of were uttered maliciously, and the conviction was right.—HAYES *v.* CHRISTIAN, I. L. R., 15 Mad. 414. [Collins, C.J., and Parker, J. Feb. 24, Mar. 1, 1892.]

A WITNESS cannot be prosecuted for defamation in respect of statements made by him when giving evidence in a judicial proceeding.—QUEEN-EMPRESS *v.* BABAJI, I. L. R., 17 Bom. 127. [Birdwood and Parsons, JJ. April 8, 1892.]

A STATEMENT made in answer to a question put by a police-officer under the Criminal Procedure Code, s. 161, in the course of investigation made by him, is privileged, and cannot be made the foundation of a charge of defamation.—QUEEN-EMPRESS *v.* GOVINDA PILLAI, I. L. R., 16 Mad 235. [Collins, C.J., and Handley, J. Sep. 1, 1892.]

— A WITNESS cannot be prosecuted for defamation on account of statements made when giving evidence in the witness-box.—QUEEN-EMPRESS *v.* BALKRISHNA VITHAL, I. L. R., 17 Bom. 573. [Telang and Fulton, JJ. Jan. 17, 1893.]

THE mere sending a notice to a person, albeit containing matter of a defamatory nature, cannot be held to be equivalent to making or publishing an imputation "intending to harm, or knowing or having reason to believe that it will harm, the reputation of the person to whom it is addressed." Where the accused sent by post a notice to the complainant, containing certain false imputations, and the complainant thereupon prosecuted the accused on a charge of defamation under s 500 of the Penal Code, *held* that the accused was not guilty of defamation.—QUEEN-EMPRESS *v.* SADASHIV ATMARAM, I. L. R., 18 Bom 205 [Candy and Fulton, JJ. Mar. 1, 1893.]

THE complainant was Deputy Collector and First-class Magistrate of Bijapur. Certain petitions, said to emanate from the accused, were received by Government, charging the complainant with bribery and corruption Government thereupon ordered Mr. Monteath, Collector and Magistrate of the district, to inquire into the matter. Mr. Monteath, enforced the attendance of the accused by writing to the police, who brought the accused before him. In answer to questions put to him, the accused denied having sent any petition to Government, but stated that he had paid a bribe to the complainant to secure the acquittal of his son, who was then on his trial on a charge of theft before him. Mr. Monteath examined other witnesses, and reported the result of his inquiry to Government. Government permitted the Deputy Collector to prosecute the accused, and he accordingly lodged a complaint against the accused for defamation, under s. 500 of the Penal Code, in having stated to Mr. Monteath, in the course of the inquiry, that he (the complainant) had accepted a bribe from him. The trying Magistrate was of opinion that the offence fell under s. 211 of the Penal Code. He at first framed charges both under ss. 211 and 500. But subsequently he struck out the charge of defamation under s. 500, and convicted the accused under s. 211 of making a false charge. On appeal the Joint Sessions Judge was of opinion that the charge under s. 211 could not

be maintained, as the accused had not made any "false charge" to a Court or officer having jurisdiction to investigate it. As regards the charge of defamation, he was of opinion that the fact of bribery was not proved. But he held that, in making the statement to Mr. Monteath, the accused had acted in good faith and that his case fell under excep. 8 to s. 499 of the Penal Code. He, therefore, reversed the conviction under s. 211, and acquitted the accused of defamation under s. 500 of the Code. Against this order of acquittal Government appealed to the High Court. *Held* that the accused was guilty of defamation. *Held*, also, that s. 211 of the Penal Code had no application to the present case. The accused was brought before Mr. Monteath against his will. He did not make any complaint before that officer; and though what he stated, in answer to questions put to him was defamatory, the imputations did not constitute a "false charge" within the meaning of s. 211, as he did not intend to set the criminal law in motion. *Per* Ranade, J.—The words "falsely charging" in s. 211 must be construed along with the words which speak of the "institution of proceedings." These latter words are obviously used in a technical and exclusive sense, and the same restricted sense must be given to the words which relate to a false charge as implying a false complaint. *Karim Buksh* v. *Queen-Empress* (I. L. R., 17 Cal. 574) followed. *Held*, also, that in the absence of sanction from Government, the inquiry held by Mr. Monteath, the District Magistrate, was not a taking cognizance of the offence. *Held*, also, that, as Mr. Monteath was not sitting as a "Court" when he made the inquiry, and examined the accused, the accused was not entitled to claim the absolute protection from a charge of defamation as a witness in a judicial proceeding. The accused was only entitled to a qualified privilege depending on the exceptions to s. 499 of the Penal Code. *Per* Ranade, J.—The High Court, in exercising jurisdiction in the matter of appeals against acquittals, should confine its exercise to the particular grounds of objection which are raised by Government against the acquittal complained of.—QUEEN-EMPRESS v. KARIGOWDA, I. L. R., 19 Bom. 51. [Jardine and Ranade, JJ. Jan. 18, 1894.]

B, THE *guru* or spiritual guide of the caste to which K belonged, issued a letter or *ajna patra* to K's fellow-villagers to the effect that, as K's wife has been caught with a man of lower caste, no one of her co-religionists should have any social intercourse with her, and in effect that she should be outcasted. K proceeded against B for defamation, and B pleaded that the statements contained in the letter were privileged, having been made in good faith and for the public good, and that the case came within one of the exceptions to s. 499. It was admitted by K that B had no enmity towards him or his wife, and that it was the custom of the *guru* to settle such matters as those that had arisen in connection with his wife, and it was proved that the letter was issued after B had made an enquiry into the truth of the allegation The lower Court convicted. *Held* that the conviction was wrong, it being clear that the statements contained in the letter had been made in good faith for the protection of the social and spiritual interests of the community of which B was the *guru*, and that, so far as they implied a censure on the conduct of K's wife, they were justified by the authority with which B was vested as spiritual head of the community, and that therefore the case came within the seventh exception to s. 499.—BASUMATI ADHIKARINI v. BUDHRAM KOLITA, I. L. R., 22 Cal. 46. [Beverley and Banerjee, JJ. July 5, 1894.]

To constitute the offence of defamation as defined in s 499 of the Penal Code, it is not necessary that the evidence should show that the complainant has been injuriously affected by such alleged defamation. The law requires merely that there should be an intent that the person who makes or publishes any imputation should do so intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person. — GOBINDA PERSHAD PANDEY v. GARTH, I. L. R., 28 Cal. 63. [Prinsep and Stanley, JJ. Mar. 27, 1900.]

**501.** Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Printing or engraving matter known to be defamatory.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Warrant. Bailable. Comp.

**502.** Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Sale of printed or engraved substance containing defamatory matter.

Ditto.

## CHAPTER XXII.*

### OF CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

Criminal intimidation.

**503.** Whoever threatens another with any injury to his person, reputation, or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

*Explanation.*—A threat to injure the reputation of any deceased person in whom the person threatened is interested is within this section.

*Illustration.*

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

WHERE the accused went to the complainant, the brother of an adult woman and told him that he had come from the Sarkar, and would get him six months' imprisonment, if he (the complainant) did not let his sister go, it was held that these words did not constitute either criminal intimidation within the meaning of s. 503 of the Penal Code (there having been no threat of an *injury* in the sense of the Code), or any other offence known to the law.—REG. v. MORARA BHASKARJI, 8 Bom. H. C. R. 101. Kemball and West, JJ. July 13, 1871.

N HAVING attended a Hindu widow-marriage (legalized by Act XV of 1856), S, his *guru* or spiritual superior, published a notice declaring N to be an outcaste, and forbidding the disciples of S, and the public of the town in which N lived, to associate with N until he submitted to the prescribed penance, and obtained a certificate of purification from S. S also sent by post a registered post-card of similar purport to N. In consequence of the interdict of S N was prevented from performing vows in the temple, lost the society of his relatives, and was otherwise damnified. N charged S with criminal intimidation, intimidation by attempt to induce a belief that by an act of the offender the person intimidated will become an object of divine displeasure and defamation. *Held* that the first two charges were unfounded, but that S, by communicating the sentence of excommunication by a registered post-card to N, was guilty of defamation.—QUEEN v. SANKARA, I. L. R., 6 Mad. 381. Turner, C.J., and Muttusami Ayyar, J. April 20, 1883.

WHERE the exercise of ecclesiastical jurisdiction is plainly *ultra vires*, or otherwise unsanctioned by the ordinances of a religious society, or where such ordinances controvert the general law, and in either case consequences result which the criminal law was intended to restrain, the Criminal Courts are not at liberty to decline jurisdiction. A Roman Catholic complained to a Magistrate that he had been threatened with an illegal sentence of excommunication, and had been excommunicated by the ecclesiastical authorities, with a view to prevent him from asserting his legal rights in defending a civil suit concerning the property of a church. *Held* that, under the circumstances, the proper course was for the Magistrate to have postponed the trial till the complainant proved in a Civil Court the illegality of the action of the ecclesiastical authorities.—*In re* DE-CRUZ, I. L. R., 8 Mad. 140. Turner, C.J., and Brandt, J. Dec. 22, 1884.

THE accused sent a fabricated petition to the Revenue Commissioner, SD, containing a threat that, if a certain forest-officer were not removed elsewhere, he would be killed. The accused was charged with the offence

* As to whipping in Upper Burma for the offence mentioned in s. 506, see the Upper Burma Laws Act (XIII. of 1898), s. 4 (3) (*b*) and Sch. II.

Offences punishable under s 504 and certain offences punishable under s. 506 are compoundable.—See the new Code of Criminal Procedure (Act V. of 1898), s. 345. As to stage of proceedings at which no composition is allowable without the leave of the Court, see *ibid*, sub-s. (5).

of criminal intimidation under s. 507 of the Penal Code (Act XLV. of 1860). The Sessions Judge found that the Commissioner had neither official nor personal interest in the forest-officer. He therefore acquitted the accused of the offence of criminal intimidation, but convicted him of an attempt to commit the offence punishable under s. 507, and sentenced him to four months' simple imprisonment. *Held*, reversing the conviction and sentence, that, as the person to whom the petition was addressed was not interested in the person threatened, the act intended and done by the accused did not amount to the offence of criminal intimidation within the meaning of s. 503 of the Penal Code. *Per* West, J.: "The offence of criminal intimidation, as defined, seems to require both a person to be threatened and another in whom he is specially interested. Then there must be the intent to cause alarm to the former by a threat to him of injury to the latter. The intent itself might be complete, though it could not be effected. But the existence of the interest seems essential to the offence, as also and equally to the attempt at the offence, since otherwise the attempt would be to do something not constituting an offence." *Per* Birdwood, J.: "No criminal liability can be incurred, under the Penal Code, by an attempt to do an act which, if done, would not be an offence against the Code. In the present case, therefore, if the accused was not guilty of committing criminal intimidation, because the act intended and done by him lacked an ingredient of that offence, he could not be guilty of an attempt at that offence."—QUEEN-EMPRESS *v.* MANGESH JIVAJI, I. L. R., 11 Bom. 376. West and Birdwood, JJ. Feb. 10, 1887.

A THREAT of getting a police constable dismissed from the police service is not such a threat of injury as is punishable under s. 506 of the Indian Penal Code (XLV. of 1860.)—QUEEN-EMPRESS *v.* DADA HANMANT, I. L. R., 20 Bom. 794. Jardine and Ranade, JJ. Sep. 5, 1895.

WHERE, in a suit for damages for malicious prosecution on a charge of assault which was dismissed, it appeared from the facts as found by the lower Courts that there was 'Criminal Intimidation' on the part of the plaintiff, although he was not charged with that offence by the defendant. *Held* that the plaintiff would not be entitled to any damages, as no malice or dishonest motive could be imputed to the defendant in bringing the charge of 'assault.'—MADHU LAL AHIR GAYAWAL *v.* SAHU PANDE DHAMI, I. L. R., 27 Cal. 532. Ghose and Harington, JJ. April 27, 1900.

**504.** Whoever intentionally insults, and thereby gives provocation to, any person, intending or knowing it to be likely that such provocation will cause him to break the public peace or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Any Mag. Uncog. Warrant. Bailable. Comp.

*Intentional insult with intent to provoke breach of the peace.*

A ABUSED B to such an extent as to reduce B to a state of abject terror. *Held* that A, having given to B such provocation as would, under ordinary circumstances, have caused a breach of the peace, was guilty of an offence under s. 504 of the Penal Code.—QUEEN-EMPRESS *v.* JOGAYYA, I. L. R., 10 Mad. 353. Collins, C.J., and Parker, J. July 8, 1887.

CERTAIN Hindus, present at a caste dinner, had sat down to partake of the food which had been served to them, when certain other members of the caste came, and, after telling those who were seated to move to another place, which they refused to do, threw down a shoe amongst the men who were seated. The persons who threw the shoe were convicted of mischief, on the ground as their action had polluted the food, and had, from a Hindu religious point of view, rendered it unfit to be eaten. On reference by the Sessions Judge it was held that this conviction was wrong; neither could the accused be convicted under s. 298 or under s. 504 of the Indian Penal Code on the facts found.—KING-EMPEROR *v.* MOTI LAL, I. L. R., 24 All. 155. Blair, J. Nov. 15, 1901.

**505.*** Whoever makes, publishes, or circulates any statement, rumour, or report,—

Presv. Mag. or Mag. of 1st class. Uncog. Warrant. Not bailable. Not comp. Sanction.

*Statements conducing to public mischief.*

* S. 505 has been substituted for the original by the Indian Penal Code Amendment Act (IV. of 1898), s. 6.—See Report of Select Committee, *Gazette of India*, 1898, Pt. V., p. 13.

(*a*) with intent to cause, or which is likely to cause, any officer, soldier, or sailor in the army or navy of Her Majesty, or in the Royal Indian Marine, or in the Imperial Service Troops, to mutiny, or otherwise disregard or fail in his duty as such; or

(*b*) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public, whereby any person may be induced to commit an offence against the State or against the public tranquillity; or

(*c*) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community;

shall be punished with imprisonment which may extend to two years, or with fine, or with both.

*Exception*.—It does not amount to an offence, within the meaning of this section, when the person making, publishing, or circulating any such statement, rumour, or report, has reasonable grounds for believing that such statement, rumour, or report is true, and makes, publishes, or circulates it without any such intent as aforesaid.

* Presy. Mag. or Mag. of 1st class. Uncog. Warrant. Bailable. Comp.

**506.** Whoever commits the offence of criminal intimidation shall be punished* with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

Punishment for criminal intimidation.

† Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp.

and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or transportation, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished† with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

If threat be to cause death or grievous hurt, &c.

A THREAT to commit suicide if another person refuse to do a particular act is not criminal intimidation, unless that other person be interested in the person making the threat.—NUBI BUKSH *v.* MUSSAMMAT OOMRA, Panj. Rec., No 109 of 1866.

AN accused, who threatened three witnesses, was convicted and sentenced to four months' imprisonment for the threat to each witness—in all to one year. *It was held that*, if a person at one time criminally intimidates three different persons, and each of those persons brings a separate charge against him, the accused may be convicted for an offence as against each person, and be punished separately for each offence. The facts and evidence in this case, however, were considered insufficient to support the sentence, which was reversed as extremely harsh and unjust. —GOOLZAR KHAN, 9 W. R 30. [Kemp and Jackson, JJ. Mar. 10, 1868.]

WHERE the accused went to the complainant, the brother of an adult woman, and told him that he had come from the Sarkar, and would get him six months' imprisonment if he (the complainant) did not let his sister go, *held* that these words did not constitute either criminal intimidation within the meaning of s. 503 of the Penal Code (there having been no threat of an *injury* in the sense of the Code), or any other offence known to the law. —REG *v.* MORABA BHASKARJI, 8 Bom. H. C. R. 101. [Kemball and West, JJ. July 13, 1871.]

AN intention to intimidate, insult, or annoy any person in possession of a house does not mean to insult or annoy any person in constructive, but in actual, possession of the premises.—ISHUR CHUNDER KURMOKAR *v.* SEETUL DASS MITTER, 17 W. R. 47; 8 B. L. R. Ap. 62. [Couch, C.J., and Ainslie, J. *April 6, 1872.*]

THE threat referred to in s. 503 of the Penal Code must be a threat communicated, or uttered with the intention of its being communicated, to the person threatened for the purpose of influencing his mind. The facts of the case are fully set out in the following judg-

ment of the Court, which was delivered by Petheram, C.J.: "This is a rule which has been obtained for the purpose of revising a conviction of three men for an offence under ss. 503 and 506 of the Indian Penal Code—that is to say, for the offence of having threatened the complainant within the meaning of those sections. The charge is a charge of having threatened him on the 28th Aughran 1294, and in support of that charge two witnesses are called, who speak to what took place on that occasion. The facts of the case up to that point are these: that the complainant had purchased a rayati tenure within the limits of the accused's zemindari, and the accused disliked his being there, and apparently, from what the witnesses say, they intimated their dislike of that to them. Two witnesses say that, on that day, they were at the house of the accused, when a piyada of theirs came and told them that the complainant, notwithstanding what they had done, was still in the place, and was still taking away the paddy on the land, upon which the accused said that they would beat him and set fire to his house. Assuming that to be true, the question is whether that is a threat within the meaning of the section. The section which defines the offence is s. 503, and it is in these words: 'Whoever threatens another with any injury to his person, reputation, or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.' It is clear that the gist of the offence, as defined in that section, is the effect which the threat is intended to have upon the mind of the person threatened, and it is equally clear that, before it can have any effect upon his mind, it must be either made to him by the person threatening, or communicated to him in some way. In this particular case there is no suggestion that the threat was made to the person threatened. All that happened was that, in the presence of some persons, the accused used the words I have quoted in their house. In one sense those words amount to a very bad threat; but there is no evidence on the face of them and there is no other evidence, that they intended that the words should be communicated to the complainant for the purpose of influencing his mind. It seems to us that the evidence in the case falls far short of establishing the offence defined by this section, which is, in our opinion, a threat communicated, or uttered with the intention of its being communicated, to the person threatened, for the purpose of influencing that man's mind. In this case there is nothing whatever to show that it was the intention of the accused that the threat should be communicated to the complainant. The complainant himself was called, and he does not say that he ever heard this particular threat. Though he speaks of a threat uttered on some other occasion, he does not say that the threat, which is the subject of this charge, was ever communicated to him, or that he ever heard it. Under these circumstances we think that there is no evidence of an offence having been committed under this section, and that this rule must be made absolute."—GUNGA CHUNDER SEN *v.* GOUR CHUNDER BANIKYA, I. L. R., 15 Cal. 671. [Petheram, C.J., and Tottenham, J. July 4, 1888.]

A THREAT of getting a police-constable dismissed from the police service is not such a threat of injury as is punishable under s. 506 of the Indian Penal Code (XLV. of 1860). —QUEEN-EMPRESS *v.* DADA HANMANT, I. L. R., 20 Bom. 794. [Jardine and Ranade, JJ. Sep. 5, 1895.]

**507.** Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceeding section.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp.

Criminal intimidation by an anonymous communication.

THE accused sent a fabricated petition to the Revenue Commissioner, S D, containing a threat that, if a certain forest-officer were not removed elsewhere, he would be killed. The accused was charged with the offence of criminal intimidation under s. 507 of the Penal Code (Act XLV. of 1860). The Sessions Judge found that the Commissioner had neither official nor personal interest in the forest-officer. He, therefore, acquitted the accused of the offence of criminal intimidation, but convicted him of an attempt to commit the offence punishable under s. 507, and sentenced him to four months' simple imprisonment. *Held*, reversing the conviction and sentence, that, as the person to whom the petition was addressed was not interested in the person threatened, the act

intended and done by the accused did not amount to the offence of criminal intimidation within the meaning of s. 503 of the Penal Code. *Per* West, J.: "The offence of criminal intimidation, as defined, seems to require both a person to be threatened and another in whom he is specially interested. Then there must be the intent to cause alarm to the former by a threat to him of injury to the latter. The intent itself might be complete, though it could not be effected But the existence of the interest seems essential to the offence, as also and equally to the attempt at the offence, since otherwise the attempt would be to do something not constituting an offence." *Per* Birdwood, J.: "No criminal liability can be incurred, under the Penal Code, by an attempt to do an act, which, if done, would not be an offence against the Code. In the present case, therefore, if the accused was not guilty of committing criminal intimidation, because the act intended and done by him lacked an ingredient of that offence, he would not be guilty of an attempt at that offence."—QUEEN-EMPRESS *v.* MANGESH JIVAJI, I. L. R., 11 Bom. 376. [West and Birdwood, JJ Feb. 10, 1887.]

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Not comp.

Act caused by inducing person to believe that he will be rendered an object of divine displeasure.

**508.** Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or omits to do anything which he is legally entitled to do

by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

*Illustrations.*

(*a*.) A sits dharna at Z's door with the intention of causing it to be believed that by so sitting he renders Z an object of divine displeasure. A has committed the offence defined in this section.

(*b*.) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children under such circumstances that the killing would be believed to render Z an object of divine displeasure. A has committed the offence defined in this section.

N HAVING attended a Hindu widow-marriage (legalized by Act XV. of 1856), S, his *guru*, or spiritual superior, published a notice declaring N to be an outcast, and forbidding the disciples of S and the public of the town in which N lived to associate with N until he submitted to the prescribed penance, and obtained a certificate of purification from S S also sent by post a registered post-card of similar purport to N. In consequence of the interdict of S, N was prevented from performing vows in the temple, lost the society of his relatives, and was otherwise damnified. N charged S with criminal intimidation by attempt to induce a belief that, by an act of the offender, the person intimidated will become an object of divine displeasure and defamation. *Held* that the first two charges were unfounded, but that S, by communicating the sentence of excommunication by a registered post-card to N, was guilty of defamation.—QUEEN *v.* SANKARA, I. L. R., 6 Mad. 381. [Turner, C J., and Muttusami Ayyar, J. April 20, 1883.]

WHERE the exercise of ecclesiastical jurisdiction is plainly *ultra vires*, or otherwise unsanctioned by the ordinances of a religious society, or where such ordinances controvert the general law, and, in either case, consequences result which the criminal law was intended to restrain, the Criminal Courts are not at liberty to decline jurisdiction A Roman Catholic complained to a Magistrate that he had been threatened with an illegal sentence of excommunication, and had been excommunicated by the ecclesiastical authorities, with a view to prevent him from asserting his legal rights in defending a civil suit concerning the property of a church. *Held* that, under the circumstances, the proper course was for the Magistrate to have postponed the trial till the complainant proved in a Civil Court the illegality of the action of the ecclesiastical authorities.—*In re* DECRUZ, I. L. R., 8 Mad 140. [Turner, C.J., and Brandt, J Dec. 2, 1884.]

**509.** Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Word, gesture, or act intended to insult the modesty of a woman.

Presy. Mag. or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp.

THE accused in the middle of the night effected an entry into a room occupied by four women. On an alarm being given, and an attempt made to capture him, he escaped. He was charged with an offence under s. 456 of the Penal Code. The defence set up was disbelieved by both the lower Courts. Neither Court found specifically what was the intention with which the accused entered the room, but it was suggested that it was probably for the purpose of prosecuting an intrigue with one of the women. There was no evidence that he had been invited by her to go there. The lower Courts convicted the accused under s. 456. It was contended that, as the prosecution had failed to prove that the entry was made with intent to commit any offence, the conviction was illegal. *Held* that the facts proved were good evidence of an intent and of an intrusion on privacy within the meaning of s. 509 of the Penal Code, and that therefore the intent to commit an offence within the meaning of s. 441 was made out.—*Balmakand Ram* v. *Ghansamram* (I. L. R., 22 Cal. 391) followed.—PREM ANUNDO SHAHA *v.* BRINDABUN CHUNG, I. L. R., 22 Cal. 994. [Pigot and Banerjee. JJ. July 22, 1895.]

**510.** Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.

Misconduct in public by a drunken person.

Any Mag. Uncog. Warrant. Bailable. Not comp.

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## CHAPTER XXIII.*

### OF ATTEMPTS TO COMMIT OFFENCES.

**511.** Whoever attempts to commit an offence punishable by this Code with transportation or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with transportation or imprisonment of any description provided for the offence, for a term of transportation or

Punishment for attempting to commit offences punishable with transportation or imprisonment.

Triable by Court by which the offence attempted is triable. Cog. If offence attempted is cog. Warrant or summons shall issue according as the offence is one in respect of which a warrant or summons shall ordinarily issue. Bailable if offence contemplated is bailable. Compoundable if offence attempted is compoundable.

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* NOTE.—Ss. 13 and 15 of the Indian Penal Code Amendment Act (XXVII. of 1870) enact as follows:—

13. [*Application of certain chapters of Penal Code.*]—The following chapters of the same Code, namely, IV. *(General Exceptions)*, V. *(Of Abetment)*, and XXIII. *(Of Attempts to commit Offences)*, shall apply to offences punishable under the said ss. 121A, 294A, and 304A, and the said Chapters IV. and V. shall apply to offences punishable under "ss. 124A, 225A, and 225B" [The words and figures quoted have been substituted for the words and figures, "said sections 124A and 225A," by the second schedule to the Repealing and Amending Act (XII. of 1891).]

15. [*Saving of special and local laws.*]—Nothing contained in this Act (XXVII. of 1870) shall be taken to affect any of the provisions of any special or local law.

Attempts to commit certain offences are compoundable.—See the new Code of Criminal Procedure (Act V. of 1898), s. 345.

As to stage of proceedings at which no composition is allowable without the leave of the Court, *see* ibid, sub-s. (5).

**imprisonment which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.**

*Illustrations.*

**(*a*.) A makes an attempt to steal some jewels by breaking open a box, and finds, after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.**

**(*b*.) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.**

THE term of imprisonment for attempting to fabricate false evidence for the purpose of being used in a stage of judicial proceeding cannot extend beyond one-half of seven years. —QUEEN *v.* SOONDUR PUTNAICK, 3 W. R. 59. [Kemp and Seton-Karr, JJ. Aug. 7, 1865.]

IN the case of a conviction of attempting to commit house-breaking by night with intent to commit theft, a sentence of whipping was annulled as being illegal.—REG. *v.* YELLA *valad* PARSHIA, 3 Bom. H. C. R. 37. Couch C.J., and Newton, J. Nov. 21, 1866.]

ATTEMPT at murder must not be confounded with causing grievous hurt with dangerous weapons.—GHOLAM RUSSOOL *v.* CROWN Panj. Rec., No. 32 of 1866.

S. 511 of the Penal Code does not apply to a case of dacoity. Where a prisoner was found guilty of an attempt at dacoity under that section, and of causing grievous hurt in such attempt under s. 397, and a sentence of three years rigorous imprisonment was passed on him, the finding was amended by striking out "ss. 397 and 511," and substituting "s. 395."—QUEEN *v.* KOONEE, 7 W. R. 48. [Jackson and Glover, JJ. Mar. 25, 1867.] Referred to in *Queen-Empress v. Bani*, I. L. R., 23 All. 78 *infra*.

IN order to constitute the offence of attempt to murder under s. 307, the act committed by the prisoner must be an act capable of causing death in the natural and ordinary course of events. *Aliter* under s. 511 taken in connection with ss. 299 and 300. Therefore, where the prisoner presented an uncapped gun at F. G. (believing the gun to be capped) with the intention of murdering him, but was prevented from pulling the trigger, *held* that he could not be convicted of an attempt to murder upon a charge framed under s. 307, but that, under the same circumstances, he might be convicted upon a charge of simple attempt to murder framed under s. 511 in connection with ss. 299 and 300. Unnecessary allegations in a charge may be rejected as surplusage. Apparent inconsistency between the English law with reference to attempts as laid down in *Reg. v. Collins* (33 L. J. M. C. 177) and the provisions of the Indian Penal Code explained.—REG. *v.* FRANCIS CASSIDY, 4 Bom. H. C. R. 17 [Couch, C.J., and Westropp, J. Dec. 23, 1867.]

HELD by Glover, J., that incendiarism having, on several occasions, occurred in a village, produced by a ball of rag with a piece of burning charcoal within it, and the prisoner one evening being discovered to have a ball of that description concealed in his dhoti, which contained burning charcoal, he is, under s. 511 of the Penal Code, guilty of an attempt to commit mischief by fire. The possession of the instrument to commit mischief by fire, and the going about of the person with it, are sufficient to raise a presumption that he intended to commit the act, and had already begun to move towards the execution. These facts are sufficient to constitute an attempt. *Held* by Mitter, J., that the possession of a fire-ball and moving about with it, cannot support a conviction under ss. 436 and 511 of the Penal Code. These facts are not sufficiently indicative of an intention to destroy a building used for human dwelling. To constitute an offence under s. 511 of the Penal Code, it is not only necessary that the prisoner should have done an overt act towards the commission of the offence but that the act itself should have been done in the attempt to commit it.—QUEEN *v.* DOYAL BAURI, 3 B. L. R. A. Cr. 55. [Glover and Mitter, JJ. Sep. 1, 1869.] In subsequent rulings, the opinion of Mitter, J., was upheld.

A, INTENDING to procure a forged document purporting to be executed by one Chotak applied to K to accompany A to Gorakhpur, where A said Chotak would be found, and there to draw out a bond for execution by Chotak. In pursuance of this invitation, K, believing that Chotak would execute the bond, accompanied A to Gorakhpur. A took with him his ploughman, named Chetoo, and directed Chetoo to purchase a stamp paper for the bond, and to give his name and description to the stamp-vendor as Chotak.

Chetoo complied with this direction, and the stamp-vendor wrote on the stamp-paper an endorsement to the effect that the purchaser was Chotak, with the description which would apply to that person, but, suspecting false personation, arrested Chetoo, and took him to the Magistrate. On the above facts, the Sessions Judge convicted A of attempt to forge a valuable security, and, under ss. 467 and 511, sentenced him to be rigorously imprisoned for five years. *Held* that, to constitute the offence of attempt under s. 511, Penal Code, there must be an act done with the intention of committing an offence, and for the purpose of committing that offence, and it must be done in *attempting* the commission of the offence. The provisions of s. 511, Penal Code, do not extend to make punishable as attempts acts done in the mere stage of preparation. Although such are doubtless done towards the commission of the offence, they are not done *in the attempt* to commit the offence within the meaning of the word "attempt" as used in the section. —QUEEN v. RAMSARUN CHOWBEY, 4 N.-W. P. 46. [Turner, J. Mar. 13, 1872.] Distinguished and observed on in *Empress* v. *Mula*, I. L. R., 2 All. 105, *infra*; and referred to in *Queen-Empress* v. *Kalyan Singh*, I. L. R., 16 All. 409, *infra*.

FACTS showing that an accused person had dug a hole, intending to place salt therein, in order that the discovery of the salt so placed might be used in evidence against his enemy in a judicial proceeding, would justify a conviction for an attempt to fabricate false evidence.—QUEEN v. NUNDA, 4 N.-W. P. 133. [Turner and Spankie JJ. Aug. 16, 1872.]

M INSTIGATED Z to personate C, and to purchase in C's name certain stamped paper, in consequence of which the vendor of the stamped paper endorsed C's name on such paper as the purchaser of it. M acted with the intention that such endorsement might be used against C in a judicial proceeding. *Held* that the offence of fabricating false evidence had been actually committed, and M was properly convicted of abetting the commission of such offence. *Queen* v. *Ramsarun Chowbey* (4 N.-W. P. 46) distinguished and observed on.—EMPRESS v. MULA, I. L. R., 2 All. 105. [Turner, J. Jan. 24, 1875.]

THE act of causing the publication of banns of marriage is an act done in the preparation to marry, but does not amount to an attempt to marry. Where, therefore, a man having a wife living, causes the banns of marriage between himself and a woman to be published, he could not be punished for an attempt to marry again during the lifetime of his wife.—REG. v. PETERSON, I. L. R., 1 All. 316. [Pearson, J. Dec. 6, 1876.]

AN indecent assault upon a woman does not amount to an attempt to commit rape, unless the Court is satisfied that there was a determination in the accused to gratify his passions at all events, and in spite of all resistance.—EMPRESS v. SHANKAR, I. L. R., 5 Bom. 403. [Melvill and Nanabhai Haridas, JJ. Mar. 2, 1881.]

A PERSON cannot be convicted of an attempt to commit an offence under s. 511 of the Penal Code unless the offence would have been committed if the attempt charged had succeeded. A prisoner, who was charged with attempting to commit forgery of a valuable security, was found guilty by the jury of attempting to commit forgery. The jury explained their finding by saying that the prisoner had ordered certain receipt forms to be printed similar to those used by the Bengal Coal Company, and that one of these forms had actually been printed, and the proof corrected by him, that the prisoner had had an intention of making such addition to the printed forms as would make it a false document, and that he did this dishonestly, and with intent to commit fraud. The Sessions Judge sentenced the prisoner to rigorous imprisonment for one year under ss. 465 and 511 of the Penal Code for attempting to commit forgery. *Held* that the conviction was wrong and must be set aside. —*In re* RIASAT ALI, *alias* BARI MIYA, *alias* BODIUZZUMA. EMPRESS v. RIASAT ALI, *alias* BARI MIYA, *alias* BODIUZZUMA, I. L. R., 7 Cal. 352; 8 C. L. R. 572. Garth, C.J., and Prinsep, J. June 3, 1881.]

THE accused sent a fabricated petition to the Revenue Commissioner, S D, containing a threat that, if a certain forest-officer were not removed elsewhere, he would be killed. The accused was charged with the offence of criminal intimidation under s. 507 of the Penal Code (Act XLV. of 1860). The Sessions Judge found that the Commissioner had neither official nor personal interest in the forest-officer. He, therefore, acquitted the accused of the offence of criminal intimidation, but convicted him of an attempt to commit the offence punishable under s. 507, and sentenced him to four months' simple imprisonment. *Held*, reversing the conviction and sentence, that, as the person to whom the petition was addressed was not interested in the person threatened, the act intended and done by the accused did not amount to the offence of criminal intimidation within the meaning of s. 503 of the Penal Code. *Per* West, J. "The offence of criminal intimidation, as defined, seems to require both a person to be threatened and

another in whom he is specially interested. Then there must be the intent to cause alarm to the former by a threat to him of injury to the latter. The intent itself might be complete, though it could not be effected. But the existence of the interest seems essential to the offence, as also and equally to the attempt at the offence, since otherwise the attempt would be to do something not constituting an offence." *Per* Birdwood, J.: "No criminal liability can be incurred under the Penal Code, by an attempt to do an act, which, if done, would not be an offence against the Code. In the present case, therefore, if the accused was not guilty of committing criminal intimidation, because the act intended and done by him lacked an ingredient of that offence, he could not be guilty of an attempt at that offence."—QUEEN-EMPRESS *v.* MANGESH JIVAJI, I. L. R., 11 Bom. 370. [West and Birdwood, JJ. Feb. 10, 1887.]

A PERSON who has been convicted of the offence of theft (an offence punishable under ch. 27 of the Penal Code) does not, on being convicted of an *attempt* to commit the offence of theft, become liable to the enhanced punishment allowed by s. 75 of the Penal Code.—QUEEN-EMPRESS *v.* SRICHARAN BAURI, I. L. R., 14 Cal. 357. Petheram, C. J., and Cunningham, J. Mar. 19, 1887.

A MAN may be guilty of an attempt to cheat, although the person he attempts to cheat is forewarned, and is therefore not cheated. *R. v. Heesler* (11 Cox, C. C. 570) referred to. M wrote a letter to the Currency Office at Calcutta enclosing the halves of two Government currency notes, stating that the other halves were lost, and enquiring what steps should be taken for the recovery of the value of the notes. The Currency Office having, upon enquiry, discovered that the amount of the notes had been paid to the holder of the other halves, and that the notes had been withdrawn from circulation and cancelled, sent M the usual form of claim to be filled up and returned to it. It appeared from the evidence that the Currency Office never contemplated paying M in respect of the notes. The form was filled up and signed by M, and returned by him to the Currency Office. *Held* that, although there was no intention on the part of the Currency Office to pay the amount of the notes, M was guilty of an attempt to cheat.—GOVT. OF BENGAL *v.* UMESH CHUNDER MITTER, I. L. R., 16 Cal. 310. [Macpherson and Trevelyan, JJ. Nov. 6, 1888.]

PRISONER was requested to make an entry in a book of account belonging to the complainant to the effect that he was indebted to the complainant in a certain sum found due on a settlement of account; instead of making this entry as requested, prisoner entered in a language not known to complainant that this sum had been paid to complainant. He was convicted of forgery under s. 465 of the Penal Code. *Held* that the offence was not forgery, but an attempt to cheat.—QUEEN-EMPRESS *v.* KUNJU NAYAR, I. L. R., 12 Mad. 114. [Muttusami Ayyar and Shephard, JJ. Sep. 9, 20, 1888.

S. 511 of the Indian Penal Code does not apply to attempts to commit murder, which are fully and exclusively provided for by s. 307 of the said Act. A person is criminally responsible for an attempt to commit murder when, with the intention or knowledge requisite to its commission, he has done the last proximate act necessary to constitute the completed offence, and when the completion of the offence is only prevented by some cause independent of his volition.—QUEEN-EMPRESS *v.* NIDDHA, I. L. R., 14 All. 38. [Straight, J. Aug. 5, 1891.

S. 511 of the Penal Code was not meant to cover only the penultimate act towards completion of an offence, and not acts precedent, if those acts are done in the course of the attempt to commit the offence, are done with the intent to commit it, and done towards its commission. Whether any given act or series of acts amounts to an attempt of which the law will take notice, or merely to preparation, is a question of fact in each case.—IN THE MATTER OF R. MACCREA, I. L. R., 15 All. 173. Knox and Blair, JJ. Feb. 24, 1893.

S. 75 of the Penal Code does not apply to cases which are confined to s. 511 of that Code. The offences which come under s. 511 must be punished entirely irrespective of s. 75. *Queen-Empress v. Ajudhia* (I. L. R., 17 All. 120) approved.—QUEEN-EMPRESS *v.* BHAROSA, I. L. R., 17 All. 123. [Edge, C.J., and Banerji, J. Jan. 9, 1895.]

ONE Chaturi (calling himself Kehri, the son of Bhupal Kachhi, went to a stamp-vendor, accompanied by a man named Kalyan Singh, and purchased from him, in the name of Kehri, a stamp-paper of the value of four annas. The two men then went to a petition-writer, and, Chaturi again giving his name as Kehri, they asked the petition-writer to write for them a bond for Rs. 50 payable by Kehri to Kalyan Singh. The petition-writer commenced to write the bond, but, his suspicions being aroused, did not finish it, but took Chaturi and Kalyan Singh to the nearest thana. *Held* that, under the above circumstances, Kalyan Singh was rightly convicted of an attempt to commit the offence defined in s. 467 of the Indian Penal Code, and Chaturi of abetment of the said attempt. *The Queen v. Ram*

*Sarun Chowbey* (N.-W. P., H. C. Rep., 1872, p. 46) referred to.—QUEEN-EMPRESS v. KALYAN SINGH, I. L. R., 16 All. 409. [Burkitt, J., May 25, 1894.]

On the 5th May 1894 C applied in writing under the provisions of s. 133 of Ben. Act III. of 1884 to a municipality for a license to be granted to him in respect of two carriages and six ponies, and filled up and signed the usual statement required by the section. The sum payable in respect of the license was received, and the license asked for by C was granted to him, and at the same time the statement was sent to an overseer of the municipality for verification. On the 7th May the overseer reported that C had in his possession eight ponies and one horse. On the 8th May the chairman of the municipality passed an order, directing C to be prosecuted for making a false statement in the schedule to his statement regarding the number of animals in respect of which he applied for the license. On the 9th May C presented a petition asking that the tax on the three animals might be received, and stating that he did not think he was liable to take out a license for them, as they were old and diseased, and unfit for work. On the 13th May the chairman passed an order on this application that he had no power to interfere, as the prosecution of C had already been ordered. Meanwhile on the 9th May a paper was sent to the Magistrate headed "List of municipal cases under Act III. of 1884," in which C appeared as charged with an offence under s. 199 of the Penal Code for "filing a false statement, that is to say, putting down in the schedule six ponies only instead of eight ponies and one horse." On the 12th May the Deputy Magistrate directed a summons to issue to C, returnable on the 23rd. On the 18th May the District Magistrate passed an order to the effect that the municipality could not institute a prosecution under the Penal Code, but that the Deputy Magistrate had power to do so, and that he should consider the provisions of ss. 182 and 417, read with 511, of the Penal Code, as applicable to the facts of the case. On the 19th May the summons was issued, and the case was heard on the 23rd and 24th May and 19th June, on which date formal charges under ss. 190, 182, and 417-511 of the Penal Code were framed. Thereafter the hearing proceeded till the 16th July, when, on an application to the High Court, the proceedings were stayed, and a rule issued to show cause why they should not be quashed. It was contended at the hearing of the rule that the High Court should not interfere at that stage of the proceedings under its revisional jurisdiction. *Held* that the High Court has power to interfere at any stage of a case, and that, when it is brought to its notice that a person has been subjected as in this case, for over two months, to the harassment of an illegal prosecution, it is its bounden duty to interfere. *Held*, further, that it was quite clear that the municipality had no power to institute the proceedings, and that, having regard to the provisions of s. 191 of the Code of Criminal Procedure, it did not appear that the Deputy Magistrate, having no private complainant before him, had power, of his own motion, to institute them; but that, whether he had such power or not, the admitted facts of the case did not in law constitute any of the offences with which C was charged, and that the whole proceedings must be quashed. The Municipal Act is intended to be complete in itself as regards offences committed against the Municipal Commissioners, and there is no indication of any intention to render a delinquent also liable to punishment under the Penal Code. There is no penalty in the Act attached to the omission to make a return under s. 133, and no words in the Act constituting the making a false return a penal offence; and, as there are no such words in the Act as are necessary to make the provisions of the Penal Code applicable, the Court has no power to import them. The Municipal Commissioners in such a case have the remedy provided by the Act itself.—CHANDI PERSHAD v. ABDUR RAHMAN, I. L. R., 22 Cal. 131. Petheram, C.J., and Beverley, J. Aug. 13, 1894.]

THE accused was committed for trial before a Sessions Court on a charge of abetment of dacoity under s. 110 of the Indian Penal Code (Act XLV. of 1860). In the course of the trial the Assistant Sessions Judge added an alternative charge under s. 511 of the Code and sentenced the accused under ss. 395, 116, and 511 of the Indian Penal Code (Act XLV. of 1860). In appeal the Sessions Judge held that the evidence disclosed the offence of an attempt to commit the offence of collecting arms, &c., with intention of waging war against the Queen, under s. 122, and as no charge under that section could be framed for want of the sanction of Government under s. 196 of the Criminal Procedure Code (Act V. of 1898), the accused could not be brought to trial at all. He, therefore, reversed the conviction and acquitted the accused. *Held* (reversing the order of acquittal), that the mere fact that no charge for the graver offence under s. 122 of the Indian Penal Code (Act XLV. of 1860) could be framed for want of Government sanction, did not render the trial for the minor offence of attempting or abetting dacoity either irregular or illegal. *Per* Fulton, J.—According to the 2nd clause of

s. 235 of the Criminal Procedure Code (Act V. of 1898), if the accused abetted an offence under s. 122 of the Penal Code, and by the same speech also attempted or abetted the offence of dacoity, he could be tried for each of these offences; but as that section is controlled, as regards the offence against the State, by the provisions of s. 196 of the Criminal Procedure Code, its operation in this case is restricted to the minor offence for which the accused could legally be charged and tried. *Queen-Empress* v. *Karigowda* (I. L. R., 19 Bom. 51) and *In re Nagarji* (I. L. R., 19 Bom. 340) distinguished.—QUEEN-EMPRESS v. ANANT PURANIK, I. L. R., 25 Bom. 90. [Ranade and Fulton, JJ. July 19, 1900

WHERE several persons were found endeavouring to break into a house, and some of them, being armed, used violence, but only in attempting to escape being arrested, it was *held* that they could not properly be convicted under s. 397 read with s. 511 of the Indian Penal Code. *Queen* v. *Koonee* (7 W. R. 48) referred to.—QUEEN-EMPRESS v. BENI, I. L. R., 23 All 78. Henderson, J. July 25, 1900.

THE petitioners mortgaged their property and under the terms of the agreement certain persons were appointed managers of the estate under certain conditions in regard to payment of the moneys realized by them. In execution of a decree obtained by the managers in a suit brought in the names of the petitioners a certain *putni taluk* was sold for Rs. 3,000. The debtor settled with the petitioners that, on payment of Rs. 1,000, the sale was to be set aside. The money was paid into Court, and an application was made by the petitioners for the withdrawal of this money. The Court, however, made no order on this application. The petitioners were convicted of an attempt to commit an offence under s. 422 of the Penal Code. *Held* that, having regard to the relation between the petitioners and their managers at whose instance the proceedings were taken, it could not properly be said that an attempt to commit an offence under s. 422 of the Penal Code was made. That the interference of the petitioners and their application to obtain the money paid into Court might have been breaches of their contract with the mortgagees, but such conduct could not necessarily be regarded as dishonest or fraudulent so as to render them liable to punishment. Their attempt to get this money was more to put an end to the management than to prevent the money from being available for payment of their debt under the mortgage.—*Nobin Chunder Mudduck* (22 W. R. Cr. 46) referred to.—HARA KUMARI CHOWDHURANI v. R. SAVI, I. L. R., 28 Cal. 314. [Prinsep and Handley, JJ. July 5, 1900.

## OFFENCES AGAINST OTHER LAWS.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without *warrant* or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or *not*. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| | If punishable with death, transportation, or imprisonment for 7 years or upwards. | May arrest without warrant. | Warrant ... | Not bailable. | Not compoundable. | ..... | *Court of Session.* |
| | If punishable with imprisonment for 3 years and upwards, but less than seven. | Ditto ... | Ditto ... | Ditto ... Except in cases under the Indian Arms Act, 1878, section 19, which shall be bailable. | Ditto ... | ..... | *Court of Session, Presidency Magistrate or Magistrate of the first class.* |
| | If punishable with imprisonment for *one year and upward*, but less than 3 years. | Shall not arrest without warrant. | Summons... | Bailable ... | Ditto ... | ..... | *Court of Session, Presidency Magistrate, or Magistrate of the first or second class.* |
| | If punishable with *imprisonment for less than one year*, or with fine only. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | ..... | *Any Magistrate.* |

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THE

# INDIAN EVIDENCE ACT

BEING

## ACT NO. I. OF 1872

AS AMENDED UP TO DATE,

WITH

## NOTES OF CRIMINAL CASES

AS DECIDED BY

## THE HIGH COURTS IN INDIA.

BY

D. E. CRANENBURGH,

*PLEADER.*



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# PREFACE.

A CHEAP annotated edition of the Indian Evidence Act (I. of 1872), containing only criminal rulings of the several High Courts in India, is a desideratum which has long and severely been felt by those who have to deal with the criminal law.

To supply this desideratum the present work has been compiled, and is specially intended for insertion in the New Criminal Court Manual.

This edition of the Evidence Act contains rulings up to December 1900, and is amend.d up to date of publication.

It is trusted that, as the costlier works on the Evidence Act are beyond the means of many who have to deal with the criminal law, the present work will prove useful to them.

D. E. CRANENBURGH.

*March 29, 1901.*

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# ACT NO. I. OF 1872.

## THE INDIAN EVIDENCE ACT, 1872.

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# ACT NO. I. OF 1872.*

## THE INDIAN EVIDENCE ACT, 1872.

RECEIVED THE G.-G.'S ASSENT ON THE 15TH MARCH 1872.

**Preamble.** WHEREAS it is expedient to consolidate, define, and amend the Law of Evidence; It is hereby enacted as follows:—

## PART I.—RELEVANCY OF FACTS.

### CHAPTER I.—PRELIMINARY.

**Short title.** 1. This Act may be called "The Indian Evidence Act, *1872*:"

**Extent.** It extends to the whole of British India, and applies to all judicial proceedings in or before any Court, including Courts-martial,† but not to affidavits‡ presented to any Court or officer,

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* For the Statement of Objects and Reasons, see Gazette of India, 1868, p. 1574; for the Draft or Preliminary Report of the Select Committee, dated 31st March 1871, see *ibid*, 1871, Pt. V, p 273, and for the Second Report of the Select Committee, dated the 30th January 1872, see *ibid*, 1872 Pt V, p 34, for Discussions in Council, see *ibid*, 1868, Supplement, pp. 1060 and 1209, *ibid*, 1871, Extra Supplement, p 42, and Supplement, p. 1641, and *ibid*, 1872, pp 130 and 230

Act I. of 1872 has been declared in force in Upper Burma generally (except the Shan States) by the Upper Burma Laws Act (XX. of 1886), s 6; in the Hill District of Arakan, by the Arakan Hill District Laws Regulation (IX. of 1874), s. 3; in British Baluchistan, by the British Baluchistan Laws Regulation (I of 1890), s 3, in the Santhál Parganas, by the Santhál Parganas Settlement Regulation (III of 1872), as amended by the Santhál Parganas Laws Regulation (III. of 1886), s 6, in Angul and the Khondmals, by the Angul District Regulation (I of 1894), s 3, in the Kachin Hill-tracts, as regards Hill-tribes, by the Kachin Hill District Regulation (I. of 1895), s 3, and in the Chin Hills, as regards Hill-tribes, by the Chin Hills Regulation (V of 1896), s. 3; also, by notification under s 3 (*a*) of the Scheduled Districts Act (XIV. of 1874), in the following Scheduled Districts, namely: The Districts of Hazáribágh, Lohárdaga, and Manbhum, and Pargana Dhálbhum, and the Kolhán in the District of Singbhum (see Gazette of India, 1881, Pt I, p. 504); and in the North-Western Provinces Tarái (see *ibid*, 1876, Pt. I., p. 505). The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894.

So much of this Act as relates to the General Clauses Act (I. of 1868) was repealed by the General Clauses Act (X. of 1897)

† But see the Army Act (44 and 45 Vict., c 58), s. 127, which is as follows:—

"A Court-martial under this Act shall not, as respects the conduct of its proceedings, or the reception or rejection of evidence, or as respects any other matter or thing whatsoever be subject to the provisions of the Indian Evidence Act, 1872, or to any Act, law, or ordinance of any Legislature whatsoever, other than the Parliament of the United Kingdom."

Act I. of 1872 is (subject to such modifications as the Governor-General in Council may direct) applicable to all proceedings before Indian Marine Courts.—See the Indian Marine Act (XIV. of 1887), s 68.

‡ The Civil Procedure Code regulates matters to which affidavits are confined.—See Act XIV. of 1882, ss. 194 to 197, and s. 647; see also the Code of Criminal Procedure (Act V. of 1898), s. 539.

Ss. 2, 3. nor to proceedings before an arbitrator; and it shall come into force on the first day of September 1872.

Commencement of Act.

*Ruling.*

It may be that, as observed by Mr. Norton in his preface (Law of Evidence, 8th Edition), the framer of the Act over-estimated what had been done, when he claimed to have reproduced, within the compass of his 167 sections, the whole of Taylor's Work that was applicable to India, and there can be no doubt that cases must arise for which no positive solution can be found in the Act itself, and in such cases we shall probably be justified, and shall always be safe, in adopting English rules, in so far as they follow, or are in accord with, the general tenor of the Act. But in respect of matters expressly provided for in the Act, we must, so to say, start from the Act, and not deal with it as a mere modification of the Law of Evidence prevailing in England.—*Per* JACKSON, J, in EMPRESS *v.* ASHOOTOSH CHUCKERBUTTY, I. L. R., 4 Cal. 483.

Repeal of enactments.

**2.** On and from that day the following laws shall be repealed:—

(*1*) all rules of evidence not contained in any Statute, Act, or Regulation in force in any part of British India;

(*2*) all such rules, laws, and regulations as have acquired the force of law under the twenty-fifth section of "The Indian Councils Act, 1861,"* in so far as they relate to any matter herein provided for; and

(*3*) the enactments mentioned in the schedule hereto, to the extent specified in the third column of the said schedule.

But nothing herein contained shall be deemed to affect any provision of any Statute, Act, or Regulation in force in any part of British India, and not hereby expressly repealed.

Interpretation-clause.

**3.** In this Act, the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

"Court." "Court" includes all Judges† and Magistrates,‡ and all persons, except arbitrators, legally authorized to take evidence.

"Fact." "Fact" means and includes—

(*1*) anything, state of things, or relation of things, capable of being perceived by the senses;

(*2*) any mental condition of which any person is conscious.

*Illustrations.*

(*a.*) That there are certain objects arranged in a certain order in a certain place is a fact.

(*b.*) That a man heard or saw something is a fact.

(*c.*) That a man said certain words is a fact.

(*d.*) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was, at a specified time, conscious of a particular sensation, is a fact.

(*e.*) That a man has a certain reputation is a fact.

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* 24 and 25 Vict., c. 67.

† *Cf.* the Code of Civil Procedure (Act XIV. of 1882), s. 2, the Indian Penal Code (Act XLV. of 1860), s. 19, and "District Judge," the General Clauses Act (X. of 1897), s. 3 (*15*).

‡ *Cf.* the General Clauses Act (X. of 1897), s. 3 (*21*), and the Code of Criminal Procedure (Act V. of 1898), s. 3 (*2*).

S. 3.

"Relevant." One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

"Facts in issue." The expression "facts in issue" means and includes—

any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

*Explanation.*—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure,* any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.†

*Illustrations.*

A is accused of the murder of B.

At his trial the following facts may be in issue:—

that A caused B's death;

that A intended to cause B's death;

that A had received grave and sudden provocation from B;

that A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

"Document." "Document"‡ means any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

*Illustrations.*

A writing§ is a document:

Words printed, lithographed, or photographed, are documents:

A map or plan is a document:

An inscription on a metal plate or stone is a document:

A caricature is a document.

"Evidence." "Evidence" means and includes—

(*1*) all statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under enquiry:

such statements are called oral evidence;

(*2*) all documents produced for the inspection of the Court:

such documents are called documentary evidence.

"Proved." A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

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* See now the Code of Civil Procedure (Act XIV. of 1882).

† With reference to the Settlement of Issues, see the Code of Civil Procedure (Act XIV. of 1882), Ch. XI., ss. 146-151.

‡ *Cf.* s. 29 of the Indian Penal Code (Act XLV. of 1860) and s. 3 (*16*) of the General Clauses Act (X. of 1897).

§ *Cf.* definition of "written," s. 2, Act XIV. of 1882, and "writing," s. 3 (*58*), the General Clauses Act (X. of 1897).

See also "write," s. 4 (7) of the Inventions and Designs Act (V. of 1888).

Ss. 4, 5. A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

"Disproved."

A fact is said not to be proved when it is neither proved nor disproved.

"Not proved."

---

*Rulings.*

1. A Sub-Registrar is a public officer, his proceedings are judicial proceedings within the meaning of s. 228 of the Penal Code, and his Court is a Court within the meaning of that word in the Evidence Act In cases under s 228 of the Penal Code the Court in which the offence is committed is to try the offence, but the procedure is to be restricted by the provisions of ch. 32 of the Code. Where, in a case under s. 228, the Sub-Registrar, before whom the offence was committed, did not proceed under s 435 or 436, it was held that a Magistrate had no jurisdiction.—IN THE MATTER OF SARDHARE LALL. 22 W. R. 10; 13 B. L. R Ap. 10. [Kemp and Birch, JJ. April 28. 1874.]

2. A Sub-Registrar acting under s. 34 of the Registration Act, 1877, is not a "Court" within the meaning of s 195 of the Code of Criminal Procedure.—QUEEN-EMPRESS v. SUBBA, I. L. R., 11 Mad 3 [Turner, C.J., and Hutchins J Aug 22, 1884.]

3. A Sub-Registrar under the Registration Act (III of 1877) is not a Judge, and therefore not a 'Court' within the meaning of s. 195 of the Code of Criminal Procedure (Act X. of 1882). His sanction is therefore not necessary for a prosecution for forgery in respect of a forged document presented for registration in his office. The ruling in *In re Venkatachala* (I. L. R., 10 Mad 154) dissented from. The word 'forgery' is used as a general term in s. 463 of the Indian Penal Code (Act XLV. of 1860); and that section is referred to in a comprehensive sense in s. 195 of the Criminal Procedure Code (Act X. of 1882) so as to embrace all species of forgery, and thus includes a case falling under s. 467 of the Indian Penal Code. The definition of 'Court' given in the Evidence Act (I. of 1872) is framed only for the purposes of the Act itself and should not be extended beyond its legitimate scope. Distinction between *judicial* and an *administrative* inquiry pointed out.—QUEEN-EMPRESS v. TULJA I. L. R. 12 Bom. 36. [West and Birdwood, JJ July 14, 1887.]

4. A Registrar acting under Registration Act ss. 72-75 is a Court for the purposes of the Criminal Procedure Code, s. 195.—ATCHAYAT GANGIYA, I. L. R. 15 Mad. 138. [Collins C.J., and Muttusami Ayyar, Parker and Shephard, JJ Jan. 22, Oct. 13, 1891 Jan. 1892.]

**4.** Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

"May presume."

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

"Shall presume."

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

"Conclusive proof."

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## CHAPTER II.—OF THE RELEVANCY OF FACTS.

**5.** Evidence may be given, in any suit or proceeding, of the existence or non-existence of every fact in issue, and of such other facts as are hereinafter declared to be relevant, and of no others.

Evidence may be given of facts in issue and relevant facts.

S. 6.

*Explanation.*—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.*

*Illustrations.*

(*a.*) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue :—

A's beating B with the club ;

A's causing B's death by such beating ;

A's intention to cause B's death

(*b.*) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.*

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*Rulings.*

1. The statement of a witness for the defence, that a witness for the prosecution was at a particular place at a particular time, and consequently could not then have been at another place where the latter states he was, and saw the accused persons, is properly admissible in evidence, even though the witness for the prosecution may not himself have been cross-examined on the point [ss. 5, 11, 153, illus. (*c*), of Act I. of 1872]. Where such a statement, after being admitted, was withheld from the jury, the High Court ordered a new trial.—REG. v. SAKHARAM MUKUNDJI, 11 Bom. H. C. R. 160. West and Nanabhai Haridas, JJ. Sep. 2, 1874.]

2. The accused was charged with having received illegal gratifications from C. and Co. on three specific occasions in 1876. In 1876, 1877, and 1878, C. and Co. were doing business as commissariat contractors, and the accused was the manager of the commissariat office. *Held* that evidence of similar but unconnected instances of receiving illegal gratifications from C. and Co. in 1877 and 1878 was not admissible against him under ss. 5 to 13 of the Evidence Act. *Held per* Garth C.J. (Maclean, J., concurring): The evidence was not admissible under s. 14. *Per* Garth, C.J.: S. 14 applies to cases where a particular act is more or less criminal or culpable according to the state of mind or feeling of the person who does it, not to cases where the question of guilt or innocence depends upon actual facts, and not upon the state of a man's mind or feeling. *Per* Mitter, J.: If the receipt of the illegal gratifications mentioned in the charge be considered proved by other evidence, and if it were necessary to ascertain whether the accused received them as a motive for showing favour in the exercise of his official functions, the alleged transactions of 1877 and 1878 would be relevant under s. 14, but they would not be relevant to establish the fact of payments in 1876.—EMPRESS v. M. J. VYAPOORY MOODELIAR, I. L. R., 6 Cal. 655; 8 C. L. R. 197. Garth, C.J., and Mitter and Maclean, JJ. Jan. 22 and Feb. 9, 1881.]

**6.** Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place, or at different times and places.

Relevancy of facts forming part of same transaction.

*Illustrations*

(*a.*) A is accused of the murder of B by beating him. Whatever was said or done by A or B or by the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(*b.*) A is accused of waging war against the Queen by taking part in an armed insurrection in which property is destroyed, troops are attacked, and gaols are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

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* See now Act XIV. of 1882.

Ss. 7, 8.

(*c.*) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(*d.*) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

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*Ruling.*

The only evidence against a prisoner charged with having voluntarily caused grievous hurt was a statement made in the presence of the prisoner by the person injured to a third person, immediately after the commission of the offence. The prisoner did not, when the statement was made, deny that she had done the act complained of. *Held* that the evidence was admissible under s. 6 and s. 8, illus. (*g*), of the Evidence Act.—IN THE MATTER OF SURAT DHOBNI, I. L. R., 10 Cal. 302. [Mitter and Field, JJ. Jan. 24, 1884.]

Facts which are occasion, cause, or effect of facts in issue.

**7.** Facts which are the occasion, cause, or effect, immediate or otherwise, of relevant facts or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

*Illustrations.*

(*a.*) The question is, whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it, or mentioned the fact that he had it, to third persons, are relevant.

(*b.*) The question is, whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(*c.*) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Motive, preparation, and previous or subsequent conduct.

**8.** Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein, or relevant thereto, and the conduct of any person, an offence against whom is the subject of any proceeding, is relevant, if such conduct influences, or is influenced by, any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

*Explanation 1.*—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

*Explanation 2.*—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

*Illustrations.*

(*a*) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(*b*.) A sues B upon a bond for the payment of money. B denies the making of the bond: S. 8.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(*c*.) A is tried for the murder of B by poison:

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(*d*.) The question is, whether a certain document is the will of A:

The facts that, not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate, that he consulted vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

(*e*.) A is accused of a crime:

The facts that, either before, or at the time of, or after, the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence, or procured the absence, of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(*f*.) The question is, whether A robbed B:

The facts that, after B was robbed, C said in A's presence, "The police are coming to look for the man who robbed B," and that immediately afterwards A ran away, are relevant.

(*g*.) The question is, whether A owes B rupees 10,000:

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing, "I advise you not to trust A, for he owes B 10,000 rupees," and that A went away without making any answer, are relevant facts.

(*h*.) The question is, whether A committed a crime:

The facts that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

(*i*.) A is accused of a crime:

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(*j*.) The question is, whether A was ravished:

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished, is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (*1*), or

as corroborative evidence under section 157.

(*k*.) The question is, whether A was robbed:

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that he said he had been robbed, without making any complaint, is not relevant as conduct under this section, though it may be relevant—

as a dying declaration under section 32, clause (*1*), or

as corroborative evidence under section 157.

S. 8. *Rulings.*

1. A prisoner was indicted for theft and dishonestly receiving stolen property. The prosecutor, while travelling by train to Calcutta, discovered the loss of the property, and reported his loss to a railway police-inspector at the first station at which the train stopped after he became aware of the theft, prisoner not then being present. This statement was tendered in evidence, and admitted under s. 8, ill. (*h*), of the Evidence Act. Evidence was also tendered of a statement made by the prisoner to the constable who arrested him, to the effect that some of the property had been given him by his sister, and that he had bought the rest, and this was admitted; the Court remarking then that there was a distinction in the Evidence Act between "admission" and "confession."—QUEEN *v.* MACDONALD, 10 B. L. R. Ap. 2. [Phear, J. Dec. 3, 1872.]

2. The only evidence against a prisoner charged with having voluntarily caused grievous hurt was a statement made in the presence of the prisoner by the person injured to a third person immediately after the commission of the offence The prisoner did not, when the statement was made, deny that she had done the act complained of. *Held* that the evidence was admissible under s. 6 and s. 8, ill. (*g*), of the Evidence Act.—IN THE MATTER OF SURAT DHOBNI, I. L. R., 10 Cal. 302. [Mitter and Field, JJ. Jan. 24, 1884.]

3. The accused was charged, under s. 411 of the Indian Penal Code, with dishonestly receiving stolen property. In the course of the police-investigation the accused was asked by the police where the property was. He replied that he had kept it, and would show. He said he had buried the property in the fields. He then took the police to the spot where the property was concealed, and with his own hands disinterred the earthen pot in which the property was kept. He made a second statement when pointing out the spot to the effect that he had buried the property there. It was contended that those statements were inadmissible, having been made when the accused was in custody of the police. *Held*—(1) That the above statements were clearly in the nature of a confession, as they suggested the inference that the prisoner committed the crime, and, even if not intended by the accused as a confession of guilt, they were an admission of a criminating circumstance, and would form a very important part of the evidence against the accused, as showing that he had not come by the property honestly, and therefore properly within the rule of exclusion in regard to confessions made by a person in custody of the police. (2) That neither of the above statements was admissible in evidence under explanation 1 of s. 8 of the Evidence Act (I. of 1872) as evidence of the conduct of the accused. S. 8, so far as it admits a statement as included in the word "conduct," must be read in connection with ss. 25 and 26, and cannot admit a statement as evidence which would be shut out by those sections. (3) That the accused's statement, that he had buried the property in the fields, was admissible in evidence under s. 27 of the Evidence Act, as it set the police in motion, and led to the discovery of the property. A statement is equally admissible under s. 27, whether the statement is made in such detail as to enable the police to discover the property themselves, or whether it be of such a nature as to require the assistance of the accused in discovering the exact spot where the property is concealed.—QUEEN-EMPRESS *v.* NANA, I. L. R., 14 Bom 260. [Sargent, C.J., and Bayley, Scott, Jardine, and Parsons, JJ. Sep. 10, 1889.]

4 In a trial upon a charge of murder, it appeared that the deceased, shortly before her death, was questioned by various persons as to the circumstances in which the injuries had been inflicted on her, and that she was at that time unable to speak, but was conscious and able to make signs. Evidence was offered by the prosecution, and admitted by the Sessions Judge, to prove the questions put to the deceased, and the signs made by her in answer to such questions. *Held* by the Full Bench (Mahmood, J., dissenting) that the questions and the signs taken together might properly be regarded as "verbal statements" made by a person as to the cause of her death within the meaning of s. 32 of the Evidence Act, and were, therefore, admissible in evidence under that section. *Per* Straight, J., that statements by the witnesses as to their impressions of what the signs meant were inadmissible, and should be eliminated; but that, assuming that the questions put to the deceased were responded to by her in such a manner as to leave no doubt in the mind of the Court as to her meaning, it was not straining the construction to hold that the circumstances were covered by s 32. *Per* Mahmood, J., that the expression "verbal statements" in s. 32 should be confined to statements made by means of a word or words, and that the signs made by the deceased, not being verbal statements in this sense, were not admissible in evidence under that section. *Per* Petheram, C.J., that the signs could not be proved as "conduct" within the meaning of s. 8 of the Evidence Act, inasmuch as, taken alone, and without reference to the

questions leading to them, there was nothing to connect them with the cause of death, and so to make them relevant; while the questions could not be proved either under expl. 2 of s. 8, or under s. 9, inasmuch as the condition precedent to their admissibility under either of these provisions was the relevancy of the conduct which they were alleged to affect, or of the facts which they were intended to explain. The "conduct" made relevant by s. 8 is conduct which is directly and immediately influenced by a fact in issue or relevant fact; and it does not include actions resulting from some intermediate cause, such as questions or suggestions by other persons. *Per* Mahmood, J., that the word "conduct," as used in s. 8, does not mean only such conduct as is directly and immediately influenced by a fact in issue or relevant fact; that the signs made by deceased were the conduct of "a person, an offence against whom was the subject of any proceeding," and were relevant as such under s. 8; and that the questions put to her were admissible in evidence either under expl. 2 of the same section, or under s. 9, by way of an explanation of the meaning of the signs.—EMPRESS v. ABDULLAH, I. L. R., 7 All. 385. [Petheram, C.J., and Straight, Oldfield, Brodhurst, and Mahmood, JJ. Feb. 27, 1885.]

See also *Empress v. M. J. Vyapoory Moodeliar*, I. L. R., 6 Cal 655; 8 C. L. R. 197, under s. 5, ruling 2, p. 5.

**9.** Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which established the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant, in so far as they are necessary for that purpose.

*Facts necessary to explain or introduce relevant facts.*

*Illustrations.*

(*a*.) The question is, whether a given document is the will of A:

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(*b*.) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true:

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrevelant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(*c*.) A is accused of a crime:

The fact that, soon after the commission of the crime, A absconded from his house, is relevant, under section 8, as conduct subsequent to, and affected by, facts in issue.

The fact that, at the time when he left home, he had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(*d*.) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A, "I am leaving you because B has made me a better offer:" This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(*e*.) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says, as he delivers it, "A says you are to hide this:" B's statement is relevant as explanatory of a fact which is part of the transaction.

(*f*.) A is tried for a riot, and is proved to have marched at the head of a mob:

The cries of the mob are relevant as explanatory of the nature of the transaction.

Ss. 10, 11.

*Ruling.*

F was charged with having forged a document purporting to have been executed by *N*, and with falsely personating *N*. When the document was presented, a witness was called to prove the identity of the thumb-mark of the person, who alleged that he was the executant of the document, taken at the Registration Office with an admitted thumb-mark of the accused F. *Held* that, though a comparison of thumb-mark is admissible in law, it can be made only by the Court; no evidence as to the identity of thumb-marks can be given by a witness.—QUEEN-EMPRESS v FAKIR MAHOMED SHEIKH, 1 C. W. N. 33. [O'Kinealy and Banerjee, JJ. July 16, 1896.]

Things said or done by conspirator in reference to common design.

**10.** Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence, or an actionable wrong, any thing said, done, or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

*Illustration.*

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Queen

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Cabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy, or after he left it.

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*Ruling*

For a discussion on the subject of conspiracy, see QUEEN v. AMIRUDDIN (7 B. L. R. 63) and QUEEN v. AMIR KHAN (9 B. L. R. 36)

When facts not otherwise relevant become relevant.

**11.** Facts not otherwise relevant are relevant—

(*1*) if they are inconsistent with any fact in issue or relevant fact;

(*2*) if, by themselves or in connection with other facts, they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.*

*Illustrations.*

(*a*.) The question is, whether A committed a crime at Calcutta on a certain day;

The fact that, on that day, A was at Lahore, is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(*b*) The question is, whether A committed a crime

The circumstances are such that the crime must have been committed either by A, B, C, or D. Every fact which shows that the crime could have been committed by no one else, and that it was not committed by either B, C, or D, is relevant.

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*11 Bom. H. C. R. 90.

*Rulings.*

1. S. 11 of the Evidence Act should not be construed in its widest signification, but considered as limited in the effect by s. 34 of the Act. So construed, s. 11 renders inadmissible the evidence of one crime (not reduced to legal certainty by a conviction) to prove the existence of another unconnected crime, even though it be cognate. Accordingly, the possession by an accused person of a number of documents suspected to be forged is no evidence to prove that he has forged the particular document, with the forgery of which he is charged. *Per* West, J.—Where a person charges another with having forged a promissory note, and denies having ever executed any promissory note at all, the evidence that a note similar to the one alleged to be forged was, in fact, executed by that person, is not admissible, nor even would a judgment founded upon such note be so (ss. 43 and 153 of the Evidence Act).—REG. v. PARBHUDAS AMBARAM, 11 Bom. H. C. R. 90. [Melvill and West, JJ. Jan. 2, 1874.]

See REG. v SAKHARAM MUKUNDJI, 11 Bom. H. C. R. 166, ruling 1, under s. 5, p. 5.

2. F was charged with having forged a document purporting to have been executed by N, and with falsely personating N. When the document was presented, a witness was called to prove the identity of the thumb-mark of the person who alleged that he was the executant of the document, taken at the Registration Office with an admitted thumb-mark of the accused F. *Held* that, though a comparison of thumb-mark is admissible in law, it can be made only by the Court; no evidence as to the identity of thumb-marks can be given by a witness.—QUEEN-EMPRESS v. FAKIR MAHOMED SHEIKH, 1 C. W. N. 33. [O'Kinealy and Banerjee, JJ. July 16, 1896.]

In suits for damages, facts tending to enable Court to determine amount are relevant.

**12.** In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded is relevant.

Facts relevant when right or custom is in question.

**13.** Where the question is as to the existence of any right or custom, the following facts are relevant—

(*a*) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted, or denied, or which was inconsistent with its existence;

(*b*) particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted, or departed from.

*Illustration*

The question is whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father irreconcileable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

*Ruling.*

See EMPRESS v. M. J. VYAPOORY MOODELIAR, I. L. R., 6 Cal. 655; 8 C. L. R. 197, ruling 2, under s. 5, p. 5.

Facts showing existence of state of mind, or of body or bodily feeling.

**14.** Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will, or good-will, towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant when the existence of any such state of mind, or body, or bodily feeling, is in issue or relevant.

* *Explanation 1.*—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.

* *Explanation 2.*—But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the mean-

* These *explanations* have been substituted for the original by the Indian Evidence Act (1872) Amendment Act (III, of 1891), s. 1 (*f*).

S. 14. ing of this section, the previous conviction of such person shall also be a relevant fact.*

*Illustrations.*

(*a*.) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article:

The fact that, at the same time, he was in possession of many other stolen articles, is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

(*b*.)† A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it, he knew to be counterfeit:

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin, is relevant.

The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coin, knowing it to be counterfeit, is relevant.‡

(*c*.) A sues B for damage done by a dog of B's which B knew to be ferocious:

The facts that the dog had previously bitten X, Y, and Z, and that they had made complaints to B, are relevant.

(*d*.) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person is relevant as showing that A knew that the payee was a fictitious person

(*e*) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(*f*.) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss:

The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(*g*) A is sued by B for the price of work done by B upon a house of which A is owner by the order of C, a contractor.

A's defence is that B's contract was with C

The fact that A paid C for the work in question is relevant as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(*h*.) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found:

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not, in good faith, believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property, and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

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* See the Code of Criminal Procedure (Act V. of 1898), s. 31.

† The present ill. (*b*) has been substituted for the original by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 1 (*2*).

‡ Compare s. 311 of the Code of Criminal Procedure (Act V. of 1898).

S. 14.

(*i*.) A is charged with shooting at B with intent to kill him:
In order to show A's intent, the fact of A's having previously shot at B may be proved.

(*j*) A is charged with sending threatening letters to B:
Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(*k*.) The question is, whether A has been guilty of cruelty towards B, his wife:

Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts.

(*l*.) The question is, whether A's death was caused by poison:

Statements made by A during his illness as to his symptoms are relevant facts.

(*m*.) The question is, what was the state of A's health at the time when an assurance on his life was effected:

Statements made by A as to the state of his health at or near the time in question are relevant facts.

(*n*.) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured:

The fact that B's attention was drawn on other occasions to the defect of that particular carriage is relevant.

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant.

(*o*.) A is tried for the murder of B by intentionally shooting him dead.

The fact that A, on other occasions, shot at B, is relevant, as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them is irrelevant.

(*p*) A is tried for a crime

The fact that he said something indicating an intention to commit that particular crime is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

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*Rulings.*

1. A person cannot be said to be an habitual receiver of stolen goods who may receive the proceeds of a number of different robberies from a number of different thieves on the same day. In order to support a conviction under s. 413 of the Penal Code of being an habitual receiver of stolen property, it must be shown that the property was received on different occasions, and on different dates.—QUEEN EMPRESS *v.* BABURAM KANSARI, I L. R., 19 Cal. 190. [Norris and Beverley, JJ. Nov. 12, 1891.]

2. Where the accused was charged under s. 206 of the Penal Code with fraudulently transferring three properties to three different persons on a certain day in order to prevent their being seized in execution of a decree, and the prosecution tendered evidence of five other fraudulent transfers of property effected by the accused on the same day and apparently with the same object, *held* that this evidence was admissible, under ss. 14 and 15 of the Evidence Act, to prove either that all those transfers were parts of one entire transaction, or that the particular transfers which were specified in the charge were made with a fraudulent intent. *Reg* v. *Parbhudas* (11 Bom. H. C. Rep 90) distinguished.—QUEEN-EMPRESS *v.* VAJIRAM, I L. R., 16 Bom. 414. [Jardine and Telang, JJ. Feb. 1, 1892.]

See REG *v.* PARBHUDAS AMBARAM, 11 Bom. H. C. R 90, ruling under s. 11, p. 11.

See EMPRESS *v.* M. J. VYAPOORY MOODELIAR, I L. R. 6 Cal. 655; 8 C. L. R. 197, ruling 2, under s. 5, p. 5.

3. Having regard to the character of the offence under s. 400, Penal Code, previous commissions of dacoity are relevant under s. 14 of the Evidence Act. Convictions previous to the time specified in the charge or to the framing of the charge are relevant under explan. 2 of s. 14, but convictions subsequent to the time specified in the charge and to the framing of the charge are not so admissible. To support a conviction under s. 400 of the Penal Code, evidence must be given of the existence of a gang of persons, of their association, and association for the purpose of habitually committing

**Ss. 15, 16.** dacoity and robbery. *Queen-Empress* v. *Kartick Chunder Dass* (I. L. R., 14 Cal. 721) referred to —QUEEN-EMPRESS *v.* NABA KUMAR PATNAIK AND OTHERS, 1 C. W. N. 146. [Ghose and Gordon, JJ. Jan. 15, 1897.]

4 The character of the accused not being a fact in issue in the offence of belonging to a gang of persons associated for the purpose of habitually committing theft punishable under s. 401 of the Penal Code, evidence of bad character or reputation of the accused is inadmissible for the purpose of proving the commission of that offence. Where it was proved that certain persons were found together at some distance from their houses, that they were all intimately connected with one another and were in the habit of visiting *melas* together, that one of them was arrested in the act of picking a pocket, and that when they were arrested many of them gave false names and false addresses, *held*, they could not be convicted under s. 401 of the Penal Code, there being no proof that they belonged to a gang of persons associated for the purpose of habitually committing theft.—QUEEN-EMPRESS *v.* MANKURA PASI, I. L. R., 27 Cal. 139. [Prinsep and Hill, JJ. Aug. 7, 1899.]

Facts bearing on question whether act was accidental or intentional, or done with a particular knowledge or intention.

**15.** When there is a question whether an act was accidental or intentional, "or done with a particular knowledge or intention,"* the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

*Illustrations.*

(*a.*) A is accused of burning down his house in order to obtain money for which it is insured:

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance-office, are relevant, as tending to show that the fires were not accidental.

(*b.*) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that, on a particular occasion, he received less than he really did receive.

The question is, whether this false entry was accidental or intentional:

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(*c*) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D, and E, are relevant, as showing that the delivery to B was not accidental.

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*Ruling*

See QUEEN-EMPRESS *v.* VAJIRAM, I. L. R., 16 Bom. 414, ruling 2, under s. 14, p. 13.

Existence of course of business when relevant.

**16.** When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

*Illustrations.*

(*a*) The question is, whether a particular letter was despatched:

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

(*b.*) The question is, whether a particular letter reached A.

The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

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* In s. 15, the words quoted have been inserted by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 2.

ADMISSIONS. Ss. 17-21.

**17.** An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

Admission defined.

**18.** Statements made by a party to the proceeding, or by an agent to any such party whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

Admission—by party to proceeding or his agent;

Statements made by parties to suits, suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.

by suitor in representative character;

Statements made by—

(1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or

by party interested in subject matter;

(2) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,

by person from whom interest derived.

are admissions, if they are made during the continuance of the interest of the persons making the statements.

**19.** Statements made by persons whose position or liability it is necessary to prove as against any party to the suit are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position, or is subject to such liability.

Admissions by persons whose position must be proved as against party to suit.

*Illustration.*

A undertakes to collect rents for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B

A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

**20.** Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Admissions by persons expressly referred to by party to suit

*Illustration.*

The question is, whether a horse sold by A to B is sound.

A says to B, "Go and ask C; C knows all about it." C's statement is an admission.

**21.** Admissions are relevant, and may be proved as against the person who makes them, or his representative in interest;* but they cannot be proved by or on behalf of the person who makes them, or by his representative in interest, except in the following cases:—

Proof of admissions against persons making them, and by or on their behalf.

(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.

*14 Suth. W. R. 148.

S. 21. (2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

*Illustrations.*

(*a.*) The question between A and B is, whether a certain deed is or is not forged A affirms that it is genuine; B that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(*b.*) A, the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business, showing observations alleged to have been taken by him from day to day and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under section 32, clause (2).

(*c.*) A is accused of a crime committed by him at Calcutta. He produces a letter written by himself, and dated at Lahore on that day, and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section 32, clause (2).

(*d.*) A is accused of receiving stolen goods knowing them to be stolen

He offers to prove that he refused to sell them below their value

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(*e.*) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin, as he doubted whether it was counterfeit or not, and that that person did examine it, and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding illustration.

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*Rulings*

An accused, in custody at the time, made to a Magistrate in Calcutta, in the course of a police-investigation held in Calcutta, a statement confessing that he had murdered his father. The accused spoke and understood English, and the Magistrate questioned him in English, and was answered sometimes in English and sometimes in Bengali: whenever the answers were given in English, they were so taken down; when in Bengali, they were written down in English, and read over to the accused in that language, who accepted the English as being the meaning of that which he had stated, and signed the document in the presence of the Magistrate, who affixed the usual certificate thereto. In taking this confession, the Magistrate purported to have acted under ss. 164 and 364 of the Criminal Procedure Code. At the trial, subsequently to the admission of the confession in evidence under s. 80 of the Evidence Act, the Magistrate was called as witness, and deposed to the above facts, with reference to the language in which the confession was taken, and the mode in which it was recorded. *Held*, on a reference to a Full Bench as to whether the confession was inadmissible in evidence by reason of some of the answers having been given in Bengali, but recorded in English, that the provisions of s. 164 of the Code had no application to statements taken in the couse of a police-investigation made in the town of Calcutta, and that consequently ss 364 and 533 had no application. *Held*, nevertheless, that the document was properly admitted upon the evidence of the Magistrate under the provisions of s. 26 of the Evidence Act. *Semble.*—That the provisions of s. 164, as read with s. 364, would

not be complied with where answers made by an accused to a Magistrate in one language are taken down in another, unless it could be shown that it was impracticable to have taken down the answers in the language in which they were given; and further, that there would be grave doubt if such a defect could be cured by s. 533.—QUEEN-EMPRESS v. NILMADHUB MITTER I. L. R., 15 Cal. 595. [Petheram, C. J., and Wilson, Pigot, O'Kinealy, and Ghose, JJ. June 7 1888.]

2. When a Deputy Magistrate was deputed by the District Magistrate under s. 159 of the Code of Criminal Procedure (Act X. of 1882) to hold an investigation into a case of murder, and recorded the statements of the accused persons, *held* that the statements were rightly rejected as inadmissible. The rule laid down in s. 21 of the Evidence Act must be taken subject to the special provisions relating to confessions and statements of accused persons enacted in ss. 24, 25, and 26 of the Evidence Act, and ss. 164 and 364 of the Code of Criminal Procedure. Were it otherwise confessions and statements of accused persons not recorded in accordance with the requirements of ss. 164 and 364 of the Code might be proved as admissions by the accused and the wholesome provisions elaborately laid down in those two sections practically reduced to a nullity. Nor can s. 533 of the Code be construed to favour that view. Under that section when a confession or other statement of an accused person is duly made in accordance with the provisions of law but in the recording of it, those provisions have not been fully complied with, oral evidence is admissible to prove that the confession or other statement was duly made. The defect which the section is intended to cure is not one of substance, but of form only. *Queen-Empress* v. *Viran* I. L. R. 9 Mad 224) and *Jai Narayan Rai* v. *Queen-Empress* (I. L. R., 17 Cal 862) followed. The statements having been recorded by a Magistrate, not being a police-officer, in the course of an investigation under Ch. XIV. of the Code, the provisions of s. 164 must be observed. The statements contemplated by that section should be recorded in the manner prescribed for recording evidence, and confessions must be recorded in the manner provided by s 364. Ss. 355 to 363, which deal with the mode of recording evidence, can only relate to the statements of witnesses, while s 364 deals with all statements made by accused persons, whether amounting to confessions or not. The reason that s 164 provides only for the recording of that class of statements of an accused, which are, or purport to be, confessions, is that the section relates to a stage of the case, namely, the police-investigation stage, at which statements of the accused, which do not amount to confessions, and which are elicited by examination, are not intended to be obtained. Ss 209 and 342 of the Code are the only provisions authorizing the examination of the accused by the Magistrate. *Empress* v. *Maika* (I. L. R., 2 Bom. 643) and *Queen-Empress* v. *Viran* (I. L. R., 9 Mad 224) followed. It is improper to attempt to make an accused person, before any evidence is required, confess his guilt and admit facts that may go to incriminate him. *In re Chimbash Ghose* (1 C. L. R 436) and *Queen* v. *Virabhadra* (1 Mad H. C. R. 199) followed. If these statements are confessions they are clearly inadmissible under s. 164, as the appended certificate does not show they were voluntarily made, or that the Magistrate enquired whether they were so made: while the nature of the questions put indicates that they were not so made. And if they are statements other than confessions under s 364 they are equally inadmissible as having been made before the case reached the stage at which the examination of the accused is authorized.—QUEEN-EMPRESS v. BHAIRAB CHUNDER CHUCKERBUTTY, 2 C. W. N. 702. [Maclean and Banerji, JJ. Aug. 3, 1898.]

When oral admissions as to contents of documents are relevant.

**22.** Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained or unless the genuineness of a document produced is in question.

Admissions in civil cases when relevant.

**23.** In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

*Explanation.*—Nothing in this section shall be taken to exempt any barrister, pleader, attorney, or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

S. 24.

**24.** A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement,* threat, or promise, having reference to the charge against the accused person, proceeding from a person in authority,† and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that, by making it, he would gain any advantage, or avoid any evil of a temporal nature in reference to the proceedings against him.

**Confession caused by inducement, threat, or promise, when irrelevant in criminal proceeding.**

*Rulings.*

1. A Magistrate acts without due discretion when, as a prosecutor, he holds out promises to prisoners as an inducement to them to confess.—QUEEN *v.* RAMDHUN SING, 1 W. R. 24. [Kemp and Glover, JJ. Nov. 12, 1864.]

2. A prisoner, being arrested on a charge of dacoity, made a full confession; and a promise of pardon was made to him. He then made a statement confirming his previous confession. But, without fulfilling the condition under which pardon was tendered, he escaped from *hajat*, and had very lately been apprehended. It was held that the statement made under the promise of pardon is no evidence against the prisoner.—QUEEN *v.* RADHA NATH DOSADH, 8 W. R. 53. [Kemp, J. July 29, 1867.]

3. W, a travelling auditor in the service of the G. I. P. Railway Company, having discovered defalcations in the accounts of the prisoner, who was a booking clerk of the Company, went to him and told him "he had better pay the money than go to jail," and added that "it would be better for him to tell the truth," after which the prisoner was brought before the Traffic Manager, in whose presence he signed a receipt for, and admitted having received, a sum of Rs 826-8. The prisoner was subsequently put on his trial for criminal breach of trust as a servant in respect of this and of other sums. *Held* that the words used by W, the travelling auditor, constituted an inducement to the prisoner to confess, and that W was a person in authority within the meaning of s. 24 of the Evidence Act, and that the receipt signed by the prisoner was therefore not admissible in evidence on his trial. *Held* also (Bayley J., *dissentiente*) that the High Court, in considering a point of law reserved under cl. 80 of the Letters Patent, where it is of opinion that evidence has been improperly admitted as to one of two heads of charge of which a prisoner stands convicted (the two heads of charge relating to distinct and separate offences), and that the conviction on such head of charge is bad, has power to review the whole case, and, if it appears that the evidence improperly admitted could not reasonably be supposed to have influenced the jury as to the latter head of charge, ought not to set aside the conviction on that head of charge, but should proceed to pass judgment and sentence on it. *Semble.*—S. 167 of the Evidence Act applies to criminal trials by jury in the High Court.—REG. *v.* NAVROJI DADABHAI, 9 Bom. H. C. R. 358. Sargent, Offg. C.J., and Bayley and Green, JJ. Oct. 8, 1872.]

4. The prisoner was tried for wounding with intent to murder, and wounding with intent to do grievous bodily harm. The crime was committed on the high seas on a ship on which the prisoner was a seaman. The Standing Counsel having proved that the master of the ship had sailed from Calcutta and could not be found, tendered, under ss. 33 and 80 of the Evidence Act (I. of 1872) his deposition before the committing Magistrate. The deposition contained an admission alleged to have been made to the deponent by the prisoner when in custody. Phear, J., refused to allow this, as the admission was stated to have been made immediately after the prisoner with others had been threatened by the witness, to whom the statement was made, with a loaded rifle. It was immaterial that the threat was not for the purpose of extorting the confession, but in order to suppress an attempt at mutiny.—QUEEN *v.* HICKS, 10 B. L. R. Ap. 1. [Phear, J. Dec. 7, 1872.]

5. In the absence of evidence that a confession of an accused person has been induced by illegal pressure, it is not to be presumed that such confession was so induced. According to s. 24 of the Evidence Act, a confession is inadmissible only if the Court considers it to have been induced by illegal pressure. Where the Sessions Judge did not consider a confession to have been

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* For prohibition of such inducements, &c., see the Code of Criminal Procedure (Act V. of 1898), s. 343.

† 9 Bom. H. C. R. 358.

so induced, the High Court, upon a reference under s. 263 of the Code of Criminal Procedure, *held* it to have been properly admitted, and, finding it to be full and clear, and supported by reliable evidence, acted upon it by convicting the person who made it, notwithstanding his retraction of it in the Court of Session, and his being found not guilty by the jury.—REG. *v.* BALVANT PENDHARKAR, 11 Bom. H. C. R. 137. [Nanabhai Haridas and Larpent, JJ. July 9, 1874.]

6. Where more persons than one are jointly tried for the same offence, the confession made by one of them, if admissible in evidence at all, should be taken into consideration against all the accused, and not against the person alone who made it The circumstances which will render a confession objected to under ss. 24-26 of the Evidence Act (I. of 1872) admissible in evidence discussed — EMPRESS *v.* RAMA BIRAPA, I. L. R., 3 Bom 12. [West and Pinhey, JJ. Aug 1, 1878.]

7. Where a pardon was tendered by the Magistrate to a person supposed to have been concerned with other persons in offences none of which were exclusively triable by the Court of Session, and such person was examined as a witness in the case, *held* that, the tender of pardon to such person not being warranted by s. 347 of Act X of 1872, he could not legally be examined on oath, and his evidence was inadmissible *Held* also, that the statement made by such person was irrelevant and inadmissible as a confession with reference to s. 344 of Act X of 1872 and s. 24 of Act I of 1872 — EMPRESS *v.* ASHGAR ALI, I. L. R., 2 All. 260. [Pearson and Oldfield, JJ. April 10, 1879.]

8. A confession does not become irrelevant merely because the memorandum required by law to be attached thereon by the Magistrate taking it has not been written in the exact form prescribed.—EMPRESS *v.* BHAIRON SINGH, I. L. R., 3 All. 338. [Pearson, J. Nov. 27, 1880.]

9. The matter before a "panchayat" was whether M and K had murdered B, and thereby disqualified themselves from further intercourse with the rest of their brotherhood. M and B made certain statements before the panchayat, which it was afterwards sought to prove against them on their trial for the murder of B as confessions corroborating the evidence of an approver. The witnesses called to prove these "confessions" did not state specifically what was said by M and K before the panchayat One witness, a member of the panchayat, said: "M confessed, and K acquiesced." Another witness, also a member of the panchayat, said: "M and K were taxed with taking B's house, upon which both admitted having murdered him." The same witness also said: "The admissions were not taken down." It appeared that it was not till at the sixth meeting of the panchayat, and when M and K were threatened with excommunication from caste for life, that they made such statements. *Held* that, if the statements attributed to M and K had been actually made and assented to, and this fact had been duly proved, the provisions of s. 24 of Act I. of 1872 could not be pleaded against the admissibility on the ground that such statements had been caused by such threat, for the members of the panchayat were not in authority over M and K within the meaning of that section, nor was there any threat made having reference to any charge against them. The statements, however, could not be accepted as sufficient in themselves to corroborate the evidence of the approver, or to support the conviction of M and K for the murder of B. The statements were in general terms, and represented only the impression conveyed by what might have been said to the mind of the witnesses It was always essential that the Court should know, as nearly as possible, what were the words used by the supposed confessors, and what were the questions or matters in regard to which they were said It might have been that the words ascribed to M and K, taken with the questions put and the exact subject-matter of the inquiry did not amount to a confession of the guilt believed by the hearers to have been confessed.—EMPRESS *v.* MOHAN LAL, I. L. R., 4 All. 46. [Spankie and Tyrrell, JJ. May 25, 1881.]

10. A Deputy Magistrate, before taking down a statement from a person brought before him by the police, noted on the paper on which he was about to take down the statement the following words, which, after excluding the police-officers from his presence, he had verbally addressed to the accused: "After excluding from my presence the police-officers who brought him, I warned the accused that what he would say would go as evidence against him. so he had better tell the truth." *Held* that the use of such language was calculated to hold out an inducement to the prisoner to confess, and that such a confession was therefore inadmissible in evidence against him —QUEEN-EMPRESS *v.* UZEER, I. L. R., 10 Cal. 775. [McDonell and Field, JJ. May 16, 1884.]

11. Two persons, T and U, were charged with the murder of U's husband, and in the course of the police enquiry made certain statements to the police. They were then

S 25. sent up by the police to a Deputy Magistrate for enquiry. J made three statements on the 28th of February, the 1st of March, and the 9th of March 1894 respectively, two of which were confessions, the third being a withdrawal of such confessions. U also made two statements on the 2nd and 9th of March, the first of which was a confession, and the second a withdrawal thereof. On the 20th of April U was tendered a pardon, and was thereafter treated as an approver, in which capacity she gave evidence against J. J was then committed to the Court of Session to take his trial, U being sent up as an approver. In the Sessions Court U resiled from her deposition before the committing Magistrate, and was then and there treated as an accused person, and placed on her trial with the other accused, and the deposition aforesaid was put in as evidence. Both accused were convicted mainly on their confessions, J of murder, and U of abetment of murder. *Held* that the conviction of U was bad, the Court of Session having had no jurisdiction to try her, as she was never committed to that Court by any competent Magistrate. *Held* that the conviction of J was also bad—(1) because U's statement to the police was not admissible in evidence; (2) because her statements on the 2nd and 9th of March were not, under the circumstances, admissible in evidence, as she was not being legally tried jointly with him for the same offence; (3) that her deposition on the 24th of April was not admissible in evidence, because, apart from other reasons, J had no opportunity to cross-examine her; (4) because J's confession, under the circumstances, was not a free and voluntary admission of guilt. *Held*, on the whole case, that, independently of the aforesaid statements and confessions, there was not sufficient evidence to justify the conviction. *Queen-Empress* v. *Rama Tevan* (I. L. R., 15 Mad. 352) commented on.—QUEEN-EMPRESS *v.* JAGAT CHANDRA MALI, I. L. R., 22 Cal. 50. [Beverley and Banerjee, JJ. July 17, 1894.]

Confession to police-officer not to be proved.

**25.** No confession made to a police-officer* shall be proved as against a person accused of any offence.

*Rulings.*

1. The following extract from the First Report of the Indian Law Commissioners shows the reasons which prompted the Legislature in enacting ss. 25 and 26: "The police in the provinces of Bengal are armed with very extensive powers. They are prohibited from inquiring into cases of a petty nature; but complaints in cases of the more serious offences are usually laid before the police-daroga, who is authorized to examine the complainant, to issue process of arrest, to summon witnesses, to examine the accused, and to forward the case to the Magistrate, or submit a report of his proceedings, according as the evidence may, in his judgment, warrant the one or the other course. The evidence taken by the Parliamentary Committees on Indian Affairs during the sessions of 1852 and 1853, and other papers which have been brought to our notice, abundantly show that the powers of the police are often abused for purposes of extortion and oppression; and we have considered whether the powers now exercised by the police might not be greatly abridged. We have arrived at the conclusion that, considering the extensive jurisdiction of the Magistrate, the facilities which exist for the escape of parties concerned in serious crimes, and the necessity for the immediate adoption in many cases of the most prompt and energetic measures, it is requisite to arm the police with some such powers as they now possess; and we have accordingly adopted many of the provisions of the Bengal Code on this head. In one material point we propose a change in the duties of the police. By the existing law, the daroga or other police-officer presiding at an enquiry into a crime committed within his division is required, upon the apprehension of the accused, to question him fully regarding the whole of the circumstances of the case and the persons concerned in the commission of the crime, and, if any property may have been stolen or plundered, the person in possession of such property, or the place where it has been deposited. In the event of the accused making a free and voluntary confession, it is to be immediately written down. Then follow other provisions for preventing any species of compulsion or maltreatment with a view to extort a confession or procure information. But we are informed, and this information is corroborated by the evidence we have examined, that, in spite of this qualification as to the character of the confession, confessions are frequently ex-

* In s 25, as in force in Upper Burma, the words "who is not a Magistrate," shall be deemed to have been inserted after "police-officer" [see the Upper Burma Laws Act (XX. of 1886), s 7 (*1*) (*d*).] As to statement made to a police-officer investigating a case, see the Code of Criminal Procedure (Act V. of 1898), ss. 161 and 162.

S. 25.

torted or fabricated. A police-officer, on receiving intimation of the occurrence of a dacoity or other offence of a serious character, failing to discover the perpetrators of the offence, often endeavours to secure himself against any charge of supineness or neglect by getting up a case against parties whose circumstances or characters are such as are likely to obtain credit for an accusation of the kind against them. This is not unfrequently done by extorting or fabricating false confessions; and, when this step is once taken, there is, of course, impunity for the real offenders, and a great encouragement to crime. The daroga is henceforth committed to the direction he has given to the case; and it is his object to prevent a discovery of the truth and the apprehension of the guilty parties, who, as far as the police are concerned, are now perfectly safe. We are persuaded that any provisions to correct the exercise of this power by the police will be futile; and we accordingly propose to remedy the evil, as far as possible, by the adoption of a rule prohibiting any examination whatever of any accused party by the police, the result of which is to constitute a written document. This, of course, will not prevent a police officer from receiving any information which any one may voluntarily offer to him; but the police will not be permitted to put upon record any statement made by a party accused of an offence

2. A police-officer acts improperly and illegally in offering any inducement to an accused person to make any disclosure or confession. No part of his evidence as to the discovery of facts in consequence of such confession is legally admissible. Remarks to the effect that the prisoner was a person of wealth and influence, and had prevented truth from appearing, ought not, unless established in evidence, to find a place in a judgment.—QUEEN *v.* DHURUM DUTT OJHA, 8 W. R. 13. [Kemp and Glover, JJ. June 13, 1867.]

3. An admission obtained from a prisoner by persuasion and promises of immunity by the police ought not to be received in evidence, as being in direct contravention of s. 146, Code of Criminal Procedure. The deposition of the police-officer, moreover, should be taken before the admission can at all be used against the prisoner under s. 150, Code of Criminal Procedure. It must be proved that the prisoner received or retained plundered property, knowing it to be plundered property, before he can be convicted under s. 412 of the Penal Code.—*In re* BISHOO MANJEE, 9 W. R. 16. [Jackson and Mitter, JJ. Feb. 12, 1868.]

4. G D presented a Government promissory note at the Bank of Bengal, bearing a forged endorsement, and was arrested. A police-constable asked N if he knew G D. N replied that he knew him as a common man. The police-constable then asked N if he knew anything about the note. N replied that he did not. No threat or inducement was held out, nor was any caution administered to N. *Held* that the statement made by N in answer to the questions of the police-constable was admissible. N was afterwards brought before R, the Deputy Magistrate of Serampore, who told him, before any depositions were taken, that he (N) was charged with having received a stolen promissory note, and R asked him if he wished to say anything. N replying in the affirmative, R, without administering any caution to him, asked him how or where he had obtained the note, and other questions, the answers to which were taken down. N was again brought up before R, and was asked whether a promissory note then produced was one he had delivered to G D to take to the Bank. R told N that he was not bound to answer the question; but that, if he objected to answer, that would also be noted. R committed N to take his trial before the High Court. *Held* that on the trial the answers of N to the questions of R, whether R acted as a Justice of the Peace for Bengal, or as a Magistrate, were admissible.—QUEEN *v.* NABADWIP CHANDRA GOSWAMI, 15 W. R. 71n.; 1 B. L. R., O Cr., 15 [Peacock, C.J., and Norman and Markby, JJ. April 7, 8, 1868.]

5. The accused confessed to a police-constable, on being assured by him that nothing would happen to her, that she had killed her new-born child, and had buried it in the enclosure of her house. This statement led to the discovery of some bones of the head of an infant, a stone stained with blood, and a knife, with which stone and knife she said that she had killed her child. Before the committing Magistrate she made the same statement. In her trial before the Sessions Judge, she admitted the birth of the child. She stated that it would not cry, and that she buried it, not knowing whether it was alive or dead. She also stated that the police-constable had pressed and threatened her, and told her that, if she confessed the truth, nothing would happen to her. She denied having killed the child with the stone and sickle, and said that she had merely pressed it on the ground, and then buried it. There was no evidence to show that the child was born alive. *Held* that the confession before the Magistrate was irrelevant, and that the Court was not prepared to say that the confession made before the Sessions Judge was made after the impression caused by the promise of the police-constable had been fully removed; and that, looking at the fact that a promise of safety

S. 25. had been made, that the confession was, even if accepted, of a limited character, that there was nothing to show that the child was born alive, and, considering that, if the child was born dead, the accused might, under fear of exposure and disgrace, have wished to conceal the body, the accused must be acquitted of murder.—QUEEN *v.* MUSSUMAT LUCHOO, 5 N.-W. P. 86. [Spankie, J. April 5, 1873.]

6. The prisoner, on his arrest, made a statement in the nature of a confession, which was reduced into writing by one of the inspectors in whose custody the prisoner was, and subsequently signed and acknowledged by the prisoner in the presence of the Deputy Commissioner of Police at the police office, the Deputy Commissioner receiving and attesting the statement in his capacity of Magistrate and Justice of the Peace. At the trial of the prisoner at the Criminal Sessions of the High Court, this statement was tendered in evidence against him, and admitted by the Judge, who overruled an objection on behalf of the prisoner that, under s. 25 of the Evidence Act, it was inadmissible. On a case certified by the Advocate-General under cl 26 of the Letters Patent, *held* that the confession was, under s. 25 of the Evidence Act, not admissible in evidence *Per* Garth, C.J.: S. 26 of the Evidence Act is not to be read as qualifying the plain meaning of s. 25 In construing s. 25 the term "police-officer" is not to be read in a technical sense, but in its more comprehensive and popular meaning *Per Curiam:* S 167 of the Evidence Act applies as well to criminal as to civil cases *Per Garth, C.J. (Pontifex, J., doubting)*: The Court which under that section is to decide upon the sufficiency of the evidence to support the conviction is, in a case coming before the Court under s 26 of the Letters Patent, the Court of Review, and not the Court below. Such decision is to be come to on being informed, by the Judge's notes, and, if necessary, by the Judge himself, of the evidence adduced at the trial. *Per Curiam:* Apart from s 167, the Court has power, in a case under cl. 26 of the Letters Patent, to review the whole case on the merits, and affirm or quash the conviction.—REG. *v.* HURRIBOLE CHUNDER GHOSE, I. L. R., 1 Cal 207; 25 W. R 86. [Garth, C.J., and Pontifex, J. Mar. 21 and April 26, 1876.]

7. S. 25 of the Evidence Act does not preclude one accused person from proving a confession made to a police-officer by another accused person tried jointly with him Such a confession is not to be received or treated as evidence against the person making it, but simply as evidence on behalf of the other. The High Court, on a point of law as to the admissibility of rejected evidence, reserved under cl. 25 of the Letters Patent, 1865, and s. 101 of the High Court's Criminal Procedure Act, has power to review the whole case, and determine whether the admission of the rejected evidence would have affected the result of the trial; and a conviction should not be reversed unless the admission of the rejected evidence ought to have varied the result of the trial (Evidence Act, s. 167).—EMPRESS *v.* PITAMBER JINA, I. L. R., 2 Bom. 61. [Westropp, C.J., and Sargent and Atkinson, JJ. July 7, 1877.]

8. Under s. 25 of the Evidence Act (I. of 1872), a confession made to a police-officer is inadmissible in evidence except so far as is provided by s. 27. It is immaterial whether such police-officer be the officer investigating the case—the fact that such person is a police-officer invalidates a confession.—IN THE MATTER OF HIRAN MIYA *alias* ABDOOL WAHID, 1 C. L. R. 21. [Ainslie and McDonell, JJ. July 12, 1877.]

9. A statement made to a police-officer by an accused person while in the custody of the police, although intended to be made in self-exculpation, and not as a confession, may be nevertheless an admission of a criminating circumstance, and, if so, under ss. 25 and 26 of the Evidence Act (I. of 1872), it cannot be proved against the accused. After excluding evidence improperly admitted and put before the jury, the High Court found that the remaining evidence was not of such a character that a conviction might reasonably be based upon it. It accordingly reversed the conviction and sentence of the accused, declining to order his re-trial.—EMPRESS *v.* PANDHARINATH, I. L. R., 6 Bom. 34. [Melvill and Pinhey, JJ. Oct. 5, 1881.]

10. An admission made by an accused person to a police officer before arrest is admissible in evidence.—EMPRESS *v.* DABEE PERSHAD, I. L. R., 6 Cal. 530; 7 C. L. R. 451. [Prinsep, J. Jan. 29, 1881.]

11. P, accused of the murder of a girl, gave to a police-officer a knife, saying it was the weapon with which he had committed the murder. He also said that he had thrown down the girl's anklets at the scene of the murder, and would point them out. On the following day he accompanied the police-officer to the place where the girl's body had been found, and pointed out the anklets. *Held* that such statements, being confessions made to a police-officer, whereby no fact was discovered, could not be proved against P. Observations on the use of confessions made to police-officers. *Reg.* v. *Jora Hasji* (11 Bom. H. C. R. 242) and *Empress* v *Rama Birapa* (I. L. R., 3 Bom. 12) referred to.—EMPRESS *v.* PANCHAM, I.

L. R., 4 All. 198 [Stuart, C.J., and Straight, J. Jan. 10, 1882.]

12. A Village-Magistrate is not a police-officer, and therefore a confession made to a Village-Magistrate is not inadmissible in evidence by reason of s. 25 of the Evidence Act.—QUEEN-EMPRESS *v.* SAMA PAPI, I. L. R., 7 Mad. 287. [Turner, C.J. and Hutchins, J. Dec 17, 1883.]

13. Statements made to the police by accused persons as to the ownership of property, which is the subject-matter of the proceedings against them, although inadmissible as evidence against them at the trial for the offence with which they are charged, are admissible as evidence with regard to the ownership of the property in an inquiry held by the Magistrate under s 523 of the Criminal Procedure Code. An order, after trial, made by a Criminal Court for the restoration of property under s. 517 of the Criminal Procedure Code is conclusive as to the immediate right to possession. Where an order has to be made under s. 523, the Magistrate may, in the inquiry, proceed on such evidence as is available, and make an order for handing the property to the persons he thinks entitled. This does not conclude the right of any person. The real owner may proceed against the holder of the articles or for damages as for conversion. The High Court declined to interfere with an order made by a Magistrate under s. 523 of the Criminal Procedure Code for the delivery of property where the Magistrate made such order upon the mere evidence of a confession of the accused to the police that the property was stolen from the adjudged owner.—QUEEN-EMPRESS *v.* TRIBHOVAN MANEKCHAND, I. L. R, 9 Bom. 131. [West and Nanabhai Haridas, JJ. Oct. 10, 1884.]

14. A policeman, on being cross-examined, stated that, when he arrested the prisoner, the prisoner said to him, "Some Chinamen, *at the time of the occurrence, came out with hatchets*." In re-examination the policeman so far altered the words stated to have been used by the prisoner as to substitute, for the words *at the time of the occurrence*, the words *at the time*, and, on being asked if the prisoner had explained "what time," answered, "He said, 'At the time I struck the deceased.'" Counsel for the prisoner interposed, and objected to the evidence. The Standing Counsel contended that he was entitled to clear up a matter which had been left in doubt by the cross-examination *Held* that the evidence could not be given.—QUEEN-EMPRESS *v.* MATHEWS, I. L. R., 10 Cal. 1022. [Field, J. July 21, 1884.]

15. B and R, accused of offences under s. 414 of the Penal Code, gave information to the police which led to the discovery of the stolen property. This information was to the effect that the accused had stolen a cow and calf, and sold them to a particular person at a particular place. *Held* by the Full Bench (Mahmood, J., dissenting) that s 27 of the Evidence Act is a proviso, not only to s. 26, but also to s 25; and that, therefore, so much of the information given by the accused to the police-officer, whether amounting to a confession or not, as related distinctly to the facts thereby discovered, might be proved *Empress* v. *Kaurpala* (Weekly Notes, 1882, p. 225) dissented from. *Per* Mahmood, J., that s 27 of the Indian Evidence Act is not a proviso to s. 25, but only to s. 26; and that, therefore, the statements in question were wholly inadmissible in evidence. *Empress* v. *Pancham* (*I. L. R.*, 4 *All.* 198) referred to by Straight, Offg. C.J., and Mahmood, J. *Per* Straight, Offg. C J., that, where a statement is being detailed by a constable as having been made by an accused, in consequence of which he discovered a certain fact, the strictest precision should be enjoined on the witness, so that there may be no room for mistake or misunderstanding. Observations by Straight, Offg. C.J., as to the mode in which the testimony of a witness should be recorded in cases where two persons are being tried. Observations by Straight, Offg. C.J., and Duthoit, J., upon the nature of confessions by accused persons in India, and the circumstances in which such confessions are made.—EMPRESS *v.* BABU LAL, I. L. R., 6 All. 509. [Straight, Offg. C J., and Oldfield, Brodhurst, Mahmood, and Duthoit, JJ. June 30, 1884.]

16. The accused were charged with theft of some jwari. During the police-investigation they admitted before the police that they had taken the grain, and concealed it in a jar, which they forthwith produced. The identity of the jwari recovered with that stolen was not proved to the satisfaction of the trying Magistrate except by these admissions, and upon these admissions they were convicted of theft. *Held* that, as the prisoners themselves produced the jwari, it was by their own *act*, and not from any *information* given by them, that the discovery took place. S. 27 of the Evidence Act, therefore, did not apply; and, though the fact of the production of the property might be proved, the accompanying confession made to the police was inadmissible in evidence.—QUEEN-EMPRESS *v.* KAMALIA, I. L. R., 10 Bom. 595. [Birdwood and Jardine, JJ. Mar. 19, 1886.]

17. Instances of statements made by an accused person to a police-officer held to be admissible and inadmissible in evidence against such accused person. A medical

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man who has not seen a corpse which has been subjected to a *post-mortem* examination, and who is called to corroborate the opinion of the medical man who made such *post-mortem* examination, and who has stated what he considered was the cause of death, is in a position to give evidence of his opinion as an expert. The proper mode of eliciting such opinion is to put the signs observed at the *post-mortem* to the witness, and to ask what, in his opinion, was the cause of death on the hypothesis that those signs were really present and observed.—QUEEN-EMPRESS *v.* MEHER ALI MULLICK, I. L. R., 15 Cal. 589. [Wilson, J. May 11 1888.]

18. A statement made to a police-officer by an accused person while in the custody of the police, if it is an admission of a criminating circumstance, cannot be used in evidence under ss. 25 and 26 of the Indian Evidence Act (I. of 1872). The action of a spy and informer in suggesting and initiating a criminal offence is itself an offence, the act not being excused or justified by any exception in the Indian Penal Code, or by the doctrine which distinguishes the spy from the accomplice. But the act of a detective in supplying marked money for the detection of a crime cannot be treated as that of an accomplice. Distinction between a spy and an accomplice pointed out, *Rex* v. *Despard* (28 State Trials 489), *Reg.* v. *Mullins* (3 Cox C. C. 526), *Queen-Empress* v. *Mona* (I. L. R., 16 Bom. 661), referred to and followed.—QUEEN-EMPRESS *v.* JAVECHARAM, I. L. R., 19 Bom. 363. [Jardine and Ranade, JJ. April 2, 1894.]

See QUEEN *v.* MACDONALD, 10 B. L. R. Ap. 2, ruling 1, under s. 8, p. 8.

See EMPRESS *v* RAMA BIRAPA, I. L. R., 3 Bom. 12 ruling 6, under s. 24, p. 19.

See QUEEN-EMPRESS *v.* NANA, I. L. R., 14 Bom 200, ruling 3, under s. 8, p. 8.

The provisions of s. 25 of the Evidence Act (I. of 1872), which declare that no confession made to a police-officer shall be proved as against a person accused of any offence, applies to every police officer, and is not to be restricted to officers of the regular police-force.—QUEEN-EMPRESS *v* SALEMUDDIN SHEIK, I. L. R., 26 Cal. 569. [Prinsep and Stanley, JJ. March 14, 1899.]

Confession by accused while in custody of police not to be proved against him.

**26.** No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

*Explanation.**—In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or in Burma or elsewhere, unless such head man is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882.†

*Rulings.*

1. The accused confessed to a police-constable, on being assured by him that nothing would happen to her, that she had killed her new-born child, and had buried it in the enclosure of her house. This statement led to the discovery of some bones of the head of an infant, a stone stained with blood, and a knife, with which stone and knife she said that she had killed her child. Before the committing Magistrate she made the same statement. In her trial before the Sessions Judge she admitted the birth of the child. She stated that it did not cry and that she buried it, not knowing whether it was alive or dead. She also stated that the police-constable had pressed and threatened her, and told her that, if she confessed the truth, nothing would happen to her. She denied having killed the child with the stone and sickle, and said that she had merely pressed it on the ground, and then buried it. There was no evidence to show that the child was born alive. *Held* that the confession before the Magistrate was irrelevant, and that the Court was not prepared to say that the confession made before the Sessions Judge was made after the impression caused by the promise of the police-constable had been fully removed, and that, looking at the fact that a promise of safety had been made, that the confession was, even if accepted, of a limited character, that there was nothing to show that the child was born alive, and, considering that, if the child was born dead, the accused might, under fear of exposure and disgrace, have wished to conceal the body, the accused must be acquitted of murder.—QUEEN *v.* MUSSUMAT LUCHOO, 5 N.-W. P. 86. [Spankie, J. April 5, 1873.]

* This *explanation* has been added to s. 26 by the Indian Evidence Act (1872) Amendment Act (III of 1891), s. 3.

† Act X. of 1882. But see now the new Code of Criminal Procedure (Act V. of 1898).

2. When a fact is discovered in consequence of information received from one of several persons charged with an offence, and when others give like information, the fact should not be treated as discovered from the information of them all. It should be deposed that a particular fact has been discovered from the information of A B, and this will let in so much of the information as relates distinctly to the information therein discovered.—QUEEN *v.* RAM CHURN CHUNG, 24 W. R. 36. [Jackson and McDonell, JJ. Aug. 11, 1875.]

3. Money obtained upon forged money-orders is not "stolen property" within the definition thereof given in the Penal Code, s. 410. A statement which a man in the custody of the police volunteers to one in the position of the Magistrate can be used as evidence against the man who makes it —QUEEN *v.* MON MOHUN ROY, 24 W. R. 33 [*Birch and Lawford, JJ. July 26, 1875.*]

4. A statement made to a police-officer by an accused person while in the custody of the police, although intended to be made in self-exculpation, and not as a confession, may be nevertheless an admission of a criminating circumstance, and, if so, under ss. 25 and 26 of the Evidence Act (I. of 1872) it cannot be proved against the accused. After excluding evidence improperly admitted and put before the jury, the High Court found that the remaining evidence was not of such a character that a conviction might reasonably be based upon it. It accordingly reversed the conviction and sentence of the accused, declining to order his re-trial.—EMPRESS *v.* PANDHARINATH, I. L. R., 6 Bom. 34. [Melvill and Pinhey, JJ. Oct. 5, 1881.]

5. The word "confession," as used in the sections of the Evidence Act relating to confessions, must not be construed as including a mere inculpatory admission which falls short of being an admission of guilt.—QUEEN-EMPRESS *v.* JAGROP, I. L. R., 7 All. 646. [Straight, J. Mar. 21, 1885.]

6. Where a prisoner was convicted of murder on a confession, retracted at the trial, corroborated by depositions read under s. 288 of the Code of Criminal Procedure, and also retracted at the trial, *held* that the prisoner should not have been convicted on such evidence.—QUEEN EMPRESS *v.* BHARMAPPA, I. L. R., 12 Mad. 123. [Collins, C.J., and Parker, J. Oct. 24, 1888.]

7. A person under arrest on a charge of murder was taken in a tonga from the place where the alleged offence was committed to Godhra. A friend drove with her in the tonga, and a mounted policeman rode in front. In the course of the journey, the policeman left the tonga, and went to a neighbouring village to procure a fresh horse, the tonga meanwhile proceeding slowly along the road for some miles without any escort. In the absence of the policeman, the accused made a communication to her friend with reference to the alleged offence. At the trial it was proposed to ask what the prisoner had said, on the ground that she was not then in custody, and that s. 26 of the Evidence Act (I. of 1872) did not apply. *Held* that, notwithstanding the temporary absence of the policeman, the accused was still in custody, and the question must be disallowed.—EMPRESS *v.* LESTER, I. L. R., 20 Bom. 165. [*Jardine, C.J. July 1, 1895.*]

8. The custody of the keeper of a jail in a Native State, who is not a police-officer, does not become that of a police-officer merely because his subordinates, the warders of the jail, are members of the police-force of that State. In the absence of any suggestion of a close custody inside the jail, such as may possibly occur when an accused person is watched and guarded by a police-officer investigating an offence, s. 26 of the Indian Evidence Act (I. of 1872) does not exclude such a jailor from giving evidence of what the accused told him while in jail.—QUEEN-EMPRESS *v.* TATYA, I. L. R., 20 Bom. 795. [Jardine and Ranade, JJ. Sep. 4, 1895.]

See EMPRESS *v.* JAVECHARAM, I. L. R., 19 Bom. 363, ruling 18, under s. 25, p. 24.

See QUEEN *v.* DHURUM DUTT OJHA, 8 W. R. 13, ruling 2, under s. 25, at p. 21.

See EMPRESS *v.* RAMA BIRAPA, I. L. R., 3 Bom. 12, ruling 6, under s. 24, p. 19.

See REG *v.* HURRIBOLE CHUNDER GHOSE, I. L. R., 1 Cal. 207: 25 W. R. 86, ruling 6, under s. 25, p. 22.

See EMPRESS *v.* PANCHAM, I. L. R., 4 All. 198, ruling 11, under s. 25, p. 22.

See QUEEN-EMPRESS *v.* KAMALIA, I. L. R., 10 Bom. 595, ruling 16, under s. 25, p. 23.

See QUEEN-EMPRESS *v.* MEHER ALI MULLICK, I. L. R., 15 Cal. 589, ruling 17, under s. 25, p. 23.

See QUEEN-EMPRESS *v.* NILMADHUB MITTER, I. L. R., 15 Cal. 595, ruling under s. 21, p. 16.

See QUEEN-EMPRESS *v.* NANA, I. L. R., 14 Bom. 260, ruling 3 under s. 8, p. 8.

See EMPRESS *v.* BABU LAL, I. L. R., 6 All. 509, ruling 15, under s. 25, at p. 23.

The words "police-officer" and "Magistrate" in s. 26 of the Evidence Act (I. of 1872) include the police-officers and Magis-

S. 27. trates of Native States, as well as those of British India. A confession made by a prisoner while in police-custody to a First-class Magistrate of the Native State of Muli in Kathiawar, and duly recorded by such Magistrate in the manner prescribed by the Criminal Procedure Code (Act X. of 1882), is admissible in evidence. *Queen-Empress* v. *Sundar Singh* (I. L. R., 12 All. 595) followed.—QUEEN-EMPRESS v. NAGLA KALA, I. L. R., 22 Bom 235. [Strachey and Fulton, JJ. May 28, 1896.]

**27.** Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

How much of information received from accused may be proved.

*Rulings.*

1. To make the confession of a prisoner, not uttered in the presence of a Magistrate admissible in evidence, the fact discovered must be one which, of its own force, independently of the confession, would be admissible in evidence. Ss. 149 and 150 of the Criminal Procedure Code considered.—*In re* CHODA ATCHENAH, 3 Mad. H. C. R. 318 [Holloway and Ellis, JJ. Feb. 28, 1867.]

2. The accused made a confession to a police-inspector, part of which related to the concealment of certain jewels, and in consequence of the information so received, the jewels were discovered. *Held* that under s. 27 of the Evidence Act that part of the accused's confession which described his assault on the deceased, and her consequent death, and the way in which he became possessed of the jewels, related distinctly to the fact of the discovery of the ornaments, and might be proved against the accused.—QUEEN v. PAGARES SHAHA, 19 W. R. 51. [Kemp and Glover, JJ. April 1, 1873.]

3. Under s. 27 of the Evidence Act not every statement made by a person accused of any offence while in the custody of a police-officer, connected with the production or finding of property, is admissible. Those statements only which lead immediately to the discovery of property and in so far as they do lead to such discovery, are properly admissible. Whatever be the nature of the fact discovered, that fact must, in all cases be itself relevant to the case, and the connection between it and the statements made must have been such that that statement constituted the information through which the discovery was made, in order to render the statement admissible. Other statements connected with the one thus made evidence, and thus mediately, but not necessarily or directly, connected with the fact discovered, are not admissible. That a witness says that a plan was prepared in his presence is not a sufficient reason for admitting the plan in evidence, unless the witness also says that to his own knowledge the plan is correct.—REG. v. JORA HASJI, 11 Bom. H. C. R. 242. [West and Pinhey JJ. Dec. 3, 1874.]

4. No judicial officer dealing with the provisions of s. 27 of Act I. of 1872 should allow one word more to be deposed to by a police-officer detailing a statement made to him by an accused, in consequence of which he discovered a fact, than is absolutely necessary to show how the fact that was discovered is connected with the accused, so as, in itself, to be a relevant fact against him. S. 27 was not intended to let in a confession generally, but only such particular part of it as set the person to whom it was made in motion, and led to his ascertaining the fact or facts of which he gives evidence. *Empress of India* v. *Pancham* (I. L. R., 4 All. 198), *Queen-Empress* v. *Babu Lall* (I. L. R., 6 All. 509), discussed and commented on. Thus, when a police-officer deposed that an accused had told him that he had robbed K of Rs. 48, whereof he had spent Rs. 8, and has got Rs. 40, and that he had made over the Rs. 40 to him, *held* that the statement, that he robbed K of Rs. 48, was not necessarily preliminary to the surrender of Rs. 40, and was inadmissible in evidence against him. When also a police-officer deposed to the fact that the accused, who was charged with murder, had stated to him that he and K had stolen some hides from C, and upon such statement he had sent for C, and recorded his information, and when it appeared that C had already informed the police of the fact of the theft, though the witness was not aware of it, *held* that the statement was inadmissible upon the ground that it would be most dangerous to extend the provisions of s. 27, and allow a police-officer, who is investigating a case, to prove an information received from a person accused of an offence in the custody of a police-officer, on the ground that a material fact was thereby discovered by him, when that fact was already known to another police-officer. Although, under some circumstances, a charge of murder may be sustained, when the body of the person said to have been murdered is not forthcoming,

still, when that is the case, the strongest possible evidence as to the fact of the murder should be insisted on before an accused is convicted. When an accused charged with murder was alleged to have taken a boat from a place where it had been secured by its owner, and, after proceeding some distance in it, had abandoned it, and when he was charged with the theft of the boat, *held* that the charge was unsustainable, inasmuch as it was evidently not his intention to convert it to his own use, and make it permanently his own property, but merely to make use of it for the purpose of aiding him in escaping.—ADU SHIKDAR *v.* QUEEN-EMPRESS, I. L. R., 11 Cal. 635. [Mitter and Norris, JJ. May 29, 1885.]

5. The test of the admissibility, under s. 27 of the Evidence Act, of information received from an accused person in the custody of a police-officer, whether amounting to a confession or not, is, "Was the fact discovered by reason of the information and how much of the information was the immediate cause of the fact discovered, and as such a relevant fact?"—QUEEN-EMPRESS *v.* COOMER SAHIB, I. L. R., 12 Mad. 153. [Muttusami Ayyar and Parker, JJ. Sa. 28, 29 Nov. 23, 1889.]

See QUEEN *v.* DHURUM DUTT OJHA, 8 W. R. 13, ruling 2, under s. 25, at p. 21.

See QUEEN *v.* MUSSUMAT LUCHOO, 5 N.-W. P. 86, ruling 5, under s. 25, p. 21.

See QUEEN *v.* RAM CHURN CHUNG, 24 W. R. 36, ruling 2, under s. 26, p. 24.

See IN THE MATTER OF HIRAN MIYA *alias* ABDOOL WAHID, 1 C. L. R. 21, ruling 8, under s. 25, p. 22.

See EMPRESS *v.* RAMA BIRAPA, I. L. R., 3 Bom. 12, ruling 6, under s. 24, p. 19.

See EMPRESS *v.* PANCHAM, I. L. R., 4 All. 198 ruling 11, under s. 25, p. 22.

See QUEEN-EMPRESS *v.* KAMALIA, I. L. R., 10 Bom 595 ruling 16, under s. 25, p. 23.

See QUEEN-EMPRESS *v.* MEHER ALI MULLICK, I. L. R., 15 Cal. 589, ruling 17, under s. 25, p. 23.

See QUEEN-EMPRESS *v.* NANA, I. L. R., 14 Bom. 260, ruling 3, under s 8, p. 8.

See EMPRESS *v.* BABU LAL, I. L. R., 6 All. 509, ruling 15, under s. 25, p. 23.

*Confession made after removal of impression caused by inducement, threat, or promise, relevant.*

**28.** If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat, or promise, has, in the opinion of the Court, been fully removed, it is relevant.

*Confession otherwise relevant not to become irrelevant because of promise of secrecy, &c.*

**29.** If such a confession is otherwise relevant, it does not become irrelevant, merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

*Rulings*

1. The prisoner was convicted of murder by the Sessions Judge, and sentenced to death, subject to confirmation by the High Court. The High Court directed the Sessions Judge to take any evidence that might be forthcoming to prove the alleged confession before the Magistrate, which as recorded, was inadmissible, not being taken as prescribed in s. 205 of the Criminal Procedure Code; and to certify the result of such inquiry and evidence to that Court. Evidence of the confession having been taken by the Sessions Judge and certified as directed, the High Court confirmed the conviction and the sentence of death.—REG. *v.* GANU BAPU, 2 Bom. H. C. R. 398 [Arnould, Acting C.J., and Newton and Janardan, JJ. Aug. 18, 1864.]

2. A prisoner was convicted of murder by the Sessions Court, and sentenced to death subject to the confirmation of the High Court. The High Court returned the case to the Sessions Judge in order that he should take any evidence that might be forthcoming to prove the alleged confession before the Magistrate, which, as recorded, was inadmissible, because it was not taken as prescribed in s. 205 of the Criminal Procedure Code, the result of such inquiry and evidence to be certified to that Court. The case being resumed for final disposal, the High Court remarked: "There is no evidence of what the questions were; but the witness says the confession was given freely, and was not elicited by any threats or promises. The form of the question is im-

S. 29. material, even although it assumes the prisoner's guilt. The Court alter the conviction of murder to one of culpable homicide, and sentence the prisoner to be transported for ten years "—REG. v. PEVADI BIN BASSAPA, 2 Bom. H. C. R. 397. [Couch and Newton, JJ. Mar. 16, 1864.]

3. The prisoner was convicted by the Sessions Judge of the offence of accepting a gratification as police-patel under s. 161 of the Penal Code. The examination of the prisoner before the Magistrate was not taken down in the form of question and answer, as required by s. 205 of the Criminal Procedure Code *Per Curiam:* 'The examination under s. 205, to be admissible as evidence under s. 366, must be taken in the form of question and answer, and certified as required in s. 205. But if it be not taken, as in the present case, the Court can order the confession to be proved by the evidence of the writer of the examination or other person who was present In the case, however, the evidence is sufficient without the inadmissible examination, and, under ss 426 and 429, the admission of the examination as evidence does not invalidate the trial and conviction."—REG v VITHOJI VALAD ABBA, 2 Bom H. C R 398. [Couch and Newton, JJ. Mar. 16. 1864.]

4. An admission of crime, when fairly made after due warning, is not admissible, simply because, at the time it was made, no formal accusation had been made against the party making it.—QUEEN v. RAM CHURN CHAMER 4 W. R. 10. [Kemp and Seton-Karr, JJ. Sep. 12, 1865.]

5. The admission of prisoners in their own statements before the Magistrate ought to be given in evidence at the trial. A Sessions Judge's note of the evidence should be sent up in a legible form.—QUEEN v. BHUGWAN DOSADH, 4 W. R 18. [Glover, J. Oct. 24, 1865.]

6. The whole, and not part, of a prisoner's confession must be taken in order to his conviction.—*QUEEN v. CHOKOO KHAN*, 5 W. R. 70. [Norman and Campbell, JJ. April 16, 1866.]

7. The Magistrate in his grounds of commitment, and the Sessions Judge in his conviction, should specifically note with exactness and precision the proof against each particular prisoner, and the manner in which it is supported. To give weight to confessions of prisoners recorded under s. 149, Code of Criminal Procedure, there should be a judicial record of the special circumstances under which such confessions were received by the Magistrate, showing in whose custody the prisoners were, and how far they were quite free agents. In a preliminary inquiry before a Magistrate, the evidence should be sent in as found, and not kept by the police till they have made it all complete.—QUEEN v. KODAI KAHAR, 5 W. R. 6 [Norman and Campbell JJ. Jan. 15, 1866.]

8. A prisoner may be convicted on his own uncorroborated confession.—QUEEN v. RUNJEET SENTAL, 6 W. R 73. [Loch, J. Sep. 10, 1866.]

9 The confession of a prisoner before a Magistrate, though retracted before the Judge, is admissible in evidence against the prisoner, provided the Judge be satisfied that it was voluntarily made —QUEEN v. SREEMUTTY MONGOLA 6 W. R. 81. [Kemp, J. Oct. 5, 1866.]

10 An admission by A and B that the crime charged against them was committed by C and D, and that whatever share they had in it was under compulsion, is not a confession on which any person ought to be convicted. Previous statements of witnesses on oath are not available as evidence in a subsequent trial.—QUEEN v. KRISTO MUNDUL, 7 W. R. 8. [Kemp and Markby, JJ. Jan 7, 1867.]

11. Where a wife died from a chance-kick to the spleen inflicted by her husband on provocation given by the wife, the husband not knowing that the spleen was diseased, and showing by the blow itself, and by his conduct immediately afterwards, that he had no intention or knowledge that the act was likely to cause hurt endangering human life *held* that the husband was guilty of an offence under ss 319 and 321 of the Penal Code and not of an offence under ss. 320 and 322 An admission by the husband in the presence of several witnesses that he had killed his wife, and that she died after receiving the kick, was held to be direct evidence against him.—QUEEN v BYSAGOO NOSHYO, 8 W. R 29 [Seton-Karr and Hobhouse JJ June 29, 1867.]

12. A prisoner's confession must be taken in its entirety. Where a prisoner confessed that he did not suspect his wife's fidelity; that he left home on business; that on his return he saw what convinced him of his wife's infidelity; and that, maddened at the sight, he killed both her and her paramour, *held* that he was guilty of culpable homicide not amounting to murder, and that the case was one in which he ought to be treated with lenity.—QUEEN v. SHEIKH BOODHOO, 8 W. R. 38. [Kemp and Glover, JJ. July 9, 1867.]

13. A confession before the Magistrate, though afterwards retracted before the Sessions Court, is evidence against the party making it under s. 366 of the Code of Criminal Procedure (Act XXV. of 1861).—

QUEEN v. MUSSAMUT JEMA, 8 W. R. 40. [Kemp and Glover, JJ. July 16, 1867.]

14. A voluntary and genuine confession is legal and sufficient proof of guilt.—QUEEN v. JHURREE, 7 W. R. 41. [Seton-Karr, J. Mar. 11, 1867.]

15. The confessions of a prisoner in one case in which he was convicted cannot be used against him in another case, unless they are deposed to on oath either by the person who took them down, or by some one else who heard them.—MUNGER BHOOYAN, REVISION OF PROCEEDINGS IN THE CASE OF, 10 W. R. 56 [Phear and Hobhouse, JJ. Nov. 24, 1868.]

16. The properly-attested confession of a prisoner before a Magistrate is sufficient for his conviction without corroborative evidence, and notwithstanding a subsequent denial before the Sessions Court.—QUEEN v. BHUTTUN RUJWUN, 12 W. R. 49. [Glover and Mitter, JJ. Aug. 21, 1869.]

17. S. 109 of the Code of Criminal Procedure refers to cases where the confession of a prisoner has been made to the Magistrate conducting the investigation, and not to the police. It is only when properly made to the Magistrate that the confession can be used as evidence against the prisoner. The mere standing by of the Magistrate when the confession is being made to the police is not sufficient.—QUEEN v. DOMUN KAHAR, 12 W. R. 82. [Kemp and Glover, JJ. Dec. 21, 1869.]

18. A confession made to a Joint-Magistrate of a district in charge of the Sudder Sub-Division is receivable in evidence although the Joint Magistrate may not have been specially empowered under Act VIII of 1869 to receive the confession of prisoners. A confession made to a private individual may be evidence against the prisoner if proved by the person before whom the confession was made.—QUEEN v. GOPEE NATH KOLLU, 13 W. R. 69. [Jackson and Glover, JJ. May 7, 1870.]

19. It is not necessary for a Sessions Judge to read out to prisoners confessions made by them before a Magistrate, and ask them if they have any objection to the reception of these confessions. The examination of prisoners before a Magistrate is to be received in evidence, and the attestation of the Magistrate is *prima-facie* proof of the circumstances.—QUEEN v. MISSER SHEIKH, 14 W. R. 9. [Jackson and Glover, JJ. June 30, 1870.]

20. The words, "a Magistrate," in s. 149 of the Code of Criminal Procedure, mean "any Magistrate," and not merely "the Magistrate having jurisdiction." The practice of taking prisoners before Magistrates not having jurisdiction in the case, for the purpose of getting a confession recorded, is not generally desirable, but such a confession is legally admissible in evidence when duly proved.—REG. v. VAHALA JETHA, 7 Bom. H. C. R. 56. [Gibbs and Melvill, JJ. June 30, 1870.]

21. A Sessions Judge, after a prisoner upon his trial has pleaded what in effect amounts to a plea of not guilty is not justified in convicting the prisoner solely upon a confession made before the committing Magistrate.—QUEEN v. HURSOOKH, 2 N.-W. P. 479. [Spankie, J. Dec. 19, 1870.]

22. Although the averment on the record of a Magistrate by whom a prisoner is tried, that the accused, before making a confession, was warned that it was optional with him to answer the questions put to him or not, is on appeal conclusive as to the fact of such a warning having been given; it is not conclusive to show that such a confession has not been made under the influence of fear engendered by previous maltreatment, or is not otherwise valueless. Allegations made in a regular and proper manner before a Sessions Court on appeal, that a confession made by the accused before the Magistrate who tried the case was made under such circumstances as to preclude its admissibility in or diminish its value as evidence, should receive due attention, and be inquired into. A Sessions Court refusing to make such inquiry commits a grave error in law and procedure. Upon an inquiry which the High Court directed the Sessions Judge to make into such an allegation the prisoners were ordered to be and were solemnly affirmed, and the prosecution neither objected to the form of the order nor to the affirmation of the prisoners, and moreover cross-examined them, but objected to their evidence being used upon the return of the inquiry. It was held that the objection, though possibly good if taken in time, was too late, and that the evidence of the prisoners might be used whether the order directing them to be affirmed was correct or otherwise. Where, during such an inquiry, the Sessions Judge accorded his sanction to the prosecution for perjury of some of the witnesses who deposed on behalf of the prisoners, the High Court considered such a proceeding improper, and eminently calculated to defeat the object of the inquiry. *Semble* (*per* Lloyd and Kemball, JJ.)—A person cannot be convicted, under s. 201 of the Penal Code, of causing evidence of the commission of an offence by himself to disappear, nor can he be convicted of the abetment of such an act. Question as to the extent of the privilege of speech accorded to counsel and advocates considered. Important state-

S 29. ments made in verified petitions to the High Court, if untrue, should be contradicted on affidavit. Appointment of the Magistrate, who, in the first instance, had tried and convicted the accused, to be Crown Prosecutor to conduct an inquiry subsequently directed in the same case, censured as being unprecedented and objectionable. A public prosecutor should be without a personal interest in the cases which he conducts Prisoners should be allowed to have free converse with their vakils out of the hearing of the police officers in charge of such prisoners. It is undesirable that Magistrates whose decisions are under appeal, or who have been engaged in promoting the prosecution, or police-officers concerned in a case, should sit on the bench beside, or converse privately in Court with, the Judge who is engaged in trying prisoner's appeal. If the Appellate Judge wishes to ascertain any facts relating to the case from the Magistrate who convicted the accused, he should examine the Magistrate upon oath or solemn affirmation, in the same manner as an ordinary witness.—REG v. KASHINATH DINKAR, 8 Bom. H C R 126 [Westropp, C.J., and Lloyd. Melvill, Green, and Kemball, JJ. April 12, 1871.]

23 Points out the importance of properly recording and attesting the confessions of prisoners under s. 205 of the Code of Criminal Procedure.—QUEEN v. BHIKAREE, 15 W. R. 63 [Glover, J. April 29, 1871.]

24. A detailed confession made by an accused before a Magistrate, but retracted on the examination being read over to him in conformity with s. 205 of the Code of Criminal Procedure, does not amount to a confession, although the plea for retracting the confession viz, ill-treatment of the accused by the police, may be inquired into and found to be untrue—REG v. GARBAD BECHAR, 9 Bom. H C. R 344 [Lloyd and Kemball, JJ. Aug. 22, 1872.]

25. The words actually used by an accused, who is said to have confessed, ought to be ascertained. The Court should not accept merely the conclusions at which the witnesses deposing to a confession themselves arrived, from the answers which the accused gave to questions put by them. Where an accused makes two distinct statements—the one amounting to a confession of guilt, the other repudiating guilt—if the one statement is taken against the accused, the other also must be taken, for what it is worth, in his favour. The Court ought to weigh well the relative credibility of the two statements before it accepts the one in preference to the other. Documents which were in the record sent up by the Magistrate but which were not put in evidence before the Sessions Judge, were looked at, because they told in favour of the prisoner.—QUEEN v. SOOBJAN, 10 B. L. R. 332. [Phear and Ainslie, JJ. Jan. 14, 1873.]

26. The direction of s. 346 of the Code of Criminal Procedure, enjoining that an accused person shall sign the record of his confession, is not satisfied by the following: "Signature of A B (the accused); the handwriting of C D." Where the conviction of a person was based upon a confession thus subscribed, the High Court reversed it, and *held* that the Sessions Judge was bound to prevent the production of such a confession.—REG. v. DAYA ANAND, 11 Bom. H C. R. 44 [West and Nanabhai Haridas, JJ Mar. 12 1874.]

27 S 122 of the Code of Criminal Procedure, which requires a Magistrate to certify on a confession his belief that it was voluntarily made, does not apply to the case of a confession taken by a Magistrate, who is actually investigating the case, and examining the witnesses preparatory to commitment, but to a case where some other Magistrate takes a confession, and forwards it to the Magistrate by whom the case is inquired into or tried—QUEEN v JETOO, 23 W. R. 16 [Phear and Morris, JJ. Jan. 7, 1875.]

28. A confession not recorded according to the provisions of Act X. of 1872, s. 346, is inadmissible as evidence. — QUEEN v. KALA CHAND PAL, 24 W. R. 29. [Birch and Lawford, JJ July 28, 1875.]

29 The ordinary rule of taking confessions as a whole, and giving the accused (in the absence of other evidence against him) the benefit of any circumstance that may appear in his favour therefrom, cannot apply to confessions which are diametrically opposed to each other, but only where the more favourable view is not absolutely inconsistent with the general tenor of the confession—QUEEN v. NITYO GOPAL DASS BYRAGEE, 24 W R. 80. [Glover and Mitter, JJ Dec 21, 1875.]

30. Where a person, accused of murder, acknowledged having struck his victim, but repudiated the intention to murder, and the Sessions Judge accepted this acknowledgment as a plea of guilty, and omitted to record any further evidence, *held* that the Judge was bound to accept the statement of the accused as a whole, if it was taken as a confession at all Conviction for murder accordingly set aside, and new trial ordered. —QUEEN v SONADOLLAH, 25 W. R. 23. [Macpherson and Morris, JJ. Mar. 14, 1876.]

31 A confession recorded under s 122 of the Criminal Procedure Code, to be admissible in evidence, must not only bear a me-

morandum that the Magistrate believed it to have been voluntarily made, but also a certificate, under s. 346 of the Code, that it was taken in the Magistrate's presence and hearing, and contains accurately the whole of the statement made by the accused person. No oral evidence can be received to prove the fact of the confession, if the confession itself be inadmissible *Reg. v. Bai Ratan* (10 Bom. H. C. R. 166) followed.—REG. v. SHIVYA, I L. R., 1 Bom. 219 [Melvill and West, JJ. April 5, 1876.] Dissented from in *Empress v. Ramanjiyya, infra*, ruling 34.

32. Where the only evidence in a Sessions trial was confessions made to a Magistrate, but subsequently retracted, and it was established that the police misconducted themselves in the search of the houses of the prisoners who confessed, and of others under trial and produced evidence which was rejected as false, it was *held* that the prisoners could not safely be convicted on their own statements without any corroboration.—IN THE MATTER OF SOFIRUDDEEN, 2 C. L R. 132. [Markby and Prinsep, JJ. April 28 1878.]

33 The attestation required by s 346 of the Criminal Procedure Code is unnecessary when a confession is made in Court to the officer trying the case at the time of trial — IN THE MATTER OF CHUMMAN SHAH, I L R., 3 Cal 756, 2 C L R 317. [Markby and Prinsep, JJ April 30, 1878.]

34 Where a Magistrate, in taking the confession of a prisoner under s 122 of the Criminal Procedure Code, omits to take it in writing with the formalities prescribed by s. 346 of that Code, such confession is not absolutely inadmissible in evidence. Evidence may be taken to show that the prisoner duly made the statement recorded *Reg. v Shivya* (I L. R., 1 Bom 219) dissented from A Village-Munsif in the Madras Presidency is a "Magistrate" within the meaning of s 26 of the Evidence Act, 1872 The word "include" in cl 13 and other clauses of s 1 of Act I. of 1868 is intended to be enumerative, not exhaustive. —EMPRESS v RAMANJIYYA, I. L. R., 2 Mad 5. [Innes and Forbes, JJ Sep 18, 1878.]

35. When the confession of a prisoner under s 122 of the Criminal Procedure Code was not taken in the manner provided by s. 346, and was, therefore, defective, *held* that the evidence of the recording officer, that such confession was actually made, was inadmissible to remedy the defect. — *In re* EMPRESS v MANNOO TAMOOLEE, I. L. R., 4 Cal. 696, 4 C. L. R. 137. [Morris and White, JJ. Feb 19, 1879.]

36. S. 122 of the Criminal Procedure Code does not apply to a confession recorded by a Magistrate acting under ch. 15 or ch. 17, but to a confession made by a Magistrate other than the Magistrate by whom the case has to be inquired into or tried, and to a confession made during, or before the commencement of, an investigation by the police —IN THE MATTER OF BEHARI HADJI, 5 C. L. R. 238. [Wilson and Tottenham, JJ. Oct. 11, 1879.]

37. A defect in a confession taken under s. 122 of the Code of Criminal Procedure cannot be remedied, as in the case of an examination of a prisoner under s. 346, by evidence taken at the Sessions.—EMPRESS v. HARI KRISTO BISWAS, 5 C. L. R. 209. [Wilson and Tottenham, JJ. Oct. 31, 1879.]

38. A confession made by the accused person before a Magistrate who has jurisdiction to deal with the matter to which it relates may be made at the commencement of a trial or enquiry under ch. 15 of the Criminal Procedure Code, and be treated as a confession under s. 346, whether or not the case be still under the investigation of the police *Per Curiam* —The object of s. 122 of the Code of Criminal Procedure is to enable any Magistrate, other than the Magistrate by whom the case is to be tried or enquired into, to record a confession promptly. *In the Matter of Behari Hadji* (5 C. L R 238) and *Reg. v. Shivya* (I. L. R., 1 Bom 219) discussed —KRISHNO MONEE v. EMPRESS, 6 C L R. 289. [Morris and Prinsep, JJ. Feb. 5 1880.]

39. A confession recorded by a Magistrate who afterwards conducts the enquiry preliminary to committal, and has jurisdiction to do so, is to be treated as an examination under s. 193 of the Criminal Procedure Code, and not as a confession recorded under s. 122, notwithstanding that the prisoner may have been brought before the Magistrate before the conclusion of the police-investigation. To such confession, consequently, the provisions of the last paragraph of s 346 apply. S. 122 of the Criminal Procedure Code contemplates and provides for cases in which confessions are recorded by a Magistrate other than the Magistrate by whom the case is enquired into or tried.—EMPRESS v. ANUNTRAM SINGH, I. L. R., 5 Cal. 954; 6 C. L. R 97. [Garth, C.J., and Jackson, Pontifex, Morris, and Mitter, JJ April 26, 1880.]

40 The confession of an accused person was recorded in a simple narrative form, instead of in the shape of question and answer, as required by the Code of Criminal Procedure, s. 346. There was nothing in the character of the confession, or in the circumstances of the case, to lead to the inference that the accused had been pre-

S. 30. judiced by the error. *Held* that the error did not affect the admissibility of the statement in evidence.—*In re* MUNSHI SHEIKH; EMPRESS *v.* MUNSHI SHEIKH, I. L. R., 8 Cal. 616; TITU MAYA *v.* REG., I. L. R., 8 Cal. 618n. [Cunningham and Tottenham, JJ. Mar. 15, 1882.]

41. On a certain day a confession by an accused person was recorded by a Magistrate, and on the next day the same Magistrate, having jurisdiction to do so, examined the witnesses for the prosecution, and eventually committed the accused. *Held*, following *Empress v. Anuntram Singh* (I. L. R., 5 Cal. 954; 6 C. L. R. 97), that such confession, having been made to a Magistrate competent to hold, and who actually then was holding, an enquiry preliminary to committal, must be regarded as falling within s. 193 of Act X. of 1872, or s. 342 of Act X. of 1882, and as such governed by the reservations contained in s. 346 of the former Act, or s. 364 of the latter. Observations on ss. 346 and 364 of Act X. of 1882 (Criminal Procedure Code). —EMPRESS *v.* YAKUB KHAN, I. L. R., 5 All. 253. [Stuart, C.J., and Straight, J. Jan. 13, 1883.]

**30.** When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.*

Consideration of proved confession affecting person making it and others jointly under trial for same offence.

† *Explanation.*—"Offence," as used in this section, includes the abetment of, or attempt to commit, the offence.‡

*Illustrations.*

(*a.*) A and B are jointly tried for the murder of C. It is proved that A said, 'B and I murdered C.' The Court may consider the effect of this confession as against B.

(*b.*) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said, 'A and I murdered C.'

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

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*Rulings*

1. The confession of an accused person is only evidence against himself.—QUEEN *v.* KALLY CHURN LOHARA, 6 W. R. 84. [Loch, J. Nov. 20, 1866.]

2. The admission of an accused cannot be taken to be corroborative evidence, or any evidence at all, against anybody other than himself. Police-papers ought not to be taken judicial notice of either as evidence or consulted in order to test evidence.—QUEEN *v.* BUSSIRUDDI, 8 W. R. 35. [Hobhouse, J. July 8, 1867.]

3. The confession of one prisoner cannot be used as corroborative evidence against another prisoner. Corroboration as to the details of the crime without corroboration as to the person of the accused, is worthless.—QUEEN *v.* DURBAROO DASS SIRDAR, 13 W. R. 14. [Jackson and Markby, JJ. Jan. 11, 1870.]

4 Under s. 30 of the new Evidence Act (I. of 1872), the statement of fact made by a prisoner, which amounts to a confession of guilt on his part, may be taken into consideration so far and so far only, as that particular statement of fact itself extends against the other prisoners who are being tried, as well as himself, for the offence which is thus confessed.—QUEEN *v.* MOHESH BISWAS, 19 W. R. 16 *to* 8 B. L. R. 455, note. [Phear and Ainslie, JJ. Jan. 23, 1873.]

5 S. 30 of the Evidence Act (I of 1872) is an exception, and its wording shows that the confession is merely to be an element in the consideration of the evidence. Unless there is something more, a conviction upon it will still be a case of no evidence, and bad in law.—PRO., Jan 24, 1873; 7 Mad H C R Ap. 15.

6 Where a case is referred to the High Court under s. 287, Act X of 1872, the Court is bound, under s. 288 of the same Act, to go into the facts of the case, although the

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* 10 Bom H. C. R. 499; 19 Suth. W. R. Cr 23

† This *explanation* has been inserted in s 30 by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s 4.

‡ Compare *explanation* 4 to s. 108 of the Indian Penal Code (Act XLV. of 1860).

conviction was by the verdict of a jury. The confessions of persons tried jointly for the same offence may, by s. 30, Act I. of 1872, be "considered" as against other parties then on their trial with them; but such confessions, when used as evidence against others, stand in need of corroboration, and cannot be used as corroborating in any way the evidence of approvers against such other parties. S. 30, Act I. of 1872, ought to be construed with great strictness, and the confession of one person is not admissible in evidence against another, although the two are jointly tried, if one is tried for the abetment of the offence for which the other is on his trial. By s. 297 of the Criminal Procedure Code, the Court can deal with the case of a prisoner who does not appeal, and is authorized to pass such "order," sentence, or judgment as it thinks fit.—QUEEN v. JAFFIR ALI, 19 W. R. 57. [Kemp and Glover, JJ. April 17 1873.]

7. Before a confession of a person jointly tried with the prisoner can be taken into consideration against such prisoner it must appear that that confession implicates the confessing person substantially to the same extent as it implicates the person against whom it is to be used in the commission of the offence for which the prisoners are being jointly tried.—QUEEN v. BRIAR ALI MOONSHEE, 19 W. R. 67: 10 B. L. R. 453 [Kemp. and Phear, JJ. April 20 1873.]

8. When more persons than one are being tried for the same offence and a confession made by one affecting himself and some of the others, is proved, the Evidence Act, s. 30 does not provide that such confession is evidence, but that it may be "taken into consideration" the intention of the Legislature being that when as against any person implicated by such confession, there is evidence tending to his conviction, the circumstance of such person being implicated by the confession of one of those who are being jointly tried with him shall be taken into consideration as bearing upon the truth or sufficiency of such evidence. When a confession has to be used for the above purpose, the person to be affected by it has a right to demand that it be strictly proved and shown to have been in all essential respects taken and recorded as prescribed by law (Criminal Procedure Code, s. 122), *i.e.*, in the manner provided by ss. 345 and 346. When the examination of the accused is taken otherwise than in the course of a preliminary inquiry, an omission to comply with the provisions of s. 346 cannot be remedied by the evidence of the Magistrate who took it. The reception, as evidence against an accused person, of a confession which ought not to have been proved, and which is not in accordance with law, and the grounding of a case against him upon such confession, must be held to be irregularities which seriously prejudice the prisoner.—QUEEN v. CHUNDER BHUTTACHARJEE 24 W. R. 42. [Jackson and McDonell JJ. Aug. 12, 1875.]

9. A confession, not taken in the form of question and answer, and not authenticated by the Magistrate's endorsement as to its accuracy, is inadmissible in evidence, even though no objection should be made to its reception: ss. 45, 122 256, and 346 of the Code of Criminal Procedure, and s. 91 of the Evidence Act. If an abettor of a crime is, on account of his presence at its commission, to be charged under s. 114 of the Penal Code as principal, his abetment must continue down to the time of the commission of the offence. If he distinctly withdraws at any moment before the final act is done, the offence is not committed with his continuing abetment. The confession of a person who says he abetted a murder, but withdrew before the actual perpetration of that murder by his associates, cannot be used as evidence against those associates, though the person confessing is tried with them jointly on a charge of murder: s. 30 of the Evidence Act. If, in a case tried by a jury, the High Court finds that inadmissible evidence has been received, but that, after setting it aside, there is other evidence on the record on which the jury may find a verdict of guilty the High Court may reverse the conviction and sentence, and order a new trial: s. 280 of the Code of Criminal Procedure.—REG. v. AMRITA GOVINDA, 10 Bom. H. C. R. 497. [West and Nanabhai Haridas, JJ. Dec. 17, 1873.]

10. Statements made by one set of prisoners criminating another set of prisoners, when each individual prisoner made a case for himself on which he was free from any criminal offence, ought not to be taken into consideration under s. 30 of the Evidence Act against the prisoners of the second set, when the two sets, although tried together, were tried upon totally different charges.—QUEEN v. BUNWAREE LALL, 21 W. R. 53. [Phear and Morris, JJ. Mar. 24, 1874.]

11. Act I. of 1872, s. 30, which makes the confession of one prisoner evidence against person other than the man who made the confession, applies only to cases in which the confession is made by a prisoner tried at the same time with the accused person against whom the confession is used.—QUEEN v. SHEIKH BUXOO, 21 W. R. 65. [Phear and Morris, JJ. Mar. 31, 1874.]

12. *Held*, on a consideration of the Evidence Act (I of 1872), s. 114, that the Legislature intended to lay down as a maxim or rule of evidence that the testimony of an

S. 30. accomplice is unworthy of credit, so far as it implicates an accused person, unless it is corroborated in material particulars in respect to that person; and it is the duty of a Court which has to deal with an accomplice's testimony to consider whether this maxim applies to exclude that testimony or not, and in a case tried by jury, to draw the attention of the jury to the principles relative to the reception of an accomplice's testimony. A Judge should charge the jury that the mere confessions of prisoners tried simultaneously with the accused for the same offence, which are in a very qualified manner made operative as evidence by Act I. of 1872, s. 30, are only to be rated as evidence of a defective character, and that they require specially careful scrutiny before they can be safely relied on.—QUEEN *v.* SADHU MUNDUL, 21 W. R. 69. [Phear and Morris, JJ. April 2, 1874.]

13. The evidence requisite for the corroboration of the testimony of an accomplice must proceed from an independent and reliable source, and previous statements made by the accomplice himself, though consistent with the evidence given by him at the trial, are insufficient for such corroboration. The confession of one of the prisoners cannot be used to corroborate the evidence of an accomplice against the other.—REG. *v.* MALAPA BIN KAPANA, 11 Bom. H. C. R. 196. [Nanabhai Haridas and Larpent, JJ. July 15, 1874.]

14. A prisoner who pleads guilty at the trial and is thereupon convicted and sentenced, cannot be said to be jointly tried with the other prisoners, committed on the same charge who plead not guilty. Where, therefore, one out of eight prisoners before the committing Magistrate made a confession affecting himself and five others, and afterwards, at the trial before the Assistant Sessions Judge, pleaded guilty, and was thereupon convicted and sentenced, and the Judge then proceeded to take his evidence on solemn affirmation, and recorded his confession as evidence in the case against the other prisoners, *held* that the Judge was wrong in taking the confession into consideration against those prisoners who pleaded not guilty. The proper course for the Judge was either to have sentenced the prisoner who pleaded guilty, and then put him aside, or to have waited to see what the evidence would disclose. Discrepancies are not less infirmative of testimony, because a greater sagacity on the part of witnesses would have avoided them.—REG. *v.* KALLU PATIL 11 Bom. H. C. R. 146 [West and Nanabhai Haridas, JJ. Aug 13 1874.]

15. While A and B were being jointly tried before a Court of Session, the first for murder, and the second for abetment of murder, a confession made by A, that he himself had committed the murder at the instigation of B, was put in as evidence against A. Subsequently the charge against A was altered to one of abetment of murder, and the Sessions Judge, under the authority of s. 30 of the Evidence Act, used the confession against both, and convicted them. The High Court held that the original and amended charges were so nearly related that the trial might, without any unfairness, be deemed to have been a trial on the amended charge from the commencement; and that no objection having been taken by B, who was represented by a vakil, to the admissibility of A's confession against him when the charge against A was altered, the Sessions Judge was justified in using the confession against B also.—REG *v.* GOBIND BABJI RAUL AND BABAJI GOBIND KUBAL, 11 Bom. H. C. R. 278. [West and Nanabhai Haridas JJ Dec. 2, 1874.]

16. *The confession of co-prisoners cannot*, under the Evidence Act (I. of 1872), s. 30, be treated as evidence of ordinary character not distinguished by any special infirmity or qualifications against the other prisoners, as, in addition to the infirmity inherent in an accomplice's testimony, they are not given on oath, and are not liable to be tested by cross examination.—QUEEN *v.* NAGA, 23 W. R. 24 [Phear and Morris, JJ Jan. 22, 1875.]

17. Tainted evidence is not made better by being corroborated by other tainted evidence. The statement of one prisoner cannot be taken as evidence against another prisoner under s. 30 of the Evidence Act, unless the confessing prisoner implicates himself to the full as much as his co-prisoner whom he incriminates. The rules of evidence cannot be departed from, because there may be strong moral conviction of guilt.—QUEEN *v.* BAIJOO CHOWDHRY, 25 W. R. 43. [Kemp and Glover, JJ. May 8, 1876.]

18. A conviction based solely on the evidence of a co-prisoner is bad in law.—REG. *v.* AMBIGARA HULAGU, I. L. R., 1 Mad. 163 [Holloway and Innes, JJ. Oct. 16, 1876.]

19. A conviction of a person who is being tried together with other persons for the same offence cannot proceed merely on an uncorroborated statement in the confession of such other persons.—EMPRESS *v.* BHOWANI I. L. R., 1 All 664. Turner, Offg. C. J. May 6, 1878.] EMPRESS *v.* RAM CHAND, I. L. R. 1 All. 675. [Pearson, Spankie, and Oldfield, JJ. May 20, 1878.]*

* As to the necessity of corroboration, see *Queen* v. *Chunder Bhuttacharjee*, 24 W. R. 42; *Queen* v. *Naga*, 23 W. R. 24; *Queen* v. *Sadhu Mundul*, 21 W. R. 69; *Queen* v. *Jaffir Ali*, 19 W. R. 57; *Reg.* v. *Ambigara Hulagu*, I. L. R., 1 Mad. 163.

20. Under s. 30 of the Evidence Act, the confession of a prisoner affecting himself and another person charged with the same offence is, when duly proved, admissible as evidence against both, but such second person cannot, when it is uncorroborated as against him, be legally convicted on it. *Per* Garth, C.J.: Such evidence must be dealt with by the Court in the same manner as any other evidence. The weight, however, to be attached to such evidence, and the question whether, taken by itself, it is sufficient in point of law to justify a conviction, is a question for the Judge. Unsupported by other evidence, it, however, should be taken as evidence of the very weakest kind, being simply a statement of the third person not made upon oath or affirmation. If such confession is corroborated by other evidence, it is immaterial whether, in proving the case at the trial, the confession precedes the other evidence, or the other evidence precedes the confession. *Per* Jackson, J. (McDonell, J, concurring): Such evidence is not sufficient to support a conviction, even if corroborated by circumstantial evidence, unless the circumstances constituting corroboration would, if believed to exist, themselves support a conviction. *Per Curiam.*—The word 'Court' in s. 30 of the Evidence Act means not only the Judge in a trial by a Judge with a jury, but includes both Judge and jury.—EMPRESS *v.* ASHOOTOSH CHUCKERBUTTY, I. L. R., 4 Cal. 483; 3 C. L. R 270. [Garth, C.J., and Jackson, Markby, Ainslie, and McDonell, JJ. July 10, 1878.]

21. Where the confession of a person being tried jointly with other persons did not implicate him to the same extent as it implicated such other persons, and was not sufficient in itself to justify his conviction, *held* that such confession could not be taken into consideration under s. 30 of Act I. of 1872 against such other persons, *Queen* v. *Belat Ali Moonshee* (10 B. L. R. 453; 19 W. R. 67) followed.—EMPRESS *v.* GANRAJ, I. L. R., 2 All. 444. [Straight, J. Sep 4, 1879.]

22. *Held* that it is only in extreme cases of delay or expense that the personal attendance of a witness before the Court of Session should be dispensed with, and the evidence given by him before the committing Magistrate referred to. *Held* also, where a person being tried jointly with other persons made a statement, deprecating any guilty knowledge, and seeking to clear himself at the expense of such other persons, that such statement could not be taken into consideration under s. 30 of Act I. of 1872 against such other persons *Queen* v. *Belat Ali Moonshee* (10 B. L. R. 453; 19 W. R. 67) and *Empress* v. *Ganraj* (1 L. R., 2 All. 444) followed.—EMPRESS *v.* MULU, I. L. R., 2 All 646 [Straight J. Jan. 13, 1880.]

23. A and B were committed for trial, the former for dacoity under s. 395 of the Penal Code, and the latter under s. 412 for receiving stolen property, knowing it to be such. A made two confessions, and in both he stated he had handed over to B some pieces of gold and silver stolen at the dacoity. When B was arrested, a gold ring and a silver wristlet were found in his possession. At the trial A pleaded guilty, and B claimed to be tried. A goldsmith deposed that he made the ring and wristlet found with B out of pieces of gold and silver given to him for the purpose by B. On this evidence and on the confessions made by A the Sessions Judge convicted B. On appeal to the High Court, *held* that A and B not having been tried jointly for the same offence, the confession of A was inadmissible as evidence against B. There was, therefore, no evidence of the identity of the goods stolen at the dacoity with those found in B's possession, and the case against him failed. Conviction quashed — EMPRESS *v.* BALA PATIL, I. L. R., 5 Bom. 63. [Westropp, C.J., and Melvill, J. April 7, 1880.]

24. A prisoner, charged together with others with being a member of an unlawful assembly, made a statement before the committing Magistrate implicating his fellow-prisoners and another person. He subsequently withdrew this statement, and made

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The Calcutta High Court appear to have decided, under a series of rulings, that the statement of a person, being tried jointly with other persons, cannot be used in evidence against such other persons, unless such statement implicates himself as well as such other persons and to the same extent. — *Queen* v. *Baijoo Chowdhry*, 25 W. R. 43; *Queen* v. *Keshub Bhoonia*, 25 W. R. 8; *Queen* v. *Belat Ali Munshee*, 10 B. L. R. 453; 19 W. R. 67; *Queen* v. *Mohesh Biswas*, 10 B. L. R. 455; 19 W. R. 10; *Reg.* v. *Amrita Govinda*, 10 Bom. H. C. R. 497.

It has also been ruled that such statement cannot be used as corroborating the evidence of an accomplice.—*Queen* v. *Jaffir Ali*, 19 W. R. 57; *Reg.* v. *Malapa bin Kapana*, 11 Bom. H. C. R. 196.

Also that such statement cannot be used in evidence where one party is being tried for the abetment of the offence of which the other is on his trial —*Queen* v. *Jaffir Ali*, 19 W. R. 57. See also *Reg.* v. *Amrita Govinda*, 10 Bom. H. C. R. 497.

Also that such statement cannot be used in evidence after the person making it has been convicted and sentenced. — *Reg.* v. *Kallu Patil*, 11 Bom. H. C. R. 146.

S. 30. another, in which he endeavoured to exculpate himself. *Held* that this statement was not evidence against the other prisoners under s. 30 of the Evidence Act. It was not a confession, nor did it amount to any admission by the prisoner that he was guilty in any degree of the offence charged; but it was simply an endeavour on his part to explain his own presence on the occasion in such a manner as to exculpate himself, and any mention made by him in such a statement of other persons having been engaged in the riot was altogether irrelevant, and not evidence against them At a trial before a Sessions Court, the Judge, on the examination-in-chief of the witnesses for the prosecution being finished, questioned the witnesses at considerable length upon the points to which he must have known that the cross-examination would certainly and properly be directed. *Held* that such a course of procedure was irregular and opposed to the provisions of s. 138 of the Evidence Act. It is not the province of the Court to examine the witnesses unless the pleaders on either side have omitted to put some material question or questions; and the Court should, as a general rule, leave the witnesses to the pleaders to be dealt with as laid down in s. 138 of the Act. —NOOR BUX KAZI v. EMPRESS. I. L. R., 6 Cal. 270, 7 C. L. R. 385 Garth, C.J., and Tottenham J July 20, 1880.

25. Several persons were charged together with offences under ss 148, 302, 324, and 326 read with s. 149 of the Penal Code. The Sessions Judge, when about to examine the prisoners, required all but the prisoner under examination to withdraw from the Court, until his turn for examination came round and convicted each prisoner chiefly upon what was said by his co-prisoners during his absence from the Court. *Held* that the evidence so given was inadmissible.—IN THE MATTER OF CHANDRA NATH SIRCAR, EMPRESS v. CHANDRA NATH SIRCAR, I. L. R., 7 Cal. 65; 8 C. L. R. 352. [Morris and Prinsep, JJ. April 2 1881.]

26. The two accused persons were jointly tried before the Sessions Judge on a charge of murder. The Sessions Judge examined each of the accused in the absence of the other, making the latter withdraw from the Court during the examination of the former, though without objection from the pleaders of the accused persons. *Held* that the examination of each accused could be used only against himself, and not against his fellow-accused. — EMPRESS v. LAKSHMAN BALA, I. L. R., 6 Bom. 124. [Melvill and Kemball, JJ. Jan. 11, 1882.]

27. If the certificate required by s. 122 of the Code of Criminal Procedure (Act X. of 1872), that a confession is voluntarily made, is not recorded by the Magistrate, at the time the confession is made, or, at any rate, on the day it is reduced to writing, the confession is bad, and inadmissible in evidence. To render the statement of one person jointly tried with another for the same offence liable to consideration against that other, it is necessary that it should amount to a distinct confession of the offence charged.—EMPRESS v. DAJI NARSU, I. L. R. 6 Bom. 288. [West and Pinhey, JJ. Mar. 8, 1882.]

28. Several prisoners being charged together with house-breaking, some of them pleaded guilty The Sessions Judge used the confessions made by those who pleaded guilty as evidence against a prisoner who was tried. *Held* that such confessions were not evidence under s. 30 of the Evidence Act, 1872. — VENKATASAMI v. QUEEN, I. L. R., 7 Mad. 102 [Hutchins, J. Aug. 21, 1883.]

29 Evidence of the possession and attempted disposal of coins of unusual kind is relevant on a charge of uttering such coins soon afterwards when the factum of uttering is denied. A and B were tried together, under s. 239 of the Penal Code, on a charge of delivering to another counterfeit coins knowing the same to be counterfeit at the time they became possessed of them. A confessed that he had got the coins from B, and had passed them to several persons at his request *Held* that the confession of A was relevant against B When two persons are accused of an offence of the same definition arising out of a single transaction, the confession of the one may be used against the other, though it inculpates himself through acts separable from those ascribed to his accomplice, and capable, therefore, of constituting a separate offence from that of the accomplice.—QUEEN-EMPRESS v. NUR MAHOMED, I. L. R., 8 Bom. 223. [West and Nanabhai Haridas, JJ. Dec. 6, 1883.]

30 It is open to a Judge in charging the jury to express his opinion as to the effect of a certain portion of the evidence; but he should always be careful to add that it is for the jury to form their own opinion. Exact correspondence in details of several statements made by an approver in the course of a trial is not corroborative evidence such as is ordinarily required to make it safe to convict a particular prisoner. Confessions of prisoners are not, as against their fellow-prisoners who were not present when the confessions were made, such corroborative evidence of the statement of an approver as would justify the conviction of the other prisoners thereon. Confessions of two of several accused persons made in the absence of the others are of no weight against the

latter. Such confessions, as well as the statements of approvers, are always regarded as tainted; because, from the position occupied by the person making them, they are not entitled to the same weight on the evidence of ordinary witnesses. An accused person is not bound to account for his movements at or about the time an offence was committed, unless there has been given legal evidence sufficient, *primâ facie*, to convict him of the offence.—QUEEN-EMPRESS *v.* BIPIN BISWAS, I. L. R., 10 Cal. 970. [Prinsep and Macpherson, JJ. June 26, 1884.]

31. Upon the trial of A for murder and B for abetment thereof, a confession by A implicating B cannot be taken into consideration against B under s. 30 of the Evidence Act, 1872.—BADI *v.* QUEEN-EMPRESS, I. L. R., 7 Mad. 579. [Kernan and Hutchins, JJ. July 30, 1884.]

32. In cases exclusively triable by the Court of Session, s. 436 of the Code of Criminal Procedure (Act X. of 1882) empowers the Court of Session or District Magistrate to order a discharged person to be committed for trial by such Court. There is nothing in that section to show that, when such order is made, the commitment thereupon must necessarily be made by the Magistrate who has discharged him, whilst the first proviso to it shows that it may be made by the Court of Session or by the District Magistrate according as the power under that section happens to be exercised by one or the other. Meaning of the expression "a Court of competent jurisdiction" in s. 537 of the Criminal Procedure Code (Act X. of 1882) considered. A Court of Session may try a prisoner so committed and charged by itself. It is an established rule of practice that the accomplice must be corroborated by independent evidence as to the identity of every person whom he impeaches *Reg.* v. *Malapa bin Kapana* (11 Bom. H. C. R 196) and *Reg.* v. *Budhu Nahu* (I. L. R., 1 Bom. 475) followed.—QUEEN-EMPRESS *v.* KRISHNABHAT, I. L. R., 10 Bom. 319 [Nanabhai Haridas and Wedderburn, JJ. Dec. 1, 1885.]

33. A conviction of a person who is tried jointly with other persons for the same offence cannot proceed merely upon the uncorroborated confession of one of such other persons. Where the accused was convicted of house-breaking by night with intent to commit theft, and the only evidence against him was the confession of a fellow-prisoner, and the fact that he pointed out the stolen property some months after the commission of the offence, *held* that the mere production of the stolen property by the accused was not sufficient corroboration of the confession of the other prisoner.—QUEEN-EMPRESS *v.* DOSA JIVA, I. L. R., 10 Bom. 231. [Birdwood and Jardine, JJ. Dec. 17, 1885.]

34. When the accused was convicted solely on the confessions of his fellow-prisoners who were tried jointly with him for the same offence, *held* that the conviction was bad. Under s 30 of the Evidence Act, such confessions could be "taken into consideration against the accused, but they were not evidence within the definition given in s. 3 of the Act, and they could not, therefore, alone form the basis of a conviction.—QUEEN-EMPRESS *v* KHANDIA BIN PANDU, I L R, 15 Bom. 66. [Birdwood and Candy, JJ. July 3, 1890.]

35 Where the only evidence against two prisoners accused of murder directly implicating them in the commission of the crime consisted of confessional statements made by them before the committing Magistrate, which were subsequently retracted, and the statements in such confessions were corroborated in material particulars by other evidence on the record, *held* that the evidence was sufficient to support a conviction.—QUEEN-EMPRESS *v.* RARU NAYAR, I. L. R., 19 Mad 482. [Subramania Ayyar and Davies, JJ. Aug. 12, 1896.]

36. A and B were charged with murder. A pleaded guilty, but he was not convicted or sentenced till the conclusion of the trial of his fellow-prisoner B. The Sessions Judge, holding that both the accused were jointly tried for the same offence, took into consideration as against B the confessions made by A, and convicted both of murder. *Held* that after A had pleaded guilty, he could not be treated as being jointly tried with B. A's confessions were, therefore, not admissible against B under s. 30 of the Evidence Act.—QUEEN-EMPRESS *v.* PAHUJI, I. L. R., 19 Bom 195 [Jardine and Ranade, JJ. Jan. 23, 1894.]

37. In order to constitute an offence under s 373 of the Penal Code, it is not necessary that the intention or knowledge of likelihood as to the employment of the minor for purposes of prostitution should be, with reference to employment, either immediate or at some definite, and not very remote, future period, but an offence under the section is complete as soon as a girl is purchased with the guilty intention or knowledge of likelihood that she will, while still a minor under the age of 16 years, be employed for that purpose, although the point of time for such employment may be remote by reason of her physical incapacity for the purpose. H, the father of two girls, twins about a year old, sold one of them to K, a prostitute, for Rs 9, and within ten days of such sale sold her the other for Rs. 14. K was shown to have previously purchased another child whom she had brought up from her

S. 30. infancy, and who was then living with her, and leading the life of a prostitute. Both H and K made confessions as to the guilty knowledge and intention with which the sale of the two children was made. K's confession was made within two hours after her arrest and immediately thereafter she was committed to *hajat* for seven days On the seventh day, on being brought up for trial before the Deputy Magistrate, she retracted her confession, and assigned an innocent reason for her purchase of the girl. H and K were tried jointly — H being charged with an offence under s. 372, *viz.*, selling the girls for the purpose of prostitution, and K with an offence under s 373, *viz.*, buying for the same purpose. Neither was charged with abetting the other. The two confessions were used as evidence, and there was other evidence tending to prove the intention and guilty knowledge. The Deputy Magistrate convicted each of the offence with which they were charged. On appeal the Sessions Judge acquitted K on the ground that the offence under s. 373 could not be committed unless the intention was that the minor was to be used for the purpose of prostitution at some definite future time, and that it would be carrying the law too far to hold that the intention had reference to a period some 12 or 14 years after the purchase when the minor became capable of being used for that purpose. *Held*, for the reasons above stated, that the acquittal on that ground was erroneous. *Held*, further, that, having regard to the circumstances under which the confession of K was given and retracted, it was open to suspicion, and could not safely be acted upon, and that the confession made by H was not legally admissible against her, as they were not being tried jointly for the same offence. *Held*, also, that, having regard to the provisions of s. 106, ill. (*a*) of the Evidence Act, and to the fact that there was evidence, apart from the confessions which tended to show the knowledge and intention which the character and circumstances of the Act suggested, the onus lay on K to show that the intention was other than that which the Act suggested, or that the employment of the girls as prostitutes was not intended till after they had attained the age of 16 years, and that, as she had failed to show this, and the evidence all tended the other way, the acquittal was erroneous, and must be reversed.—DEPUTY LEGAL REMEMBRANCER *v.* KARUNA BAISTOBI, I. L. R., 22 Cal. 164. [Banerjee and Sale, JJ. Oct. 19, 1894.]

38. Where two out of several persons on their trial in a Court of Session on a joint charge pleaded guilty, and made certain statements to the Court, it was *held* that such statements could not be taken into consideration as evidence against the other accused persons, inasmuch as, after pleading guilty, the persons making those statements were no longer on their trial —QUEEN-EMPRESS *v* PIRBHU, I. L. R., 17 All. 524, [Edge, C.J.. and Aikman, J. April 27, 1895.]

See EMPRESS *v.* RAMA BIRAPA, I. L. R., 3 Bom. 12, ruling 6, under s. 24, p. 19.

See QUEEN-EMPRESS *v.* JAGRUP, I. L. R., 7 All. 646, ruling 5, under s. 26, p. 25.

See QUEEN-EMPRESS *v.* JAGAT CHANDRA MALI, I. L. R., 22 Cal. 50, ruling 11, under s. 24, p. 19.

On the trial of more persons than one, jointly, for the same offence, where one of them pleads guilty, the person so pleading is no longer on his trial, and cannot be treated as being jointly tried with the others. A confession by that person affecting himself and others cannot, therefore, be taken into consideration as against such others under s. 30 of the Evidence Act.—QUEEN-EMPRESS *v.* LAKSHMAYYA PANDARAM, I. L. R., 22 Mad. 491. [Boddam, J. March 17, 1899.]

The trial of an accused person does not necessarily end if he pleads guilty. Under section 271 of the Code of Criminal Procedure, where an accused pleads guilty, "the plea shall be recorded," and the accused "may be convicted" thereon; but evidence may be taken in sessions cases as if the plea had been one of "not guilty," and the case decided upon the whole of the evidence, including the accused's plea. When such a procedure is adopted, the trial does not terminate with the plea of guilty, and therefore a confession by the person so pleading may be taken into consideration under section 30 of the Indian Evidence Act, 1872, as against any other person who is being jointly tried with him for the same offence. A trial does not strictly end until the accused has been either convicted or acquitted or discharged.—QUEEN-EMPRESS *v.* CHINNA PAVUCHI, I. L. R., 23 Mad. 151. [Subrahmania Ayyar and Benson, JJ. Nov. 29, 30, 1899.]

Where a witness who has made a statement before the committing Magistrate subsequently resiles from that statement in the Court of Session, the statement made before the committing Magistrate can be used under section 288 of the Code of Criminal Procedure to contradict the witness; but the use of such statement as substantial evidence of the facts alleged by the witness on the prior occasion is fraught with the gravest peril, and could never have been the intention of the Legislature. The words "take into consideration" in section 30 of

the Indian Evidence Act, 1872, do not mean that the confession referred to in the section is to have the force of sworn evidence. *Queen-Empress* v. *Khandia* (1890, I. L. R., 15 Bom. 66) referred to. The bare finding of stolen property and arms in the house of a joint Hindu family is not such evidence of possession on the part of each of its members as would form a sufficient basis for a conviction.—QUEEN-EMPRESS v. NIRMAL DAS, I. L. R., 22 All. 445. [Blair and Henderson, JJ. July 7, 1900.] Ss. 31, 32.

**31.** Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

Admissions not conclusive proof, but may estop.

*Statement by Persons who cannot be called as Witnesses.*

**32.** Statements, written or verbal, of relevant facts, made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:—

Cases in which statement of relevant fact by person who is dead or cannot be found, &c., is relevant.

(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

When it relates to cause of death;

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2) When the statement was made by such person, in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment, written or signed by him, of the receipt of money, goods, securities, or property of any kind; or of a document used in commerce, written or signed by him, or of the date of a letter or other document usually dated, written, or signed by him.

or is made in course of business;

(3) When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him, or would have exposed him, to a criminal prosecution, or to a suit for damages.

or against interest of maker;

(4) When the statement gives the opinion of any such person as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom, or matter had arisen.

or gives opinion as to public right or custom, or matters of general interest;

(5) When the statement relates to the existence of any relationship "by blood, marriage, or adoption"* between persons as to whose relationship "by blood, marriage, or adoption"* the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

or relates to existence of relationship;

* In s. 32 (5), the words quoted have been inserted by the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872), s. 2.

or is made in will or deed relating to family-affairs;

(6) When the statement relates to the existence of any relationship "by blood, marriage, or adoption"* between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family-pedigree, or upon any tombstone, family portrait, or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

or in document relating to transaction mentioned in section 13, clause (*a*);

(7) When the statement is contained in any deed, will, or other document which relates to any such transaction as is mentioned in section 13, clause (*a*).

or is made by several persons, and expresses feelings relevant to matter in question.

(8) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

*Illustrations.*

(*a*.) The question is, whether A was murdered by B; or

A dies of injuries received in a transaction in the course of which she was ravished. The question is, whether she was ravished by B; or

The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow:

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts.

(*b*.) The question is as to the date of A's birth:

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day, he attended A's mother, and delivered her of a son, is a relevant fact.

(*c*.) The question is, whether A was in Calcutta on a given day:

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that, on a given day, the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(*d*.) The question is, whether a ship sailed from Bombay harbour on a given day:

A letter written by a deceased member of a merchant's firm by which she was chartered, to their correspondents in London to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(*e*.) The question is, whether rent was paid to A for certain land:

A letter from A's deceased agent to A, saying that he had received the rent on A's account, and held it at A's orders, is a relevant fact.

(*f*.) The question is, whether A and B were legally married:

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime is relevant.

(*g*.) The question is, whether A, a person who cannot be found, wrote a letter on a certain day:

The fact that a letter written by him is dated on that day is relevant.

(*h*.) The question is, what was the cause of the wreck of a ship:

A protest made by the captain, whose attendance cannot be procured, is a relevant fact.

(*i*.) The question is, whether a given road is a public way:

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(*j*.) The question is, what was the price of grain on a certain day in a particular market:

A statement of the price, made by a deceased banya in the ordinary course of his business, is a relevant fact.

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* In s. 32 (6), the words as quoted above have been inserted by the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872), s. 2.

**(k.) The question is, whether A, who is dead, was the father of B:** S. 32.

**A statement by A that B was his son is a relevant fact.**

**(l.) The question is, what was the date of the birth of A:**

**A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.**

**(m.) The question is, whether, and when, A and B were married:**

**An entry in a memorandum-book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.**

**(n.) A sues B for a libel expressed in a painted caricature exposed in a shop-window. The question is as to the similarity of the caricature and its libellous character:**

**The remarks of a crowd of spectators on these points may be proved.**

**Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.**

**33.** Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense, which, under the circumstances of the case, the Court considers unreasonable:*

Provided—

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding.

*Explanation.*—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

*Rulings.*

1. **The High Court of Bombay has jurisdiction to try a prisoner accused of having committed murder at Zanzibar, and sent by the British Consul at Zanzibar for trial to Bombay. A prisoner accused of having committed murder at Zanzibar was sent by the British Consul there for trial before the High Court at Bombay. The Consul could not enforce the attendance of witnesses at Bombay, but he transmitted to the High Court the depositions which he had taken in the course of the inquiry he had held with regard to the commission of the alleged offence. In the absence of the witnesses these depositions were tendered in evidence at the trial in Bombay. *Held* that the British Consul at Zanzibar was authorized to take the depositions, and that they were admissible in evidence at the trial under s. 38 of the Evidence Act (I of 1872).—EMPRESS v. DASSAJI GULAM HUSEIN, I. L. R., 3 Bom. 334 [Sargent, J. Dec. 3, 1878.]**

2. **When a confession is made to a Magistrate by an accused person during an inquiry held previously to the case being taken up by the committing officer and by an officer acting merely as a recording officer, it must be recorded in strict accordance with the provisions of ss. 122 and 346 of the Code of Criminal Procedure. If the provisions of these sections have not been fully complied with by the recording officer, the Court of Session cannot take evidence that the accused person duly made the statement recorded; and in cases where evidence can be taken, a Court of Session is not at liberty to treat a deposition sent up with the record, and made by the recording officer before the committing officer, to the effect that the accused person did, in fact, duly make before him the statement recorded, as evidence of the fact. In such case the recording officer must himself be called and examined by the Court of Session, except in cases in which**

* See *Queen* v. *Mowjan*, 20 Suth. W. R., C. R., 69.

S. 33. the presence of the recording officer cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court of Session considers unreasonable. — NOSHAI MISTRI AND RAM CHUNDER HALDAR v. EMPRESS, I. L. R., 5 Cal. 958; 6 C. L. R. 353 [White and Maclean, JJ. May 13, 1880.]

3. Where a person is accused of an offence under s. 411 of the Penal Code, he cannot, where the circumstances do not raise the presumption that he received the property knowing it to be stolen, be convicted of that offence, merely because he is in possession of the property, and does not account for his possession. The prosecution must prove both that the property was stolen, and that the accused received it dishonestly. At the trial of a person for an offence under s. 411 of the Penal Code, the Court of Session, under s. 33 of the Evidence Act, 1872, used, against the accused, the evidence of the owner of the property in respect of which the accused was charged, and of his wife taken by commission during the inquiry, and the evidence of the servant of those persons taken at the inquiry, and also the evidence of the owner of the property during the trial under a commission issued by the Sessions Judge under s 503 of the Criminal Procedure Code. The grounds upon which the Sessions Judge admitted the evidence taken during the inquiry were that the attendance of the witnesses could not be procured without an expense of Rs 500 an amount which he considered unreasonable, that the witnesses would be inconvenienced, and that their evidence did not concern the accused personally, having reference only to the identification of the property in respect of which the accused was charged. *Held* that the Sessions Judge had improperly admitted such evidence. Inconvenience to witnesses is no ground allowed under s. 33 of the Evidence Act and the question of identification was a most material one, and the evidence of the witnesses in question was of the utmost moment, the whole case resting on it, and, as regards the ground of expense it was impossible to consider the amount unreasonable, considering that the entire case rested on the evidence of those witnesses, and that accused had not cross-examined those whose evidence had been taken by commission, nor, looking at his position, could he arrange for their cross-examination. *Held* also that on similar grounds the Sessions Judge was not justified in issuing a commission under s. 503 of the Criminal Procedure Code.—EMPRESS v. T. BURKE, I. L. R., 6 All. 224. [Oldfield, J. Feb. 16 1884.]

4. In 1874 five out of six persons, who were named as having committed a murder, were arrested, and after inquiry before a Magistrate were tried before the Court of Session and convicted. At the time of the inquiry before the Magistrate, the sixth accused person absconded, as was recorded by the Magistrate. In their examination before that officer the witnesses deposed to the absconder having been one of the participators in the crime charged against the prisoners then under trial. In the Sessions Court, the Judge did not record that the sixth accused person had absconded, and the evidence was recorded against the prisoners then under trial only. In 1886 the absconder was apprehended and tried before the Court of Session upon the charge of murder. At that time most of the former witnesses were dead, and the Sessions Judge, referring to s. 48 of the Evidence Act, admitted in evidence against the prisoner the depositions given in 1874 before both the Magistrate and the Sessions Court. He also admitted the deposition of a surviving witness which had been given in 1874 before the Sessions Court. This witness now also gave evidence against the prisoner. *Held* that the depositions were not admissible in evidence under s. 33 of the Evidence Act, the prisoner not having been a party to the former proceedings, and not having then had an opportunity of cross-examining the witnesses. *Held*, however, that, under the circumstances, the depositions given in 1874 before the committing Magistrate, though not those given in the Court of Session, were admissible in evidence under s. 512 of the Criminal Procedure Code. *Per* Straight, J. that, under the special circumstances the deposition taken in 1874 of the surviving witness was admissible under s. 157 of the Evidence Act as corroboration of her evidence given at the trial of the prisoner. In cross-examination before the Court of Session, a witness stated that, when she was before the committing Magistrate, that officer, addressing her, said "Recollect, or I will send you into custody." *Held* that, if the Magistrate did so address the witness, he exceeded his duty.—QUEEN-EMPRESS v. ISHRI SINGH I. L. R., 8 All 672. [Edge and Straight, JJ. Sep. 21, 1886.]

5. Evidence taken under a commission issuing from the Court of the Chief Presidency Magistrate during the course of an inquiry before him cannot be used in evidence at the trial before the High Court under s. 507 of the Criminal Procedure Code. *Held*, further, that, on the facts before the High Court, it was also inadmissible under s. 33 of the Evidence Act.—QUEEN-EMPRESS v. A. M. JACOB, I. L. R., 19 Cal. 113 [Wilson, J. Dec. 7, 1891.]

6. The accused was charged with abetting the offence of criminal breach of trust

committed by the nazir of the Small Cause Court at Poona. The accused was a karkun in the nazir's office, and it was his duty to keep the accounts of moneys received in the office from judgment-debtors, and of moneys paid out to decree-holders. He was charged with abetting the misappropriation of three sums, *viz.*, Rs 20 on the 19th November 1885, Rs. 45 on the 23rd November 1885, and Rs. 10 on the 26th June 1886. As to the first sum, it was alleged that an instalment of Rs. 25 due under a decree had been paid into the nazir's office by a judgment-debtor on the 19th November 1885, but the accused had entered in the office day-book only Rs. 5, thereby enabling the balance of Rs. 20 to be misappropriated. It appeared, however, that a sum of Rs. 25, being the instalment due to the decree-holder under the above decree, had been in due course paid out to him on the 4th December 1885. As to the second sum of Rs. 45, it was alleged that a sum of Rs. 50 had been paid in, but only Rs. 5 had been entered by the accused, the balance being misappropriated. It appeared, however, in this case also that the full amount of the instalment, *viz.*, Rs. 50, had been duly paid out to the decree-holder a few days after its receipt. As to the third sum, it was alleged that the total receipts entered in the book on the 26th June 1886 were Rs. 55, but the figure entered as the total was only Rs. 45, and that the balance of Rs. 10 had been misappropriated. The jury found the accused guilty on all three charges. On appeal by him it was contended that there was no evidence of the misappropriation of the specific sums in respect of which he was charged. There was evidence of a general deficiency: but there was no evidence that these specific sums formed part of that deficiency. On the contrary, the evidence showed that the instalments paid into the office had been duly paid out to the persons to whom they were payable. *Held* that the jury having had the facts brought to their notice, their verdict was final, and the High Court would not interfere with the verdict. Depositions taken on commission in criminal cases, although inadmissible under Ch. XL. of the Criminal Procedure Code, may be admitted under s. 33 of the Evidence Act, if the requirements of the proviso to that section have been complied with. The words "opportunity to cross-examine" in the proviso to s. 33 do not imply that the actual presence of the cross-examining party or his agent before the tribunal taking the evidence is necessary. To make evidence admissible against an accused person under s. 33 of the Evidence Act, the fact that he had full opportunity of cross-examination, if not admitted, must be proved. *Quære.*—Whether the opportunity to administer cross-interrogatories under a commission is an "opportunity to cross-examine" within the meaning of the proviso to s. 33 of the Evidence Act so as to render the evidence taken on interrogatories admissible. The provisions of s. 167 of the Evidence Act apply to criminal trials by jury. When part of the evidence, which has been allowed to go to the jury, is found to be irrelevant and inadmissible, it is open to the High Court in appeal either to uphold the verdict upon the remaining evidence on the record under s 167 of the Evidence Act, or to quash the verdict and order a re-trial. The law as settled in England by the *Queen* v. *Gibson* (L. R., 18 Q. B. D. 537), and as stated by the Privy Council in *Makin* v. *Attorney-General of New South Wales* (L. R., 1894, A. C., 57; see pp. 69-70), with reference to the granting of new trials where evidence has been improperly admitted does not apply to India. *Wafadar Khan* v. *Queen Empress* (I. L. R., 21 Cal. 955) not followed.—QUEEN-EMPRESS v. RAMCHANDRA GOBIND HARSHE, I. L. R., 19 Bom. 749. Jardine and Fulton, JJ. Mar. 12, 1895.

S. 34.

See EMPRESS v. MULU, I. L. R., 2 All. 646, ruling 22, under s. 30, p. 35.

*Statements made under Special Circumstances.*

**34.*** Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Entries in books of account when relevant.

*Illustration.*

A sues B for Rs. 1,000, and shows entries in his account-books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

* Compare s. 198 of the Indian Companies Act (VI. of 1882) and s. 62 of the Code of Civil Procedure Act (XIV. of 1882); as to admissibility in evidence of certified copies of entries in Bankers' books, see s. 4 of the Bankers' Books Evidence Act (XVIII. of 1891), *infra*.

*Rulings.*

1. Though under s. 34 of the Evidence Act the actual entries in books of account regularly kept in the course of business are relevant to the extent provided by the section, such a book is not by itself relevant to raise an inference from the absence of any entry relating to a particular matter. The fact that the accused has, during the cross-examination of the witnesses for the prosecution, used certain documents, and that such documents have been put in as evidence on his behalf, does not entitle the prosecutor to the right of reply, if, when asked, upon the close of the case for the prosecution whether he means to adduce evidence, the accused says that he does not.—QUEEN *v.* GREES CHUNDER BANERJEE, I. L. R., 10 Cal. 1024. [Field, J. July 28, 29, 30, 1884.]

2. The accused persons were tried on 27 charges, comprising the offences of theft, abetment of theft, and receiving stolen property, in 1872-73, similar offences in 1873-74; similar offences in 1874-75; the giving and receiving of gratifications to and by public servants in 1874-75; and, finally, the fabrication, and abetment of fabrication, of false evidence in 1876. One of the accused was convicted on two heads of charge, and the rest acquitted. The convict appealed against his conviction and sentence; and the Government appealed against his acquittal on the other heads as well as against the acquittal of the rest. *Held* that the trial was irregular under s. 452 of the Code of Criminal Procedure; and so would be the hearing of the appeal. The High Court, however, heard the appeal in respect of offences in 1874-75 only, it appearing that this course did not prejudice the accused persons, who had been fully and fairly tried for those offences. Account-books containing entries not made by, nor at the dictation of, a person who had a personal knowledge of the truth of the facts stated, if regularly kept in course of business, are admissible as evidence under s. 34 of the Indian Evidence Act (I. of 1872), and *semble* under s. 32, cl. 2. Account-books, though proved not to have been regularly kept in course of business, but proved to have been kept on behalf of a firm of contractors by its servant or agent appointed for that purpose, are relevant as admissions against the firm. It is not competent to a Magistrate to convert an accused person into a witness except when a pardon has been lawfully granted under s. 347 of the Code of Criminal Procedure. Evidence given by such person, who had received a pardon in the case of an offence not exclusively triable by the Court of Session, held not relevant, that person not having been acquitted or discharged or convicted. Possession of wood by a forest-inspector, who is a servant of Government, is possession of the Government itself, and a dishonest removal of it, without payment of necessary fees, from his possession, albeit with his actual consent, constitutes theft, within the meaning of s. 378 of the Indian Penal Code, if that consent was unauthorized or fraudulent.—REG. *v.* HANMANTA, I. L. R., 1 Bom. 610. [Melvill and Kemball, JJ. Feb. 26, 1877.]

**35.** An entry in any public or other official book, register, or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty, specially enjoined by the law of the country in which such book, register, or record is kept, is itself a relvevant fact.

Relevancy of entry in public record made in performance of duty.

*Ruling.*

S. 35 of the Evidence Act, which provides "that any entry in an official public book, which is duly made by a public servant in the execution of his duty, is, of itself, a relevant fact," does not make the public book evidence to show that a particular entry has not been made in it. S. 466 of the Penal Code is not intended to apply to cases where a public officer, or a person acting for a public officer, whose duty it is to make entries in a public book, knowingly makes a false entry, but to cases where a certificate or other document is forged by some unauthorized person with a view to make it appear that it was duly issued by a public officer. The accused, in order to save an estate from forfeiture, made a false entry of rent received in a public book kept by him for the purpose of informing the Collector as to the rents which had been paid into the Collectorate, and as to what estates the rents were in arrear, so that he might take steps to enforce payment, and was convicted by the Sessions Judge of an offence under s. 465 of the Penal Code. *Held*, on appeal, that the accused ought properly to have been convicted under s. 192 of the Code, the provisions of that section not being confined to false evidence to be used in judicial proceedings.—IN THE MATTER OF JUGGUN LALL, 7 C. L. R. 356. [Garth, C.J., and Field, J. Nov. 17, 1880.]

**Relevancy of statements in maps, charts, and plans.**

**36.** Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts, or plans, are themselves relevant facts.

**Relevancy of statement as to fact of public nature contained in certain Acts or notifications.**

**37.** When the Court has to form an opinion as to existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament or in any Act of the Governor-General of India in Council, or of the Governors in Council of Madras or Bombay, or of the Lieutenant-Governor in Council of Bengal, or in a notification of the Government appearing in the Gazette of India, or in the gazette of any Local Government, or in any printed paper purporting to be the London Gazette or the Government Gazette of any colony or possession of the Queen, is a relevant fact.

*This section also applies to any Act of the Lieutenant-Governor in Council of the North-Western Provinces and Oudh, the Punjab, or Burmah.**

**Relevancy of statements as to any law contained in law-books.**

**38.** When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country, and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

*How much of a Statement is to be proved.*

**What evidence to be given when statement forms part of a conversation, document, book, or series of letters or papers.**

**39.** When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much, and no more, of the statement, conversation, document, book, or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

*Judgments of Courts of Justice when relevant.*

**Previous judgments relevant to bar a second suit or trial.**

**40.** The existence of any judgment, order, or decree, which, by law, prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact, when the question is whether such Court ought to take cognizance of such suit, or to hold such trial.

*Ruling.*

**In a suit brought by *A* against *B* for *khas* possession of a tank the plaintiff put in a decree based on a compromise in a previous suit between him and the defendant to prove his right to *khas* possession. The defence (*inter alia*) was that the decree was a fraudulent one. *Held* that, under s. 44 of the** Evidence Act (I. of 1872), the defendant could show that the decree was obtained by fraud. See the case of *Nistarini Dassi* v. *Nundo Lall Bose* (I. L. R., 26 Cal. 891).—RAJIB PANDA *v.* LAKHAN SENDH MAHAPATRA, I. L. R., 27 Cal. 11. [Maclean, C.J., and Banerjee, J. July 18, 1899.]

* To s. 37, the italicised paragraph has been added by the Indian Evidence Act (V of 1899), s. 2.

Ss. 41-43.

Relevancy of certain judgments in probate, &c., jurisdiction.

**41.** A final judgment, order, or decree of a competent Court in the exercise of probate, matrimonial, admiralty, or insolvency jurisdiction, which confers upon, or takes away from, any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person, but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order, or decree, is conclusive proof—

that any legal character which it confers accrued at the time when such judgment, order, or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, "order, or decree"* declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, "order, or decree"* declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, "order, or decree"* declares that it had been or should be his property.

Relevancy and effect of judgments, orders, or decrees, other than those mentioned in section 41.

**42.** Judgments, orders, or decrees, other than those mentioned in section 41, are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders, or decrees are not conclusive proof of that which they state.†

*Illustration.*

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

Judgment, &c., other than those mentioned in sections 40 to 42, when relevant.

**43.** Judgments, orders, or decrees, other than those mentioned in sections 40, 41, and 42, are irrelevant, unless the existence of such judgment, order, or decree, is a fact in issue, or is relevant under some other provision of this Act.

*Illustrations.*

(*a.*) A and B separately sue C for a libel which reflects upon each of them. C, in each case, says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(*b.*) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(*c.*) A prosecutes B for stealing a cow from him. B is convicted.

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* In s. 41, the words quoted, wherever they occur, have been inserted by the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872), s. 3.

† 22 Suth. W. R., C. R., 365.

A afterwards sues C for the cow which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant. Ss. 44, 45.

(*d*.) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

(*e*.)* A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

(*f*.)* A is tried for the murder of B. The fact that B prosecuted A for libel, and that A was convicted and sentenced, is relevant under section 8 as showing the motive for the fact in issue.

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*Ruling.*

See REG. *v.* PARBHUDAS AMBARAM, 11 Bom. H. C. R. 90, ruling under s. 11, p. 1.

**44.** Any party to a suit or other proceeding may show that any judgment, order, or decree, which is relevant under section 40, 41, or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.

*Ruling.*

In a suit brought by *A* against *B* for *khas* possession of a tank, the plaintiff put in a decree based on a compromise in a previous suit between him and the defendant to prove his right to *khas* possession. The defence (*inter alia*) was that the decree was a fraudulent one. *Held* that, under s. 44 of the Evidence Act (I. of 1872), the defendant could show that the decree was obtained by fraud. See the case of *Nistarini Dassi v. Nundo Lall Bose* (I. L. R., 26 Cal. 891).—RAJIB PANDA *v.* LAKHAN SENDH MAHAPATRA, I. L. R, 27 Cal. 11. [Maclean, C.J., and Banerjee, J. July 18, 1899.]

OPINIONS OF THIRD PERSONS, WHEN RELEVANT.

**45.**† When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting *or finger-impressions*, the opinions upon that point of persons specially skilled in such foreign law, science, or art, "or in questions as to identity of handwriting" *or finger-impressions*, are relevant facts.

Such persons are called experts.

Opinions of experts.

*Illustrations.*

(*a*.) The question is, whether the death of A was caused by poison:

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died are relevant.

(*b*.) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law:

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(*c*.) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A:

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* To s. 43, *illustrations* (*e*) and (*f*) have been added by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 5.

† In s. 45, the words quoted have been inserted by the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872), s. 4; and the italicized words have been inserted by the Indian Evidence Act (V. of 1899), s. 3 (*i*).

ss. 46, 47. The opinions of experts on the question whether the two documents were written by the same person or by different persons are relevant.

*Ruling.*

1. In giving evidence a police-officer may refresh his memory by referring to documents in which he has, under s. 119 of Act X. of 1872, reduced into writing statements of persons examined by him during an investigation, but the documents themselves cannot be used as evidence, and a Judge should not read such documents to a jury in order to point out discrepancies between the evidence and previous statements of the witnesses. The evidence of a medical man who has seen, and has made a *post-mortem* examination of the corpse of the person touching whose death the inquiry is, is admissible, firstly, to prove the nature of injuries which he observed; and, secondly, as evidence of the opinion of an expert as to the manner in which those injuries were inflicted, and as to the cause of death. A medical man who has not seen the corpse is only in a position to give evidence of his opinion as an expert. The proper mode of eliciting such evidence is to put to the witness hypothetically the facts which the evidence of the other witnesses attempts to prove, and to ask the witness's opinion on those facts. S. 323 of Act X. of 1872 does not in any way preclude the Judge at a Sessions trial from calling and examining the medical witness who has been examined before the Magistrate, and in every case in which the deposition taken by the Magistrate is essentially deficient, or requires further elucidation, such witness should be called and examined by the Sessions Judge. A medical man in giving evidence may refresh his memory by referring to a report which he has made of his *post-mortem* examination, but the report itself cannot be treated as evidence, and no facts can be taken therefrom.—ROGHUNJ SINGH *v.* THE EMPRESS, I. L. R., 9 Cal. 455. [Mitter and Field, JJ. Sep. 22, 1882.]

See QUEEN-EMPRESS *v.* MEHER ALI MULLICK, I. L. R., 15 Cal. 589, ruling 17, under s. 25, p. 23.

2. F was charged with having forged a document purporting to have been executed by N and with falsely personating N. When the document was presented, a witness was called to prove the identity of the thumb-mark of the person, who alleged that he was the executant of the document, taken at the Registration Office with an admitted thumb-mark of the accused F. *Held* that, though a comparison of thumb marks is admissible in law, it can be made only by the Court; no evidence as to the identity of thumb-marks can be given by a witness.—QUEEN-EMPRESS *v.* FAKIR MAHOMED SHEIKH, I. C. W. N. 33. [O'Kinealy and Banerjee, JJ. July 16, 1896.]

Facts bearing upon opinions of experts.

**46.** Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

*Illustrations.*

(*a.*) The question is, whether A was poisoned by a certain poison:

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(*b.*) The question is, whether an obstruction to a harbour is caused by a certain sea-wall:

The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

Opinion as to handwriting when relevant.

**47.** When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed, that it was or was not written or signed by that person, is a relevant fact.

*Explanation.*—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority, and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

*Illustration.*

The question is, whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Calcutta, who has written letters addressed to A, and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

The opinions of B, C, and D on the question whether the letter is in the handwriting of A, are relevant, though neither B, C, nor D ever saw A write.

Opinion as to existence of right or custom when relevant.

**48.** When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence, if it existed, are relevant.

*Explanation.*—The expression, "general custom or right," includes customs or rights common to any considerable class of persons.

*Illustration.*

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

Opinion as to usages, tenets, &c., when relevant.

**49.** When the Court has to form an opinion as to—

the usages and tenets of any body of men or family,

the constitution and government of any religious or charitable foundation, or

the meaning of words or terms used in particular districts, or by particular classes of people,

the opinions of persons having special means of knowledge thereon are relevant facts.

Opinion on relationship when relevant.

**50.** When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act,* or in prosecutions under section 494, 495, 497, or 498 of the Indian Penal Code.†

*Illustrations.*

(*a*.) The question is, whether A and B were married. The fact that they were usually received and treated by their friends as husband and wife is relevant.

(*b*.) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family is relevant.

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*Ruling.*

The provisions of s. 50 of the Evidence Act show that, where marriage is an ingredient in an offence, as in bigamy, adultery, and the enticing of married women, the fact of the marriage must be strictly proved. *Queen* v. *Wasira* (8 B. L. R. App. 63) overruled —EMPRESS *v.* PITAMBUR SINGH, I. L. R., 5 Cal. 566. [Garth, C J, and Jackson, Pontifex, Morris, and McDonell, JJ. Dec. 8, 1879]

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* Act IV. of 1869.

† Act XLV. of 1860.

Ch. II. 51-54.

Grounds of opinion when relevant.

**51.** Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

*Illustration.*

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

*Character when relevant.*

In civil cases character to prove conduct imputed, irrelevant.

**52.** In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

In criminal cases, previous good character relevant.

**53.** In criminal proceedings the fact that the person accused is of a good character is relevant.

Previous bad character not relevant, except in reply.

**54** * In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

*Explanation 1.*—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

*Explanation 2.*—A previous conviction is relevant as evidence of bad character.

*Rulings.*

1. S. 54, as printed above, has been substituted for the original by Act III. of 1891, s. 6. The original section ran as follows:—

"S. 54.—*In criminal proceedings, previous conviction relevant, but not previous bad character, except in reply.*] In criminal proceedings the fact that the accused person has been previously convicted of any offence is relevant, but the fact that he has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

"*Explanation.*—This section does not apply to cases in which the bad character of any person is itself a fact in issue."

The occasion of amending the section was the decision of the Full Bench in *Emp. v. Kartic Chunder Das* (I. L. R., 14 Cal. 721) on a question of admissibility of the evidence of a previous conviction. On a full consideration of the question, the Court felt constrained to lay down that, under s. 54, a previous conviction was in all cases admissible in evidence against an accused person. Their Lordships said: "That must be the law so long as this section remains unaltered We own that, could we come to any other conclusion, we should have done so; but it is our duty to carry out the intentions of the Legislature."

But, under the new section, a previous conviction is not, in all cases, admissible as evidence against an accused person. The section should be read along with s. 310 of the Criminal Procedure Code (Act V. of 1898).

S. 75 of the Penal Code (as amended by Act VIII. of 1882) runs as follows: "Whoever, having been convicted of an offence punishable under Ch XII. or Ch. XVII. of this Code with imprisonment of either description for a term of three years or upwards, shall be guilty of any offence punishable under either of those chapters with imprisonment of either description for a term of three years or upwards, shall be subject for every such subsequent offence to transportation for life, or to imprisonment of either description for a term which may extend to ten years."

With s. 54 of the Evidence Act as substituted for the original by Act III. of 1891 should be read s. 310 of the Code of Criminal Procedure as amended by Act III. of 1891. The section (310) runs as follows:—

"S. 310.—*Procedure in case of previous conviction.*] In the case of a trial by jury or with the aid of assessors, where the accused is charged with an offence, committed after a previous conviction for any offence,

* The present s. 54 has been substituted for the original by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 6.

the procedure laid down in ss. 271, 286, 305, 306, and 309, shall be modified as follows :—

"(*a*) The part of the charge stating the previous conviction shall not be read out in Court, nor shall the accused be asked whether he has been previously convicted as alleged in the charge, unless and until he has either pleaded guilty to, or been convicted of the subsequent offence.

"(*b*) If he pleads guilty to, or is convicted of, the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the charge.

"(*c*) If he answers that he has been so previously convicted, the Judge may proceed to pass sentence on him accordingly; but if he denies that he has been so previously convicted, or refuses to, or does not, answer such question, the jury, or the Court and the assessors (as the case may be), shall then inquire concerning such previous conviction, and in such case (where the trial is by jury) it shall not be necessary to swear the jurors again.

"Notwithstanding anything in this section, evidence of the previous conviction may be given at the trial for the subsequent offence, if the fact of the previous conviction is relevant under the provisions of the Indian Evidence Act, 1872." [This last clause has been added by Act III. of 1891, s. 9.]

2. In charging the jury upon the trial of a prisoner for being dishonestly in the possession of stolen goods, the Judge directed the jury to consider the proof of previous convictions for theft as evidence from which inference might fairly be drawn as to the character of the accused. *Held* that this amounted to a misdirection; for, though s. 54 of the Evidence Act declares that "the fact that the accused person has been previously convicted of an offence is relevant," yet the same section also declares that "the fact that he has a bad character is irrelevant," and that the evidence was irrelevant and inadmissible. Except under very special circumstances, the proper object of using previous convictions is to determine the amount of punishment to be awarded, should the prisoner be convicted of the offence charged.—ROSHUN DOOSADH *v.* EMPRESS, I. L. R., 5 Cal 768; 6 C. L. R. 219. [Morris and Prinsep, JJ. Feb. 10, 1880.]

3. In trials before a jury or assessors, the record should invariably show that reference to a previous conviction was not made until the accused had been convicted of the subsequent offence.—KRISTO BEHARI DASS *v.* EMPRESS, 1 C. L. R. 555 [Cunningham and Maclean, JJ. Mar 13, 1883.]

See REG *v.* PARBHUDAS AMBARAM, 11 Bom. H. C. R. 90, ruling under s. 11, p. 11.

The character of the accused not being a fact in issue in the offence of belonging to a gang of persons associated for the purpose of habitually committing theft punishable under s. 401 of the Indian Penal Code, evidence of bad character or reputation of the accused is inadmissible for the purpose of proving the commission of that offence.

Where it was proved that certain persons were found together at some distance from their houses, that they were all intimately connected with one another and were in the habit of visiting *melas* together, that one of them was arrested in the act of picking a pocket, and that when they were arrested many of them gave false names and false addresses, *held*, they could not be convicted under s 401 of the Indian Penal Code, there being no proof that they belonged to a gang of persons associated for the purpose of habitually committing theft.—MANKURA PASI *v.* QUEEN-EMPRESS, I. L. R., 27 Cal. 139. [Prinsep and Hill, JJ. Aug. 7, 1899.]

**55.** In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive is relevant.

Character as affecting damages.

*Explanation.*—In sections 52, 53, 54, and 55, the word "character" includes both reputation and disposition: but, *except as provided in section 54*,* evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

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* In the *explanation* to s. 55, the italicized words have been inserted by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 7.

ss. 56, 57.

## PART II.—ON PROOF.

### CHAPTER III.—FACTS WHICH NEED NOT BE PROVED.

Fact judicially noticeable need not be proved.

**56.** No fact of which the Court will take judicial notice need be proved.

Facts of which Court must take judicial notice.

**57.** The Court shall take judicial notice of the following facts—

(1) all laws or rules having the force of law, now or heretofore in force, or hereafter to be in force, in any part of British India;

(2) all public Acts passed or hereafter to be passed by Parliament, and all local and personal Acts directed by Parliament to be judicially noticed:

(3) Articles of War for Her Majesty's Army or Navy;

(4) the course of proceeding of Parliament and of the Councils for the purposes of making Laws and Regulations established under the Indian Councils Act* or any other law for the time being relating thereto:

*Explanation.*—The word "Parliament" in clauses (2) and (4) includes—

(1) the Parliament of the United Kingdom of Great Britain and Ireland;

(2) the Parliament of Great Britain:

(3) the Parliament of England:

(4) the Parliament of Scotland; and

(5) the Parliament of Ireland;

(5) the accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland;

(6) all seals of which English Courts take judicial notice; the seals of all the Courts of British India, and of all Courts out of British India, established by the authority of the Governor-General† or any Local Government in Council; the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public; and all seals which any person is authorized to use by any Act of Parliament or other Act or Regulation having the force of law in British India;

(7) the accession to office, names, titles, functions, and signatures of the persons filling, for the time being, any public office in any part of British India if the fact of their appointment to such office is notified in the Gazette of India, or in the official gazette of any Local Government;

(8) the existence, title, and national flag of every State or Sovereign recognized by the British Crown;

(9) the divisions of time, the geographical divisions of the world, and public festivals, fasts, and holidays notified in the official gazette;

(10) the territories under the dominion of the British Crown;

(11) the commencement, continuance, and termination of hostilities between the British Crown and any other State or body of persons;

(12) the names of the members and officers of the Court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders, and other persons authorized by law to appear or act before it;

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* Stat. 24 & 25 Vict., c. 67.

† For lists of such Courts, see the notifications printed on pp. 372 to 374 of the Western India Volume of the Lists of British Enactments in force in Native States.

(13) the rule of the road "on land or at sea."*

In all these cases,† and also on all matters of public history, literature, science, or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

*Rulings.*

1. Under the provisions of the penultimate paragraph of s. 57, and of the first proviso of s. 60, of the Evidence Act, the Court referred to Taylor's Medical Jurisprudence with reference to the effect likely to be caused by a sudden blow on the abdomen.—IN THE MATTER OF HATIM, 12 C. L. R. 86 [McDonell and Field, JJ. April 21, 1882.]

2. At the close of the evidence for the prosecution, the attorney for the defence, in answer to the Judge, stated that he meant to call witnesses. The Court then adjourned, and on the following day the attorney stated that, on re-consideration, he did not intend to call witnesses. The Judge allowed the prosecutor to reply. *Held* that, though the strict interpretation of ss. 289 and 292 of the Criminal Procedure Code would warrant this course, it was never meant by the Legislature that the prosecutor should have a reply when no witnesses are called for the defence, the object of the law being evidently to let each side have an opportunity of commenting on the evidence of the other, and not to give an additional advantage to the prosecutor in such a case as the present. A well-known treatise, such as Taylor's Medical Jurisprudence, may be referred to in the course of trial. *Hatim* v. *The Empress* (12 C. L. R. 86) followed. It is improper on the part of a Judge, when examining a prisoner under s. 342 of the Criminal Procedure Code, to cross-examine him. The only questions which are permissible are such as will enable the prisoner to explain any circumstances appearing in the evidence against him. Although s. 303 of the Criminal Procedure Code empowers a Judge to ask the jury such questions as are necessary to ascertain what their verdict is, it was never contemplated that, on ascertaining that the jury are not unanimous, the Judge should make minute enquiries to learn the nature of the majority and its opinion, so that he should have the opportunity of accepting or refusing that opinion as a verdict according as it coincides with his own opinion or not. Whatever may be the opinion of the Judge, if he goes so far as to ask the jury what is the exact majority, and what is the opinion of the majority, he ought to receive that verdict without hesitation, and, if he differs from it, he should proceed as directed by s. 307. A prisoner or his Counsel is at liberty to offer evidence or not, as he thinks proper, and no inference unfavourable to him can be drawn, because he takes one course rather than another.—HURRY CHURN CHUCKERBUTTY *v.* EMPRESS, I. L. R., 10 Cal. 140. Prinsep and Tottenham, JJ. Aug. 22, 1883.

3. A *masjid* was used by the members of a sect of Muhammadans called the Hanifis, according to whose tenets the word "*amen*" should be spoken in a low tone of voice. While the Hanifis were at prayers, R, a Muhammadan of another sect, entered the *masjid*, and, in the course of the prayers, according to the tenets of his sect, called out "*amen*" in a loud tone of voice. For this act he was convicted of voluntarily disturbing an assembly engaged in religious worship, an offence punishable under s. 296 of the Penal Code. The Full Bench (Mahmood, J. dissenting) ordered the case to be re-tried, and that, in re-trying it, the Magistrate should have regard to the following questions, namely, (1) Was there an assembly lawfully engaged in the performance of religious worship? (2) Was such assembly, in fact, disturbed by the accused? (3) Was such disturbance caused by acts and conduct on the part of the accused by which he intended to cause such disturbance, or which acts and conduct, at the time of such acts and conduct, he knew or believed to be likely to cause disturbance? *Held* by Mahmood, J., that the discussion occasioned by the act of the accused having presumably taken place during the interval when the prayers were not going on, the assembly was not at that time "engaged in the performance of religious worship," and was not "disturbed" within the meaning of s. 296 of the Penal Code; that, in reference to the terms of s. 39 of the Code, the ac-

* The words quoted in s. 57, para. (13), have been inserted by the Indian Evidence Act (18 of 1872) Amendment Act (XVIII. of 1879), s. 5.

† For an additional case, see the Code of Civil Procedure (Act XIV. of 1882), s. 431.

ss. 58-62.

cused did not disturb the assembly "voluntarily;" that he was justified by the Muhammadan Ecclesiastical Law in entering the mosque, and joining the congregation in saying the word "*amen*" loudly if he thought fit, and his conduct fell within the purview of s. 79 of the Penal Code, and was therefore not an offence under s. 296. *Beatty* v. *Gillbanks* (L. R., 9 Q. B. D. 308) referred to. Also *per* Mahmood, J., that, having regard to the guarantee given by the Legislature in s. 24 of Act VI. of 1871 (Bengal Civil Courts Act), that the Muhammadan Law shall be administered in all questions regarding "any religious usage or institution," the Court was bound, by s. 57 (*1*) of Act I. of 1872 (Evidence Act), to take judicial notice of the Muhammadan Ecclesiastical Law, and the rules of that law need not be proved by specific evidence.—QUEEN-EMPRESS v. RAMZAN, I. L. R., 7 All. 461. [Petheram, C.J., and Straight, Oldfield, Brodhurst, and Mahmood, JJ. Mar. 7, 1885.]

Facts admitted need not be proved.

**58.** No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which, by any rule of pleading in force at the time, they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

## CHAPTER IV.—OF ORAL EVIDENCE.

Proof of facts by oral evidence.

**59.** All facts, except the contents of documents, may be proved by oral evidence.

Oral evidence must be direct.

**60.** Oral evidence must, in all cases whatever, be direct; that is to say,—

if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense, or in that manner;

if it refers to an opinion, or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises, if the author is dead, or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided, also, that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

*Ruling.*

See IN THE MATTER OF HATIM, 12 C. L. R. 1, ruling 1, under s. 57, p. 53.

## CHAPTER V.—OF DOCUMENTARY EVIDENCE.

Proof of contents of documents.

**61.** The contents of documents may be proved either by primary or by secondary evidence.

Primary evidence.

**62.** Primary evidence means the document itself produced for the inspection of the Court.

*Explanation 1.*—Where a document is executed in several parts, each part is primary evidence of the document. Ss. 4, 5.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

*Explanation 2.*—Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

*Illustration.*

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence.

**63.** Secondary evidence means and includes—

(1) certified copies given under the provisions hereinafter contained; *

(2) copies made from the original by mechanical processes which, in themselves, insure the accuracy of the copy, and copies compared with such copies;

(3) copies made from or compared with the original;

(4) counterparts of document as against the parties who did not execute them;

(5) oral accounts of the contents of a document given by some person who has himself seen it.

*Illustrations.*

(*a*.) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(*b*) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(*c*.) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(*d*) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Proof of documents by primary evidence.

**64.** Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given.

**65.** Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:—

(*a*) when the original is shown or appears to be in the possession or power—

of the person against whom the document is sought to be proved, or

of any person out of reach of, or not subject to, the process of the Court, or

of any person legally bound to produce it,

and when, after the notice mentioned in section 66, such person does not produce it;

* See s. 76, *infra*.

(*b*) when the existence, condition, or contents of the original have been proved to be admitted in writing by the person against whom it is proved, or by his representative in interest;

(*c*) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(*d*) when the original is of such a nature as not to be easily moveable;

(*e*) when the original is a public document within the meaning of section 74;

(*f*) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence;

(*g*) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (*a*), (*c*), and (*d*), any secondary evidence of the contents of the document is admissible.

In case (*b*), the written admission is admissible.

In case (*e*) or (*f*), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (*g*), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

*Ruling.*

The Deputy Magistrate of Malabar, purporting to act under the provisions of the Mapilla Act (Mad. Act XX. of 1859), recorded a statement in the nature of a confession made by V, who was under arrest on suspicion of being concerned in a Mapilla outrage. This statement, which was made in Malayalam, was recorded in English in the form of a narrative, and was signed by the Magistrate only. The same Magistrate shortly afterwards, purporting to act under the Code of Criminal Procedure, before any evidence was recorded against V, examined him as to this statement, which was read over and translated to him. In answer to questions, V admitted that he had made it voluntarily. This examination was recorded according to the provisions of s 364 of the Code of Criminal Procedure. After other evidence was recorded, V retracted his statement. He was committed to the Sessions, tried, and convicted mainly on his own recorded statement and examination. The Deputy Magistrate was examined as a witness, and stated that the statement recorded by him was made by V, and was correctly recorded, and was made voluntarily. *Held* that the record of the statement made by V to the Deputy Magistrate was not admissible in evidence against V. *Per* Parker, J. The provisions of s. 164 of the Code of Criminal Procedure are imperative, and s. 533 will not render a confession admissible where no attempt has been made to conform to the provisions of the former section. If the confessional statement of V was recorded by the Magistrate in his executive capacity, it was not receivable in evidence under s. 80 of the Evidence Act. The action of the Magistrate in examining V as to his confessional statement before there was any legal evidence on the record against him was illegal, and therefore the record of such examination could not be used in evidence against V. Inasmuch as the record of the statement of V was not admissible, secondary evidence thereof could not be given. —QUEEN-EMPRESS *v.* VIRAN, I. L. R., 9 Mad. 224. [Brandt and Parker, JJ. Feb. 12, 17, 1886.]

Rules as to notice to produce.

**66.** Secondary evidence of the contents of the documents referred to in section 65, clause (*a*), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, "or to

his attorney or pleader,"* such notice to produce it as is prescribed by law; and, if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case: Ss. 67-73.

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:—

(1) when the document to be proved is itself a notice;

(2) when, from the nature of the case, the adverse party must know that he will be required to produce it;

(3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force:

(4) when the adverse party or his agent has the original in Court;

(5) when the adverse party or his agent has admitted the loss of the document;

(6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.

Proof of signature and handwriting of person alleged to have signed or written document produced.

**67.** If a document is alleged to be signed or to have been written, wholly or in part, by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

Proof of execution of document required by law to be attested.

**68.** If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive and subject to the process of the Court, and capable of giving evidence.

Proof where no attesting witness found.

**69.** If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

Admission of execution by party to attested document.

**70.** The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Proof when attesting witness denies the execution.

**71.** If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Proof of document not required by law to be attested.

**72.** An attested document not required by law to be attested may be proved as if it was unattested.

Comparison of signature, writing, or seal, with others admitted or proved.

**73.** In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person, may be compared with the one which is to be proved,

* In s. 66, the words quoted have been inserted by Act XVIII. of 1872, s. 6.

Ss. 74-76. although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

*This section applies also, with any necessary modifications, to finger-impressions.**

*Public Documents.*

Public documents.

**74.** The following documents are public documents:—

1. Documents forming the Acts, or records of the Acts—

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial, and executive, whether of British India, or of any other part of Her Majesty's dominions, or of a foreign country.

2. Public records kept in British India of private documents.

*Rulings.*

Certain persons charged with a dakaiti committed at Chawripura, a village on the borders of Gwalior, having gone over into Gwalior territory, were arrested and brought before the Magistrate of Bhind in Gwalior. That officer recorded their statements, attesting each statement in the following words: "I believe that this confession was made without threat or coercion, and it was made in my presence, and to my hearing. The person making it, having heard it read out to him, stated it as correct. It contains a full and true account of the statement made by him." Each statement also bore the mark (by way of signature) of the person by whom it purported to have been made. Subsequently these persons were handed over to the British authorities, and were tried by the Court of Session, who rejected the confessions above referred to as inadmissible in evidence. The accused having appealed to the High Court, it was *held* that each of the confessions recorded in the manner above described was admissible in evidence, certainly under s. 80 of the Evidence Act, and probably under s. 74 of that Act, as against the person by whom it was made —QUEEN-EMPRESS *v.* SUNDAR SINGH, I. L. R., 12 All. 595. [Edge, C.J., and Young, J. July 26, 1890.]

*Held* by the Full Bench (Subramania Ayyar, J, dissentiente).—Reports made by a police-officer in compliance with ss. 157 and 168 of the Criminal Procedure Code are not public documents within the meaning of s. 74 of the Indian Evidence Act, and consequently an accused person is not entitled, before trial, to have copies of such reports. *Held* by Collins, C.J., and Benson, J —The same rule applies to reports made by a police-officer in compliance with s. 173 of the Criminal Procedure Code. *Held* by Shephard and Subramania Ayyar, JJ.—Reports made by a police-officer in compliance with s. 173 of the Criminal Procedure Code are public documents within the meaning of s. 74 of the Indian Evidence Act, and consequently an accused person, being a person interested in such documents, is entitled, by virtue of s. 76 of the Indian Evidence Act, to have copies of such reports before trial —QUEEN-EMPRESS *v.* ARUMUGAM, I. L. R., 20 Mad. 189. [Collins, C J., and Shephard, Subramania Ayyar, and Benson, JJ. Sep. 17, Oct 7, 1896; Feb. 23, April 30, 1897 ]

Private documents.

**75.** All other documents are private.

Certified copies of public documents.

**76.** Every public officer having the custody of a public document which any person has a right to inspect shall give that person, on demand, a copy of it, on payment of the legal fees therefor, together with a certificate written at the foot of such copy

* In s. 73, the last paragraph has been added by the Indian Evidence Act (V. of 1899), s. 3 (2).

that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies. Ss. 77-79.

*Explanation.*—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

**77.** Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of documents by production of certified copies.

Proof of other official documents.

**78.** The following public documents may be proved as follows:—

(1) Acts, orders, or notifications of the Executive Government of British India in any of its departments, or of any Local Government or any department of any Local Government,—

by the records of the departments, certified by the heads of those departments respectively,

or by any document purporting to be printed by order of any such Government:

(2) The proceedings of the Legislatures—

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of Government:

(3) Proclamations, orders, or regulations issued by Her Majesty, or by the Privy Council, or by any department of Her Majesty's Government—

by copies or extracts contained in the *London Gazette*, or purporting to be printed by the Queen's Printer:

(4) The acts of the Executive or the proceedings of the Legislature of a foreign country—

by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some public Act of the Governor-General of India in Council:

(5) The proceedings of a municipal body in British India—

by a copy of such proceedings certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body:

(6) Public documents of any other class in a foreign country—

by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public, or of a British Consul or Diplomatic Agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

*Presumptions as to Documents.*

**79.** The Court shall presume every document purporting to be a certificate, certified copy, or other document which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer in British India, or

Presumption as to genuineness of certified copies.

S. 80. by any officer in any Native State in alliance with Her Majesty, who is duly authorized thereto by the Governor-General in Council, to be genuine:

Provided that such document is substantially in the form, and purports to be executed in the manner, directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified held, when he signed it, the official character which he claims in such paper.

**80.** Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—

Presumption as to documents produced as record of evidence.

that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true; and that such evidence, statement, or confession, was duly taken.

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*Rulings.*

1. The confession of a witness in the shape of a former deposition can be used as evidence against the prisoner only on the condition prescribed by s 249, Code of Criminal Procedure, that is, it must have been duly taken by the committing officer in the presence of the person against whom it is to be used. The certificate of the Magistrate appended to such confession, in order to afford *primâ-facie* evidence, under s. 80 of the Evidence Act of the circumstances mentioned in it relative to the taking of the statement, ought to give the facts necessary to render the deposition admissible under s 249.—QUEEN *v.* NUSSURUDDIN, 21 W. R. 5 [Phear and Morris, JJ Nov 28, 1873.]

2. To support a finding upon an alternative charge of perjury, there must be legal evidence of the truth of each branch of the charge The deposition of the prisoner given in Hindustani, but taken in English by the Magistrate, and the memorandum at the foot of the deposition that it was read to the witness, and was by him acknowledged to be correct, though held not to be quite satisfactory (as the person who took down in English what the prisoner had said in Hindustani was not examined as a witness, and the prisoner had no opportunity of cross-examining him), was admitted as a proper deposition within the provisions of the Code of Criminal Procedure, and the memorandum was taken, under s. 80 of the Evidence Act (I. of 1872), as evidence of the facts stated in it, and as affording some evidence that the translation was correct.—QUEEN *v.* GONOWRI, 22 W. R. 2. [Phear and Morris, JJ. April 21, 1874.]

3. A deposition given by a person is not admissible in evidence against him in a subsequent proceeding without its being first proved that he was the person who was examined and gave the deposition. A pardon was tendered to an accused, and his evidence was recorded by the Magistrate. Subsequently the pardon was revoked, and he was put on his trial before the Sessions Judge along with the other accused. At the trial the deposition given by him before the Magistrate was put in and used in evidence against him without any proof being given that he was the person who was examined as a witness before the Magistrate. *Held* that the deposition was inadmissible without proof being given as to the identity of the accused with the person who was examined as a witness before the Magistrate. —QUEEN-EMPRESS *v.* DURGA SONAR, I. L. R. 11 Cal. 580. [Mitter and Norris, JJ. May, 26, 1885.]

4. Although all depositions of witnesses in criminal cases should be taken and attested in the presence of the accused, and a few apt words should be used on the face of the deposition to make it apparent that this has been done, there is no provision of the law which makes the attestation of the deposition by the Court in the presence of the accused obligatory. S. 80 of the Evidence Act, therefore, does not warrant the presumption that the deposition of a medical witness taken by a committing Magistrate has been taken and attested in the accused's presence, so as to make such deposition admissible in evidence at the trial before the Court of Session under s. 509 of the Criminal Procedure Code. *Queen-Empress*

v. *Riding* (I. L. R., 9 All. 720) referred to. —QUEEN-EMPRESS v. POHP SINGH, I. L. R., 10 All. 174. [Edge, C.J., and Tyrrell, J. Dec. 19, 1887.]

5. Before the deposition of a medical witness taken by a committing Magistrate can, under s. 509 of the Code of Criminal Procedure, be given in evidence at the trial before the Court of Session, it must either appear from the Magistrate's record, or be proved by the evidence of witnesses, to have been taken and attested by the Magistrate in the presence of the accused. The Court is neither bound to presume under s. 80 nor ought it to presume under either s 80 or s. 114 (ill *e*) of the Evidence Act that the deposition was so taken and attested *Queen-Empress* v. *Riding* (I. L. R. 9 All. 720) and *Queen-Empress* v. *Pohp Singh* (I. L. R., 10 All. 174) approved —KACHALI HARI v. QUEEN-EMPRESS. I. L. R. 18 Cal. 129. [Norris and Gordon, JJ. Aug 28, 1890.]

6. A revenue-official was charged with the offence of attempting to receive a bribe from certain raiyats, who gave evidence for the prosecution, and he was convicted. He subsequently charged the raiyats with having conspired to bribe him, and in their trial their depositions in the previous case were tendered in evidence for the prosecution. *Held* that the depositions should have been admitted in evidence.—QUEEN-EMPRESS v. SAMIAPPA, I. L. R., 15 Mad. 63. [Muttusami Ayyar and Parker, JJ. Mar. 31 and Sep 9, 1891.] Ss. 81-84.

See QUEEN-EMPRESS v. VIRAN, I. L. R., 9 Mad. 224, under s. 65, p. 56.

See QUEEN-EMPRESS v. NILMADHUB MITTER, I. L. R., 15 Cal. 595, under s. 21, p. 16.

See QUEEN-EMPRESS v. SUNDAR SINGH, I. L. R., 12 All. 595, under s. 74, p. 58.

**81.** The Court shall presume the genuineness of every document purporting to be the London Gazette, or the Gazette of India, or the Government Gazette of any Local Government, or of any colony, dependency, or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen's Printer, and of every document purporting to be a document directed by any law to be kept by any person if such document is kept substantially in the form required by law, and is produced from proper custody.

Presumption as to gazettes, newspapers, private Acts of Parliament, and other documents.

**82.** When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp, or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims,

Presumption as to document admissible in England without proof of seal or signature.

and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

**83.** The Court shall presume that maps or plans purporting to be made by the authority of Government were so made and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.

Presumption as to maps or plans made by authority of Government.

**84.** The Court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country,

Presumption as to collections of laws and reports of decisions.

and of every book purporting to contain reports of decisions of the Courts of such country.

Ss. 85-90.

Presumption as to powers-of-attorney.

**85.** The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty, or of the Government of India, was so executed and authenticated.

Presumption as to certified copies of foreign judicial records.

**86.** The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Her Majesty or of the Government of India "in or for"* such country to be the manner commonly in use in that country for the certification of copies of judicial records.

*An officer who, with respect to any territory or place not forming part of Her Majesty's dominions, is a Political Agent therefor, as defined in section 3, clause (40), of the General Clauses Act, 1897, shall, for the purposes of this section, be deemed to be a representative of the Government of India in and for the country comprising that territory or place.*†

Presumption as to books, maps, and charts.

**87.** The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

Presumption as to telegraphic messages.

**88.** The Court may presume that a message forwarded from a telegraph office to the person to whom such message purports to be addressed corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

Presumption as to due execution, &c., of documents not produced.

**89.** The Court shall presume that every document called for, and not produced after notice to produce, was attested, stamped, and executed in the manner required by law.

Presumption as to documents thirty years old.

**90.** Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

*Explanation.*—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

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* In s 86, the words quoted have been substituted, for the words "residence in," by the Indian Evidence Act (1872) Amendment Act (III. of 1891), s. 8.

† In s. 86, as amended by s. 8 of the Indian Evidence Act (1872) Amendment Act (III. of 1891), the italicized paragraph has been substituted for the amended paragraph by the Indian Evidence Act (V. of 1899), s. 4.

*Illustrations.*

(*a.*) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it. The custody is proper.

(*b.*) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(*c.*) A, a connection of B, produces deeds relating to lands in B's possession which were deposited with him by B for safe custody. The custody is proper.

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## CHAPTER VI.—OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

Evidence of terms of contracts, grants, and other dispositions of property reduced to form of document.

**91.** When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence* shall be given in proof of the terms of such contract, grant, or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

*Exception 1.*—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

*Exception 2.*—Wills "admited to probate in British India"† may be proved by the probate.

*Explanation 1.*—This section applies equally to cases in which the contracts, grants, or dispositions of property referred to, are contained in one document, and to cases in which they are contained in more documents than one.

*Explanation 2.*—Where there are more originals than one, one original only need be proved.

*Explanation 3.*—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

*Illustrations.*

(*a.*) If a contract be contained in several letters, all the letters in which it is contained must be proved

(*b.*) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(*c.*) If a bill of exchange is drawn in a set of three, one only need be proved.

(*d.*) A contracts in writing, with B, for the delivery of indigo upon certain terms.

The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.

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* Evidence may, however, be taken where a Criminal Court finds that a confession or other statement of an accused person has not been recorded in manner prescribed.—See the Code of Criminal Procedure (Act V. of 1898), s. 533.

† These words in s. 91, *exception 2*, have been substituted, for the words "under the Indian Succession Act," by the Indian Evidence Act Amendment Act (XVIII. of 1872), s. 7.

S. 91. (*e.*) A gives B a receipt for money paid by B.
Oral evidence is offered of the payment.
The evidence is admissible.

*Rulings.*

1. The confession of an accused person, taken by a Magistrate having no jurisdiction to commit or try him, is imperfect, if not signed by the accused person or attested by his mark, and is inadmissible in evidence (ss. 122 and 346, Criminal Procedure Code). The term "preliminary inquiry" in the final clause of s. 346 means such inquiries as are the subject of Chapters XIV. (Of Inquiries and Trials) and XV. (Of Inquiry into Cases triable by the Court of Session or the High Court); and, therefore, that clause does not apply to confessions recorded under s. 122, which refers to an inquiry, not during a trial, or one held with a view to committal, but an inquiry for the purpose of forwarding confessions, when recorded, to the Magistrate by whom the case of the accused person is inquired into or tried. Consequently, when a confession taken under s. 122 is inadmissible in evidence, oral evidence to prove that such a confession was made, or what the terms of that confession were, is inadmissible also (s. 91 of the Evidence Act).—REG. *v.* BAI RATAN, 10 Bom. H. C. R. 166. [Westropp, C.J., and Melvill, West, Pinhey, and Nanabhai Haridas, JJ. Sep. 25, 1873.]

2. S 119 of the Code of Criminal Procedure not making it obligatory upon a police-officer to reduce to writing any statements made to him during an investigation, neither that section, nor s. 91 of the Evidence Act, renders oral evidence of such statements inadmissible. If the statement be actually reduced to writing, the writing itself cannot be treated as part of the record, or used as evidence, but may be used for the purpose of refreshing memory under s. 159 of the Evidence Act. Consequently, the person making the statements may properly be questioned about them, and, with a view to impeach his credit, the police-officer himself, or any other person in whose hearing the statements were made, can be examined on the point under s. 155 of the Evidence Act.—REG. *v.* UTTAMCHAND KAPURCHAND, 11 Bom. H. C. R. 120. [Nanabhai Haridas and Larpent, JJ. June 25, 1874.]

3. In a case of giving false evidence, the English record written by the Magistrate was put in to prove what the accused had stated before him. The document was not interpreted to the accused in the language in which it was given, or which he understood; nor was it read over in accordance with the requirements of s. 339, Code of Criminal Procedure, in the presence of the person then accused. *Held* that the English record of the Magistrate was not legal evidence under the Evidence Act (I. of 1872), s. 91, of what the prisoner said before the Magistrate. Charges of perjury ought to be based strictly upon the exact words which are used by the person who is charged; and no evidence which does not profess to give those exact words can alone be a safe foundation for a conviction.—QUEEN *v.* MUNGUL DASS 23 W. R. 28. [Phear and Morris, JJ. Jan. 28, 1875.]

4. Failure to comply with the provisions of ss. 182 and 183 of Act X. of 1877 (Civil Procedure Code) in a judicial proceeding is an informality which renders the deposition of an accused inadmissible in evidence on a charge of giving false evidence based on such deposition, and, under s. 91 of Act I. of 1872 (Evidence Act), no other evidence of such deposition is admissible.—IN THE MATTER OF MAYADEB GOSSAMI, EMPRESS *v.* MAYADEB GOSSAMI, I. L. R. 6 Cal. 762; 8 C. L. R. 292 [Cunningham and Maclean, JJ. Feb. 22, 1881.]

5. A Sessions Judge, after hearing a general statement made by a mukhtar engaged in the case, considered that the depositions of certain witnesses taken in the Magistrate's Court did not conform with the requirements of s 360 of the Code of Criminal Procedure, and refused to admit the depositions as evidence, and also refused to allow oral evidence to be given as to the statements made by these witnesses. No objection was taken to the admission of these depositions on behalf of the Crown. The accused were eventually convicted and sentenced to rigorous imprisonment. *Held*, on appeal, that the conviction and sentence must be set aside.—ADYAN SINGH *v.* QUEEN-EMPRESS, I. L. R., 13 Cal. 121. [O'Kinealy and Agnew, JJ. June 30, 1886.]

6. An accused, when in custody, made a confession to a Deputy Magistrate, in the presence of a Sub-Inspector, and during an investigation being held into a case of murder, under the provisions of Ch. XIV. of the Criminal Procedure Code. The confession was recorded by the Deputy Magistrate in English, though made in Hindi, which the Deputy Magistrate perfectly well understood and could write. It purported to have been recorded under the provisions of s. 164, and was in reply to one question which was set out. The record bore the signatures of

the accused and of the Deputy Magistrate, as well as the certificate as required by the section. It occupied about five pages of foolscap. At the trial the Sessions Judge excluded this confession on the ground that, not having been recorded in the language in which it was made, and there being no reason why it should not have been so recorded, the document was inadmissible in evidence. He, however, called the Deputy Magistrate as a witness, and admitted in evidence his statement as to what the accused told him. This evidence, which occupied only a few lines, was to the effect that the accused told him he had committed the murder, and on this evidence alone the accused was convicted. On appeal, *held* that the provisions of s. 164, read with s. 364, are imperative as to the language in which a confession is to be recorded, and that s. 533 does not contemplate or provide for any *non*-compliance with the law in this respect, and that, therefore, as it was not impracticable to record the confession in Hindi, the Sessions Judge was right in refusing to admit the document in evidence *Held*, further, that the Sessions Judge erred in admitting the oral evidence of the Deputy Magistrate as to what the accused told him, as, seeing that he was acting under the provisions of s. 164 of the Criminal Procedure Code, the confession was matter which was required by law to be reduced to the form of a document, and therefore, under s. 91 of the Evidence Act, no evidence could be given in proof of such matter except the document, where, as in this case, it was in existence and forthcoming. *Held* also that, as the defects in the record could not be cured under s. 533 of the Criminal Procedure Code, and no secondary evidence could be given, no proof of the confession could be given, and the accused must be acquitted.—[AI NARAYAN RAI *v.* THE QUEEN-EMPRESS, I. L. R., 17 Cal. 862. [Macpherson and Hill, JJ. April 22, 1890.] S. 91.

**92.** When the terms of any such contract, grant, or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Exclusion of evidence of oral agreement.

*Proviso 1.*—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want *or** failure of consideration, or mistake in fact or law.

*Proviso 2.*—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

*Proviso 3.*—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant, or disposition of property, may be proved.

*Proviso 4.*—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant, or disposition of property, may be proved, except in cases in which such contract, grant, or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

*Proviso 5.*—Any usage or custom, by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

*Proviso 6.*—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

* In s. 92, *prov.* 1, the italicized word "or" has been sub-tituted for the word "of" by s. 8 of the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872).

s. 92-95.

*Illustrations.*

(*a.*) A policy of insurance is effected on goods "in ships from Calcutta to London." The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy cannot be proved.

(*b.*) A agrees absolutely in writing to pay B Rs. 1,000 on the first March 1873. The fact that, at the same time, an oral agreement was made that the money should not be paid till the thirty-first March cannot be proved.

(*c.*) An estate, called "the Rampur tea estate," is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate, and was meant to pass by the deed, cannot be proved.

(*d.*) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(*e.*) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(*f.*) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(*g.*) A sells B a horse, and verbally warrants him sound. A gives B a paper in these words: "Bought of A a horse for Rs. 500." B may prove the verbal warranty.

(*h.*) A hires lodgings of B, and gives B a card on which is written—'Rooms, Rs. 200 a month.' A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the terms verbally.

(*i.*) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount, A may prove this.

(*j.*) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

Exclusion of evidence to explain or amend ambiguous document.

**93.** When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning, or supply its defects.

*Illustration.*

(*a.*) A agrees, in writing, to sell a horse to B for "Rs. 1,000 or Rs. 1,500." Evidence cannot be given to show which price was to be given.

(*b.*) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

Exclusion of evidence against application of document to existing facts.

**94.** When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

*Illustration.*

A sells to B, by deed, "my estate at Rampur containing 100 bighas." A has an estate at Rampur containing 100 bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place, and of a different size.

Evidence as to document unmeaning in reference to existing facts.

**95.** When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

*Illustration.* Sec. 96-100.

A sells to B, by deed, "my house in Calcutta."

A had no house in Calcutta but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.

These facts may be proved to show that the deed related to the house at Howrah.

Evidence as to application of language which can apply to one only of several persons.

**96.** When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

*Illustrations.*

(*a.*) A agrees to sell to B, for Rs. 1 000, "my white horse." A has two white horses. Evidence may be given of facts which show which of them was meant.

(*b.*) A agrees to accompany B to Haid rabad Evidence may be given of facts showing whether Haiderabad in the Deccan or Haiderabad in Sindh was meant.

Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies

**97.** When the language used applies partly to one set of existing facts and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

*Illustration.*

A agrees to sell to B "my land at X in the occupation of Y." A has land at X but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X. Evidence may be given of facts showing which he meant to sell.

Evidence as to meaning of illegible characters, &c.

**98.** Evidence may be given to show the meaning of illegible or not commonly intelligible characters or foreign, obsolete, technical, local, and provincial expressions, of abbreviations, and of words used in a peculiar sense.

*Illustration*

A, a sculptor, agrees to sell to B 'all my mods' A has both models and modelling tools. Evidence may be given to show which he meant to sell.

Who may give evidence of agreement varying terms of document.

**99.** Persons, who are not parties to a document or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

*Illustration.*

A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

Saving of provisions of Indian Succession Act relating to wills.

**100.** Nothing in this chapter contained shall be taken to affect any of the provisions of the Indian Succession Act (X. of 1865) as to the construction of wills.

Ss. 101-5.

## PART III.—PRODUCTION AND EFFECT OF EVIDENCE.

### CHAPTER VII.—OF THE BURDEN OF PROOF.

Burden of proof.

**101.** Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

*Illustrations.*

(*a.*) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed :

A must prov that B has committed the crime.

(*b.*) A desires a Court to give judgment that he is entitled to certain land in the possession of B by reason of facts which he asserts, and which B denies, to be true :

A must prove the existence of those facts.

On whom burden of proof lies.

**102** The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

*Illustrations.*

(*a.*) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A

(*b.*) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed: and the fraud is not proved.

Therefore the burden of proof is on B.

Burden of proof as to particular fact.

**103.** The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

*Illustration*

A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

Burden of proving fact to be proved to make evidence admissible.

**104.** The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

*Illustrations.*

(*a.*) A wishes to prove a dying declaration by B. A must prove B's death.

(*b.*) A wishes to prove, by secondary evidence, the contents of a lost document: A must prove that the document has been lost.

Burden of proving that case of accused comes within exceptions.

**105.** When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Indian Penal Code, or within any special exception or proviso con-

tained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances. S. 105.

*Illustrations.*

(*a.*) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

(*b.*) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.

The burden of proof is on A.

(*c.*) Section 325 of the Indian Penal Code provides that whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section 325:

The burden of proving the circumstances bringing the case under section 335 lies on A.

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*Rulings.*

1. A Sessions Judge, holding a second trial, should not comment on the conduct of a previous trial. It is for those who raise the plea of private defence to prove it. The act charged cannot be denied, and the plea of private defence raised as an alternative. If raised, a full account of the occurrence must be given in evidence.—IN THE MATTER OF JANSHEER SIRDAR, 1 C. L. R. 62. [Ainslie and McDonell, JJ. July 24, 1877.]

2. In all criminal cases tried in the Mofussil it is incumbent on the accused, since the passing of the Evidence Act (I of 1872), to prove the existence (if any) of circumstances which bring the offence charged within the general or special exceptions or provisos contained in any part of the Penal Code or in any law defining such offence. *Quære.*—As to the state of the law in this respect in the presidency-towns. In dealing with the question of good faith, the proper point to be decided is, not whether the allegations put forward by the accused in support of the defamation are in substance true, but whether he was informed, and had good reason, after due care and attention, to believe, that such allegations were true. Markby, J.—Although ss. 235 and 237 of Act XXV. of 1861 have been repealed, it may still be inferred from ill. (*a*), s. 439 of the present Criminal Procedure Code, that it is unnecessary specifically to allege in a charge the absence of all general and some at least of the other exceptions mentioned in the Penal Code. The operation of the illustration, however, is strictly confined to the statement of the offence in the charge.—IN THE MATTER OF SHIBOO PROSHAD PANDAH, I. L. R., 4 Cal. 124; 3 C. L. R. 122. [Markby and Prinsep, JJ. June 13, 1878.]

3. Where the accused had been convicted of riot under s. 148, and of grievous hurt under s. 325, of the Penal Code, the Sessions Judge on appeal held that the complainants had themselves been the aggressors, and that the accused had merely exercised the right of private defence; but, inasmuch as they had not set up the plea of private defence, he considered it was not competent to him to set aside the conviction. *Held* that, on the finding of the Sessions Judge, the accused were entitled to an acquittal.—IN THE MATTER OF KALI CHURN MOOKERJEE, 11 C. L. R. 232. [Prinsep and O'Kinealy, JJ. May 22, 1882.]

*Held* that an accused person who at his trial has not pleaded the right of private defence, but has raised other pleas inconsistent with such a defence, cannot, in appeal, set up a case, founded upon the evidence taken at his trial, that he acted in the exercise of the right of private defence; neither is the Court competent to raise such a plea on behalf of the appellant. *Queen-Empress* v. *Prag Dat* (I. L. R., 20 All. 459) referred to.—QUEEN-EMPRESS v. TIMMAL, I. L. R., 21 All 122. [Knox and Banerjee, JJ. Nov. 18, 1898.]

Burden of proving fact specially within knowledge.

**106.** When any fact is specially within the knowledge of any person, the burden of proving that fact is upon him.

*Illustrations.*

(*a.*) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

Ss. 107-12. (*b.*) A is charged with travelling on a railway without a ticket: The burden of proving that he had a ticket is on him.

*Ruling.*

See DEPUTY LEGAL REMEMBRANCER *v.* KARUNA BAISTOBI, I. L. R., 22 Cal. 164, ruling 37, under s. 30 at p. 38.

Burden of proving death of person known to have been alive within thirty years.

**107.** When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Burden of proving that person is alive who has not been heard of for seven years.

**108.** "Provided that,"* when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is *shifted to*† the person who affirms it.

Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.

**109.** When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships, respectively, is on the person who affirms it.

Burden of proof as to ownership.

**110.** When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Proof of good faith in transactions where one party is in relation of active confidence.

**111.** Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

*Illustrations.*

(*a.*) The good faith of a sale by a client to an attorney is in question in a suit brought by the client: The burden of proving the good faith of the transaction is on the attorney.

(*b.*) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son: The burden of proving the good faith of the transaction is on the father.

Birth during marriage conclusive proof of legitimacy.

**112.** The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

*Ruling.*

A married woman is entitled, under s. 488 of the Code of Criminal Procedure (Act X. of 1882), to claim maintenance for her illegitimate children from the putative father. A wife can be examined as to non-access of her husband during her married life, without independent evidence being first offered to prove the illegitimacy of her children.—ROZARIO *v.* INGLES, I. L. R., 18 Bom. 468. [Candy and Fulton, JJ. Oct. 16, 1893.]

* In s. 108, the words quoted have been inserted by s. 9, Act XVIII., 1872.

† In s. 108, the italicized words have been substituted for the word "on," by s. 9, Act XVIII., 1872.

**118.** A notification in the *Gazette of India* that any portion of British territory has been ceded to any Native State, Prince, or Ruler,* shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification. Ss. 112, 114.

Proof of cession of territory.

**114.** The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.

Court may presume existence of certain facts.

*Illustrations.*

The Court may presume—

(*a*.) that a man who is in possession of stolen goods soon after the theft is either the thief, or has received the goods knowing them to be stolen, unless he can account for his possession;

(*b*.) that an accomplice is unworthy of credit unless he is corroborated in material particulars;

(*c*.) that a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(*d*.) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence;

(*e*.) that judicial and official acts have been regularly performed;

(*f*.) that the common course of business has been followed in particular cases;

(*g*.) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(*h*.) that, if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;

(*i*.) that, when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following in considering whether such maxims do or do not apply to the particular case before it—

as to illustration (*a*)—a shopkeeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business;

as to illustration (*b*)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself;

as to illustration (*b*)—a crime is committed by several persons: A, B, and C, three of the criminals are captured on the spot, and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable;

as to illustration (*c*)—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence;

as to illustration (*d*)—it is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course;

as to illustration (*e*)—a judicial act, the regularity of which is in question, was performed under exceptional circumstances;

as to illustration (*f*)—the question is, whether a letter was received: It is shown to have been posted, but the usual course of the post was interrupted by disturbances;

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* See, for example, Gazette of India, Jan. 4, 1873, Pt. I., p. 2.

S. 114. as to illustration (*g*)—a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family;

as to illustration (*h*)—a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked;

as to illustration (*i*)—a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

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*Rulings.*

1. The evidence requisite for the corroboration of the testimony of an accomplice must proceed from an independent and reliable source, and previous statements made by the accomplice himself, though consistent with the evidence given by him at the trial, are insufficient for such corroboration. The confession of one of the prisoners cannot be used to corroborate the evidence of an accomplice against the others—REG. *v.* MALAPA BIN KAPANA, 11 Bom. H. C. R. 196. [Nanabhai Haridas and Larpent, JJ. July 15, 1874.]

2. The law in India, as expressed in s. 133 and s. 114 of the Evidence Act, and which is in no respect different from the law of England on the subject, is that a conviction based on the uncorroborated testimony of an accomplice is not *illegal*, that is, not *unlawful*; but experience shows that it is unsafe, and hence it is the practice of the Judges, both in England and in India when sitting alone, to guard their minds carefully against acting upon such evidence when uncorroborated, and, when trying a case with a jury, to warn the jury that such a course is unsafe. There must be some corroboration independent of the accomplice, or of a co-confessing prisoner, to show that the party accused was actually engaged directly in the commission of the crime charged against him. A second accomplice does not improve the position of the first; and if there are two, it is necessary that both should be corroborated. The accomplice must be corroborated, not only as to one, but as to all, of the persons affected by the evidence, and corroboration of his evidence as to one prisoner does not entitle his evidence against another to be accepted without corroboration *R.* v. *Webb* (6 C. and P. 595), *R* v. *Dyke* (8 C and P. 261), *R.* v. *Addis* (6 C. and P. 388), and *R.* v. *Wilkes* (7 C. and P. 272) referred to. The possession of property taken from a murdered person is not adequate corroboration of the evidence of an accomplice charging such person in possession with participation in the murder, though it would, no doubt, be corroboration of evidence that the prisoner participated in a robbery, or that he had dishonestly received stolen property. In the trial of R, S, and M, upon a charge of murder, the evidence for the prosecution consisted of (i) the confession of P, who was jointly tried with them for the same offence, (ii) the evidence of an accomplice, (iii) the evidence of witnesses who deposed to the discovery in R's house of property belonging to the deceased, and (iv) the evidence of witnesses who deposed that, on the day when the deceased was last seen alive, all the prisoners were seen together near the place where the body was afterwards found. *Held* that there was no sufficient corroboration of the statements of the accomplice or of the co-confessing prisoner, P.—QUEEN-EMPRESS *v.* RAM SARAN, I. L. R., 8 All. 306. [Straight and Tyrrell, JJ. Nov. 11, 1885.]

3 Before the deposition of a medical witness taken by a committing Magistrate can, under s. 509 of the Criminal Procedure Code, be given in evidence at the trial before the Court of Session, it must either appear from the Magistrate's record, or be proved by the evidence of witnesses, to have been taken and attested in the accused's presence. It should not merely be presumed, under s. 114, ill (*e*), of the Evidence Act (I. of 1872), to have been so taken and attested.—QUEEN-EMPRESS *v.* RIDING, I. L. R., 9 All. 720. [Edge, C.J. Aug. 5, 1887.]

4. Case in which, upon review, a certificate having been granted by the Advocate-General under s. 26 of the Letters Patent, a conviction was quashed on the ground of improper reception of evidence and misdirection. The accused being upon his trial at the Sessions for murder, the two principal witnesses for the prosecution were G and M, to whom pardons were tendered by the committing Magistrate under s 337 of the Criminal Procedure Code, and who had accepted the pardons. The Judge read to the jury statements (which had not been admitted in evidence) by G and M purporting to have been taken under s. 364. *Held* that the improper reception of such evidence constituted a decision erroneous in point of law calculated to prejudice the prisoner. The Judge further charged the jury that they were not to convict upon the evidence of G if satisfied that he was an accomplice

and uncorroborated, but coupled the direction with a strong expression of opinion that G was not an accomplice. *Held* that this constituted a misdirection in fact, though not in form, calculated seriously to prejudice the prisoner's case.—QUEEN-EMPRESS v. O'HARA, I. L. R., 17 Cal. 642. [Petheram, C.J., and Prinsep, Pigot, Macpherson, and Norris, JJ. Mar. 10, 1890.]

5. A revenue-official was charged with the offence of attempting to receive a bribe from certain raiyats who gave evidence for the prosecution, and he was convicted. He subsequently charged the raiyat with having conspired to bribe him; and in their trial their depositions in the previous case were ordered in evidence for the prosecution. *Held* that the depositions should have been admitted in evidence.—QUEEN-EMPRESS v. SAMIAPPA, I. L. R., 15 Mad 63 [Muttusami Ayyar and Parker, JJ. Mar. 31, and Sep. 9, 1881.]

See QUEEN-EMPRESS v. KRISHNABHAT, I. L. R., 10 Bom. 319, ruling 32, under s. 30, p. 37. Ss. 115-117.

See QUEEN-EMPRESS v. BABURAM KANSARI, I. L. R., 19 Cal. 190, ruling 1, under s. 14, at p. 13.

See KACHALI HARI v. QUEEN-EMPRESS, I. L. R., 18 Cal. 129, ruling 5, under s. 80, p. 61.

On the trial of more persons than one, jointly, for the same offence, where one of them pleads guilty, the person so pleading is no longer on his trial, and cannot be treated as being jointly tried with the others. A confession by that person affecting himself and others cannot, therefore, be taken into consideration as against such others under s. 30 of the Evidence Act.—QUEEN-EMPRESS v LAKSHMAYYA PANDARAM, I. L. R., 22 Mad. 491.

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## CHAPTER VIII.—ESTOPPEL.

Estoppel.

**115.** When one person has, by his declaration, act, or omission, intentionally caused or permitted another person to believe a thing to be true, and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

*Illustration.*

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.

The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title: He must not be allowed to prove his want of title.

Estoppel of tenant; and of licensee of person in possession.

**116.** No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immoveable property; and no person who came upon any immoveable property by the license of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such license was given.

Estoppel of acceptor of bill of exchange, bailee, or licensee.

**117.** No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment, or grant such license.

*Explanation 1.*—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

*Explanation 2.*—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

S. 118.

## Chapter IX.—Of Witnesses.

**118.** All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Who may testify.

*Explanation.*—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him, and giving rational answers to them.

*Rulings.*

1. The Court in this case declined to act on the evidence of a child, 9 years old, who had been examined without oath, although she was a competent witness under s. 118 of the Evidence Act (I of 1872), inclining to the opinion that s. 13 of the Oaths Act, by which the evidence of a witness may be received in evidence, although no oath was administered did not render the deposition of a child of 9 years, whose deposition had been taken advisedly, and not by omission without oath or solemn affirmation, admissible as evidence. — QUEEN v ANUNTO CHUCKERBUTTY, 22 W. R. 1; 14 B. L. R. 295n. [Kemp and Birch, JJ. April 20, 1874.]

2 The evidence of a child of immature age—who, the Sessions Judge considered understood the questions which were put to her, and who was, therefore, a competent witness under s 118 of the Evidence Act—taken by the Sessions Judge on a simple affirmation, because she was not aware of the responsibility of an oath, was held to be admissible as evidence under s. 13 of the Oaths Act (X of 1873). Case of *Dwarkanath Dutt* (7 W R 15), which ruled that a Court, before which a second trial was held has nothing to do with the evidence given in the former trial except for the purpose of ascertaining whether the offence in the two trials is the same, followed A prisoner originally charged with an offence under one section (302), and acquitted of that charge, was committed, the day following that on which she was acquitted, for trial under another section (307) without any witnesses being examined on the charge under s. 307, and without having any opportunity of cross-examining the witnesses on the first charge with respect to the second charge. *Held* that the irregularity was one which was not covered by s 283, Code of Criminal Procedure, and that the prisoner had been prejudiced thereby in her defence. The trial under s. 307 was accordingly quashed, and a new trial ordered.—QUEEN v MUSSAMUT ITWARYA, 22 W. R 14, 14 B. L. R. 54, Ap. 1. [Kemp and Birch, JJ. May 9, 1874.]

3. K and B were accused of being concerned in the same offence. K was first apprehended, and the Magistrate inquired into the charge against him, and committed him for trial, but the Court of Session acquitted K. The Local Government preferred an appeal against his acquittal, and the Magistrate arrested him with a view to his detention in custody until such appeal was determined While K was so detained the Magistrate inquired into the charge against B, who had meanwhile been arrested, and made K a witness for the prosecution, and committed B for trial. K's evidence was taken on B's trial. *Held*, *per* Stuart, C.J. (Spankie J. doubting), that K's arrest was lawful, and that his evidence was admissible against B. *Held*, *per* Spankie, J., that, assuming that the Magistrate looked on K as an accused person, and his arrest was lawful the Magistrate should not have examined him as a witness against B, and that, assuming that K's arrest was unlawful, and that, when he made his statements, he was a free man, his evidence, if admissible, was not evidence on which a Court should place much reliance.—EMPRESS v. KARIM BUKHSH, I. L. R. 2 All. 386 (Stuart, C.J., and Spankie, J. June 6, 1879.]

4. S. 6 of the Oaths Act (X. of 1873) imperatively requires that no person shall testify as a witness except on oath or affirmation, and, notwithstanding s. 13 of the same Act, the evidence of a child of eight or nine years of age is inadmissible if it has been advisedly recorded without any oath or affirmation *Queen* v. *Sewa Bhogta* (14 B. L. R. 294) dissented from The nature of judicial oaths and affirmations and the history of Indian legislation on the subject discussed. —QUEEN-EMPRESS v MANU, I. L. R., 10 All. 207. [Mahmood, J. Jan. 16, 1888.]

5. The competency of a person to testify as a witness is a condition precedent to the administration to him of an oath or affirmation, and is a question distinct from that of his credibility when he has been sworn or has affirmed. In determining the question of competency, the Court, under s. 118 of the Evidence Act, has not to enter into inquiries as to the witness's religious belief, or as to his knowledge of the consequences of falsehood in this world or the next. It has

to ascertain, in the best way it can, whether, from the extent of his intellectual capacity and understanding, he is able to give a rational account of what he has seen or heard or done on a particular occasion. If a person of tender years or of very advanced age can satisfy these requirements, his competency, as a witness, is established. Having regard to the language of the Oaths Act (X. of 1873), a Court has no option, when once it has elected to take the statements of a person as evidence, but to administer to such person either an oath or affirmation as the case may require. *Queen-Empress* v. *Maru* (I. L. R., 10 All. 207) referred to. In a trial for murder before the Court of Session, one of the witnesses was a boy of twelve years of age, and in answer to questions put by the Sessions Judge, he said that he worshipped Debi, and understood the difference between truth and falsehood; that he did not know what would be the consequences here or hereafter of telling lies, but that he would tell the truth. The Sessions Judge proceeded to record the boy's statement, but without administering to him any oath or affirmation. *Held* that there was nothing in the law to sanction this procedure on the part of the Judge. The High Court required the attendance of the boy and of the accused, and, having satisfied itself of the competency of the former to depose as a witness, examined him as to his account of what had occurred.—QUEEN-EMPRESS v. LAL SAHAI, I. L. R., 11 All. 183. [Straight and Tyrrell, JJ. Oct. 24, 1888.] Ss. 119-121.

**119.** A witness, who is unable to speak, may give his evidence in any other manner in which he can make it intelligible, as by writing, or by signs; but such writing must be written, and the signs made, in open Court. Evidence so given shall be deemed to be oral evidence.

Dumb witnesses.

**120.** In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

Parties to civil suit and their wives or husbands.

Husband or wife of person under criminal trial.

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*Ruling.*

Bastardy proceedings under the provisions of s. 488 of the Criminal Procedure Code are in the nature of civil proceedings within the meaning of s. 120 of the Evidence Act, and the person sought to be charged is a competent witness on his own behalf. Upon a summons charging that the defendant, having sufficient means, had refused to maintain his child by his *nikâ* wife whom he had subsequently divorced, the Magistrate found that the marriage had not been proved, but that, upon the other evidence adduced, including the similarity of the features and the name of the child with those of the defendant, who did not appear before him during the proceedings, but with whom he stated that he was well acquainted the child was the illegitimate child of the defendant. He accordingly made an order for maintenance under the section. *Held* that, under the circumstances he was wrong in taking into account the similarity of the names and the features of the child and the defendant, but as there was ample evidence of the paternity he was justified in making the order he did, as it was immaterial for the purpose of determining the liability of the defendant to maintain the child, whether the mother had been married to the defendant or not.—NUR MAHOMED v. BISMILLA JAN, I. L. R., 16 Cal. 781. [Trevelyan and Beverley, JJ. July 9, 1889.]

**121.** No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Judges and Magistrates.

*Illustrations.*

(*a*) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

S. 122, 123. (*b.*) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.

(*c.*) A is accused before the Court of Session of attempting to murder a police-officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

*Rulings.*

1. A person having to exercise judicial functions may give evidence in a case pending before him when such evidence can and must be submitted to the independent judgment of other persons exercising similar judicial functions sitting with him at the same time. A Sessions Judge is a competent witness, and the giving of evidence by him does not preclude him from dealing judicially with the evidence of which his own forms a part. A prisoner has a right to ask to have the evidence of a Sessions Judge, who is trying him, taken on a point which he thinks makes in his favour. A Sessions Judge who makes a complaint before a Magistrate is not incompetent afterwards to try it without the aid of jury, if he has no personal or pecuniary interest in the subject of the charge —QUEEN *v.* MOOKTA SINGH, 13 W. R. 60; 4 B. L. R., A Cr., 15. [Norman and Mitter, JJ April 20, 1870.]

2. A Sessions Judge, finding in the course of a trial, as regards the examination of the accused person taken by the committing Subordinate Magistrate, that the provisions of s. 346 of Act X. of 1872 had not been fully complied with, summoned the committing Magistrate, and took his evidence that the accused person duly made the statement recorded. The Magistrate of the district objected to this proceeding of the Sessions Judge, contending that it was "contrary to law." The Sessions Judge referred the question, whether or not his proceeding was contrary to law, to the High Court. *Per* Stuart, C.J., and Pearson, Oldfield, and Straight, JJ.—That the privilege given by s. 121 of Act I. of 1872 is the privilege of the witness, *i e*. of the Judge or Magistrate of whom the question is asked; if he waives such privilege, or does not object to answer to such question, it does not lie in the mouth of any other person to assert the privilege; the reference, the objection not having been taken by the Subordinate Magistrate, but by the Magistrate of the district, should be answered accordingly. *Per* Spankie, J.—That a Sessions Judge, while trying a case, cannot compel a committing Magistrate to answer questions as to his own conduct in Court as such Magistrate.—EMPRESS *v.* CHIDDA KHAN, I. L. R., 3 All. 573. [Stuart, C.J., and Pearson, Spankie, Oldfield, and Straight, JJ. Mar. 14, 1881.]

**122.** No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons or proceedings in which one married person is prosecuted for any crime committed against the other.

Communications during marriage.

*Ruling.*

A married woman is entitled, under s. 488 of the Code of Criminal Procedure (Act X. of 1882), to claim maintenance for her illegitimate children from the putative father. A wife can be examined as to non-access of her husband during her married life, without independent evidence being first offered to prove the illegitimacy of her children.—ROZARIO *v.* INGLES, I. L. R., 18 Bom. 468. [Candy and Fulton, JJ. Oct. 16, 1893.]

On a trial for the offence of breach of trust by a public servant, a letter was tendered in evidence for the prosecution which had been sent by the accused to his wife at Pondicherry, and had been found on a search of her house made there by the police. *Held* that the letter was admissible in evidence against the accused.—QUEEN-EMPRESS *v.* DONAGHUE, I. L. R., 22 Mad. 1. [Subramania Ayyar and Boddam, JJ. July 31, Aug. 31, and Sep. 1, 1898.]

**123.** No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the Department concerned, who shall give or withhold such permission as he thinks fit.

Evidence as to affairs of State.

**124.** No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure. Ss. 124-125

Official communications.

**125.*** No Magistrate or police-officer† shall be compelled to say whence he got any information as to the commission of any offence, and no revenue-officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.

Information as to commission of offences.

*Explanation.*—"Revenue-officer" in this section means any officer employed in or about the business of any branch of the public revenue.

**126.** No barrister, attorney, pleader, or vakil shall, at any time, be permitted, unless with his client's express consent, to disclose any communication made to him in the course, and for the purpose, of his employment as such barrister, pleader, attorney, or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course, and for the purpose, of his professional employment, or to disclose any advice given by him to his client in the course, and for the purpose, of such employment:

Professional communications.

Provided that nothing in this section shall protect from disclosure—

(1) any such communication made in furtherance of any illegal‡ purpose;

(2) any fact observed by any barrister, pleader, attorney, or vakil in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader,§ attorney, or vakil, was or was not directed to such fact by or on behalf of his client.

*Explanation.*—The obligation stated in this section continues after the employment has ceased.

*Illustrations.*

(*a.*) A, a client, says to B, an attorney, "I have committed forgery, and I wish you to defend me:"

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(*b.*) A, a client, says to B, an attorney, "I wish to obtain possession of property by the use of a forged deed on which I request you to sue"

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(*c.*) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account-book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

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* Substituted, by Act III. of 1887, for the section originally enacted.

† All the privileges which a police-officer has under s. 125 of this Act have been conferred on a Commandant or Second-in-Command of Military Police in Burma.—See the Burma Military Police Act (XV. of 1887), s. 13.

‡ The word "illegal" has been substituted for the word "criminal" by the Indian Evidence Act Amendment Act (XVIII. of 1872), s. 10.

§ In s. 126, the word "pleader," wherever it occurs, has been inserted by the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872), s. 10.

ss. 127-129.

*Ruling.*

The law relating to professional communications between a solicitor and a client is the same in India as in England. It is not every communication made by a client to an attorney that is privileged from disclosure. The privilege extends only to communications made to him confidentially, and with a view to obtaining professional advice. Where a solicitor claims privilege under s 126 of the Indian Evidence Act (I. of 1872), he is bound to disclose the name of his client, on whose behalf he claims the privilege. The mere fact that the client's name had been communicated to him in the course and for the purpose of his employment as solicitor by another client affords no excuse, unless it was communicated to him confidentially, on the express understanding *that it was not to be disclosed. But a solicitor* is not at liberty, without his client's express consent, to disclose the nature of his professional employment. S. 126 of the Indian Evidence Act protects from publicity not merely the details of the business, but also its general purport, unless it be known *aliunde* that such business falls within proviso 1 or 2 to the section. At an interview between a solicitor and a client, the solicitor took down a certain statement made by a person named A B, who was in his client's company, and whose name was communicated to him in the course and for the purpose of his professional employment. A B was afterwards tried for defamation, and the solicitor was examined by the prosecution with reference to the statement made to him by the accused at the above interview. The solicitor was asked whether the person who had made the statement had given his name as A B. The solicitor declined to answer the question on the ground of privilege. *Held* that the solicitor was bound to answer the question, unless A B's name was communicated to him by his client in confidence with a view to its not being disclosed.—FRAMJI BHICAJI *v.* MOHANSING DHANSING, I. L. R., 18 Bom. 263. [Candy and Fulton, JJ. April 4, 1893.]

**127**. The provisions of section 126 shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys, and vakils.

Section 126 to apply to interpreters, &c.

**128**. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126, and, if any party to a suit or proceeding calls any such barrister, pleader,* attorney, or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney, or vakil on matters which, but for such question, he would not be at liberty to disclose.

Privilege not waived by volunteering evidence.

**129**. No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

Confidential communications with legal advisers.

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*Ruling.*

If a person, while in custody as an accused, gives information to the police as complainant in another case, his statements as such informant cannot be used as evidence against him on his trial. The depositions of witnesses given in a counter-case may be used as evidence against them on their trial as accused persons, but such depositions could only be evidence against the persons making them. *Queen* v. *Gopal Doss* (I. L. R., 3 Mad. 271) and *Queen-Empress* v. *Ganu Sonba* (I. L. R., 12 Bom. 440) followed. The mere subpœnaing of a witness, or ordering him to go into the witness-box, does not compel him to give any particular answer, or to answer any particular question. The words, "shall be compelled to give," in s. 132, Evidence Act, apply to pressure put upon a witness after he is in the box, and when he asks to be excused from answering a question. The wording of ss. 129, 130, 131, 132 and 148, Evidence Act, compared and discussed. When a party is in possession for four or

* In s 128, the word "pleader" has been inserted by the Indian Evidence Act (1872) Amendment Act (XVIII. of 1872), s. 10.

five days, though it may be in wrongful possession, another party, although claiming to be the rightful owner, is not entitled to go in force to turn him out, much less is he entitled to take armed men with him for that purpose. In an affray, specific evidence as to the acts of each fighter cannot be expected, but only general evidence as to the accused taking part in it and persons who, as in this case, punted the boats on which the fight took place, and in whose interests the fight on the boats took place, were held to be just as blameworthy as the men who struck the blows. — MOHER SHEIKH *v.* QUEEN EMPRESS, I. L. R., 21 Cal. 392. [Trevelyan and Rampini, JJ. Aug. 28, 1893.] Ss.130-32.

**130.** No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds, or some person through whom he claims.

Production of title-deeds of witness not a party.

*Ruling.*

See MOHER SHEIKH *v.* QUEEN-EMPRESS, I. L. R., 21 Cal. 392, under s. 129, *supra*.

**131.** No one shall be compelled to produce documents in his possession, which any other person would be entitled to refuse to produce if they were in his possession, unless such last-mentioned person consents to their production.

Production of documents which another person, having possession, could refuse to produce.

*Ruling.*

See MOHER SHEIKH *v.* QUEEN-EMPRESS, I. L. R., 21 Cal. 392, under s. 129, *supra*.

**132.** A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend, directly or indirectly, to criminate, such witness, or that it will expose, or tend, directly or indirectly, to expose, such witness to a penalty or forfeiture of any kind:

Witness not excused from answering on ground that answer will criminate.

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

Proviso.

*Rulings.*

1. Although a person under examination as a witness is bound by his affirmation to tell the truth, if he is examined on a point on which he is likely to criminate himself, his position should be explained to him by the Magistrate, as otherwise he may be induced, through ignorance of the state of the law, to deny the existence of the facts for fear of penal consequences. Although, without such a warning, he may make a false denial, and thereby become guilty of the offence of intentionally giving false evidence, his offence will not be deserving of severe punishment.—*In re* JADOONATH DUTT, 2 C. L. R. 181. [Markby and Prinsep, JJ. April 18, 1878.]

2. In a small-cause suit under ch 39 of the Code of Civil Procedure on a promissory note, which was alleged to have been executed jointly by G and his son V, V filed an affidavit in order to obtain leave to defend the suit, and, having obtained leave to defend, gave evidence at the trial on his own behalf On a subsequent trial of V for forgery of his father's signature to the same promissory note, the affidavit and deposition of V in the small cause suit were admitted as evidence against V. *Held* by Turner, C.J., and Innes and Kindersley, JJ., that both the affidavit and the deposition were properly admitted. By Kernan and Muttusami Ayyar, JJ., that the affidavit was properly admitted, but not the deposition. *Per* Turner, C.J., and Innes and Kindersley, JJ.. Where an accused person has made a statement on oath voluntarily and without compulsion on the part of the Court to which the statement is made, such a state-

S. 132. ment, if relevant, may be used against him on his trial on a criminal charge. If a witness does not desire to have his answer used against him on a subsequent criminal charge, he must object to answer, although he may know beforehand that such objection, if the answer is relevant, is perfectly futile, so far as his duty to answer is concerned, and must be overruled.—QUEEN v. GOPAL DOSS, I. L. R., 3 Mad. 271. [Turner, C.J., and Innes, Kernan, Kindersley, and Muttusami Ayyar, JJ. Feb. 14, 1881.]

3. S. 132 of the Evidence Act (I. of 1872) makes a distinction between those cases in which a witness voluntarily answers a question and those in which he is compelled to answer, and gives him a protection in the latter of these cases only Protection is afforded only to answers which a witness has objected to give, or which he has asked to be excused from giving, and which then he has been compelled by the Court to give. *Queen* v. *Gopal Doss* (I. L. R., 3 Mad. 271) followed. *Per* Birdwood, J. (dissenting): S. 132 of the Evidence Act (I. of 1872), read with s. 14 of the Indian Oaths Act (X. of 1873), compels a witness to answer criminating questions, and he is protected by the proviso to s. 132 from a criminal prosecution for any offence of which he criminates himself directly or indirectly by his answer, except a prosecution for giving false evidence by such answer. It is not only when a witness asks to be excused from answering a criminating question, and his request is refused, that he is "compelled to give" the answer within the meaning of the proviso. The compulsion is operative, whether he asks to be excused or gives the answer without so asking.—QUEEN-EMPRESS v. GANU SONBA, I. L. R., 12 Bom. 440. [Bayley, C.J., and Birdwood and Parsons, JJ Feb 2, 1888.]

See QUEEN-EMPRESS v. SAMIAPPA, I. L. R., 15 Mad. 63, ruling 6, under s. 80, p. 61.

See MOHER SHEIKH v. QUEEN-EMPRESS, I. L R, 21 Cal. 392, under s. 129, p. 78.

The accused D, a European British subject, was charged together with others, who were natives of India, under ss. 384, 385, and 389 of the Penal Code (Act XLV. of 1860), with conspiring to commit extortion. D claimed to be tried by a mixed jury under s. 450 of the Criminal Procedure Code (Act V. of 1898) The other accused, who were natives of India, then claimed to be tried separately under s. 452. The trial of D then proceeded, and at the close of the case for the prosecution he proposed to call as his witnesses the persons who had been charged with him, and who were awaiting their trial. They objected to be called. *Held* that he was entitled to call them as witnesses, and to examine them on oath. The words "the accused" in cl. 4 of s. 342 of the Criminal Procedure Code (Act V. of 1898) mean the accused then under trial and under examination by the Court.—QUEEN-EMPRESS v DURANT, I. L. R., 23 Bom. 213. [Candy, J. Oct. 6, 1898.]

**133.** An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Accomplice.

*Rulings.*

1. An approver's uncorroborated evidence is not sufficient as proof against other persons.—QUEEN v. ISSEN MUNDLE, 3 W. R. 8. [Jackson and Glover, JJ. May 4, 1865.]

2. A jury may convict upon the evidence of an accomplice, though not corroborated, so as to show the prisoner's actual participation in the offence. S. 28, Act II. of 1855, applied only to the old Supreme Courts and the rules and practice prevailing in them, and does not show that, in the Courts of the mofussil, corroborative evidence is legally requisite to support the testimony of an accomplice.—QUEEN v. GODAI RAOUT, 5 W. R. 11. [Seton-Karr and Macpherson, JJ Jan. 16, 1866.]

3. The testimony of an accomplice is not alone sufficient for a conviction The corroboration must be on matters directly connecting the prisoner with the offence of which he is accused, and the evidence of two or more accomplices requires confirmation equally with the testimony of one.—QUEEN v. DWARKA, 5 W. R. 18; 1 Ind. Jur, N. S., 100. [Kemp, Seton-Karr, and Jackson, JJ. Jan. 25, 1866.]

4. Case of murder where those prisoners, whose conviction depended on the uncorroborated evidence of accomplices and an accessary after the fact, were acquitted. In cases of view by assessors of the scene of the alleged offence, it was *held* that the Judge could not delegate his own function of examining the witnesses on the spot to the assessors, who cannot, under s. 348 of the Code of Criminal Procedure (Act XXV. of 1861), speak to, or communicate with, any other person than the officer appointed to conduct them to the place.—QUEEN v. CHUTTERDHAREE SINGH, 5 W. R. 59. [Norman and Campbell, JJ. April 4, 1866.]

5. When evidence is given by an approver, it is not important to consider whether a story told by the accused to him tallies with that made to another person.—QUEEN v. MEETARAM MYTEE, 1 Ind. Jur., N. S., 171. [Norman, Jackson, and Campbell, JJ. April 10, 1866.]

6. The uncorroborated testimony of one or more accomplice or accomplices is sufficient in law to support a conviction (see Act I. of 1872, s. 133). The evidence of accomplices should not be left to the jury without such directions and observations from the Judge as the circumstances of the case may require, pointing out to them the danger of trusting to such evidence when it is not corroborated by other evidence. The omission to do so is an error in law in the summing-up by the Judge, and is, on appeal, a ground for setting aside the conviction, when the Appellate Court thinks that the prisoner has been prejudiced by such omission, and that there has been a failure of justice. The nature and extent of the corroboration requisite explained and illustrated. The word "reverse," in ss. 419 and 426, Code of Criminal Procedure, means to make void, to set aside or annul, and not merely to change or turn into the contrary.—QUEEN v. ELAHI BUX, 5 W. R. 80; B. L. R., Sup. Vol., 459. [Peacock, C.J., and Kemp, Seton-Karr, and Phear, JJ. May 29, 1866.]

7. A verdict of guilty of dacoity against certain of the prisoners set aside on the ground of misdirection, the Judge having omitted to point out to the jury the danger of relying upon the uncorroborated testimony of accomplices.—QUEEN v. KHOTUB SHEIKH, 6 W. R. 17. [Norman and Campbell, JJ. July 2, 1866.]

8. A person may call the woman with whom he is accused of having had sexual intercourse as a witness on his behalf. A person is not, by reason of being an accomplice, disqualified from giving evidence either for or against a prisoner.—REFERENCE IN THE CASE OF SHEIKH BECHOO, 6 W. R. 92. [Kemp and Markby, JJ. Dec. 19, 1866.]

9. Held that the English practice should be followed as to the amount of corroboration required to support the evidence of an accomplice, which is, that when he speaks as to two or more persons having been concerned in the same offence, his testimony should be confirmed, not only as to the circumstances of the case, but also as to the identity of the prisoners; and that any prisoner as to whom his testimony is not supported should be acquitted. [See the comments on this case in *Reg.* v. *Ganu bin Dhareji* (6 Bom. H. C. R., Cr. Ca., 57).]—REG. v. IMAM VALAD BABAN, 3 Bom. H. C. R. 57. [Couch, C.J., and Warden, J. April 15, 1867.]

10. Conviction and sentence set aside (Glover, J., dissenting) as to two of the prisoners, on the ground that there was a misdirection to the jury, because the Judge, in summing-up, omitted to advise the jury not to convict upon the uncorroborated evidence of an approver, and because he treated as corroborative that which was no corroboration in law.—QUEEN v. NAWAB JAN, 8 W. R. 19 [Kemp, Macpherson, and Glover, JJ. June 24, 1867.]

11. The evidence of an approver, for whose appearance at the trial there was not the slightest reason, and the mere fact that in the houses of each of the four prisoners only one article of the stolen property was found, was held insufficient, under the circumstances of this case, where the best witnesses were not examined to support a conviction of the prisoners on a charge of dacoity.—QUEEN v. RAM SAGOR, 8 W. R. 57. [Loch and Seton-Karr, JJ. Aug. 5, 1867.]

12. A prisoner should not be convicted on the sole and uncorroborated evidence of an accomplice who was made a witness after a pardon was granted to him.—QUEEN v. NUNHOO, 9 W. R. 28. [Kemp and Jackson, JJ. Mar. 8, 1868.]

13. There is no rule of law that the uncorroborated evidence of an accomplice is insufficient for a conviction. The proper form of the charge to the assessors in such cases stated.—PRO., Mar. 20, 1868, 4 Mad. H. C. R., Ap., 7.

14. In a case in which the principal evidence against an accused is the evidence of an approver, the Sessions Judge should carefully warn the jury of the infirmity which attaches to that evidence, and he should also tell them (if the fact be so) that the approver is speaking under the influence of an offer of conditional pardon. The corroboration of the evidence of an approver should arise from other evidence relative to facts which implicate the prisoner in the same way as the story of the approver does. Evidence of character and previous conduct of a prisoner, being matters of prejudice, and not direct evidence of facts relevant to the charge against the prisoner, ought not to be allowed to go to the jury.—QUEEN v. BYKUNT NATH BANERJEE, 10 W. R. 17; 3 B. L. R 30. [Phear and Hobhouse, JJ. July 14, 1868.]

15. Where the Magistrate erroneously treated a witness as an accomplice, and granted him a conditional pardon, *held* that his evidence did not require corroboration.—REG. v. FATTECHAND VASTACHAND, 5 Bom. H. C. R. 85. [Warden and Sargent, JJ. Sep. 2, 1868.]

S. 133. 16. A Sessions Judge should not permit the evidence of an approver, who was examined as a witness before the committing Magistrate, to be laid before the jury by whom the prisoners were tried.—PRO., Oct. 31, 1868, 5 Mad. H. C. R., Ap., 21.

17. Held that, where the prisoners were charged under s 148 of the Penal Code of rioting armed with deadly weapons, and also, under s 324, of voluntarily causing hurt by dangerous weapons, they should have been sentenced only under *one* or *other* of these sections, the charges being, properly speaking, only alternative charges. The High Court refused to interfere with the reception by the Sessions Judge of the uncorroborated evidence of accomplices.—QUEEN *v.* DINA SHEIKH, 10 W. R. 63; 3 B. L. R. 15n. [Phear and Hobhouse, JJ. Dec. 15, 1868.]

18. Rule as to corroboration of the evidence of approvers laid down generally, and in a case where the charge is one of belonging to a gang of dacoits under s. 400 of the Penal Code.—QUEEN *v.* KALA CHAND DAS, 11 W. R. 21. [Norman and Jackson, JJ. Mar. 10, 1869.]

19. The unsupported evidence of an approver (especially if in itself unsatisfactory) is not sufficient to support a conviction.—QUEEN *v.* CHIRAG ALI, 12 W. R. 5. [Macpherson and Jackson, JJ. June 14, 1869.]

20. Held that where the evidence of an accomplice is uncorroborated, the correct practice requires a Sessions Judge, not merely to tell the jury that it is unusual to convict on such evidence, but that he should also tell them that it is unsafe, and contrary both to prudence and practice to do so, yet that his omission to state this does not amount to an error in law. *Reg v Imam salad Baban* (3 Bom. H. C. R., Cr. Ca., 57) commented on.—REG. *v.* GANU BIN DHAROJI, 6 Bom. H. C. R. 57. [Couch, C.J., and Warden, J. Sep. 22, 1869.]

21. Where a Sessions Judge, in his charge to the jury in a case in which an approver-accomplice gave his evidence, drew the attention of the jury to the necessity for requiring corroboration to the approver's evidence before they could convict upon it, and the jury, notwithstanding his charge, convicted upon the uncorroborated evidence of the accomplice, it was *held*, following a Full Bench case cited that the High Court could not interfere with such conviction. Where a Sessions Judge omitted in his charge to the jury to comment on different parts of the evidence for the defence, to which he simply alluded as being unimportant, and allowed evidence as to character and hearsay evidence to go to the jury, the High Court acquitted the prisoner, the other evidence in the case being insufficient for conviction. Evidence as to character ought not to be laid before a jury, but should only be taken and considered by the Sessions Judge in awarding punishment.—QUEEN *v.* MOHIMA CHUNDER DASS, 15 W. R. 37; 6 B. L. R., Ap., 108. [Jackson and Mookerjee, JJ. Mar. 8, 1871.]

22. Where, although the Judge thought that the evidence of two witnesses was inadmissible against the prisoner as being the evidence of accomplices, yet he did not think the evidence in the case legally sufficient to justify the conviction of the prisoner, the High Court declined to interfere under s. 404, Code of Criminal Procedure (Act XXV of 1861), considering that the question of admissibility was a quite different matter from that of credibility.—GOVT. OF BENGAL *v.* KAZIMUDDIN, 18 W. R. 3. [Bayley and Mitter, JJ. May 15, 1872.]

23. The corroboration which is needed in order to make the testimony of an approver-witness trustworthy should be corroboration derived from evidence which is independent of accomplices, and not vitiated by the accomplice-character of the witness, and, further, should be such as to support that portion of the accomplice's testimony which makes out that the prisoner was present at the time when the crime was committed, and participated in the acts of commission. The statement must not merely be generally true, but true in the particular points which affect the persons accused.—QUEEN *v.* MOHESH BISWAS, 19 W. R 16, 10 B L. R 455n [Phear and Amslie, JJ. Jan. 23, 1873.]

24. *Although, under s. 133 of the Evidence Act* (I. of 1872), the conviction of a prisoner, on the uncorroborated testimony of an accomplice, is not illegal, the Court, having reference to ill. (*b*), s. 114 of that Act, considered in this case that the accomplice was unworthy of credit.—QUEEN *v.* LUCHMEE PERSHAD, 19 W. R. 43. [Kemp and Pontifex, JJ. Mar. 5, 1873.]

25. Under s. 133 of the Evidence Act (I of 1872), a conviction is not illegal, merely because it proceeds upon the uncorroborated testimony of an accomplice.—QUEEN *v.* KOA, 19 W. R. 48. [Kemp, J. Mar. 22, 1873.]

26 Although, by s. 133, Act I. of 1872, an accomplice is a competent witness against an accused person, and a conviction would not be illegal, merely because it proceeded upon the uncorroborated testimony of an accomplice, yet it would be unsafe, where the testimony of the accomplice is not corroborated in any material point, except by the confession of a fellow-prisoner whose testimony likewise requires corroboration

to convict the accused.—QUEEN v. UDHAN BIND, 19 W. R. 68. [Kemp and Phear, JJ. April 28, 1873.]

27. The Court (Mitter and Pontifex, JJ. Glover, J., dissenting) refused to convict in this case on the uncorroborated testimony of an accomplice, who had previously been convicted of the same offence on her own confession. *Per* Glover, J.—In a case triable by the Sessions Court, a Magistrate has power to commit the accused to the Sessions after he has once discharged him. *Quære.*—If the jury in a Sessions trial are not sworn, is the omission one which could be covered by s. 13 of the Oaths Act (X. of 1873)?—QUEEN v. RAMSODOY CHUCKERBUTTY, 20 W. R. 19. [Glover, Mitter, and Pontifex, JJ. June 9, 1873.]

28. An accused person cannot be convicted solely upon the evidence of persons who are more or less participators in the crime of which he is accused. Where a witness admits that he was cognizant of the crime as to which he testifies and took no means to prevent or disclose it, his evidence must be considered as no better than that of an accomplice—QUEEN v. CHANDO CHANDALINEE, 24 W. R. 55. [Markby and McDonell, JJ. Sep. 13, 1875.]

29. A conviction based on the testimony of approvers, uncorroborated as to the identity of the accused person, cannot be sustained, and confessions of co-prisoners implicating him cannot be accepted as sufficient corroboration of such testimony.—REG. v. BUDHU NANKU, I. L. R., 1 Bom 475 [Westropp, C.J., and Nanabhai Haridas, J. 1876.]

30. S. 133 of the Evidence Act (I. of 1872), in unmistakable terms, lays it down that a conviction is not illegal, merely because it proceeds upon the uncorroborated testimony of an accomplice, and to hold that corroboration is necessary is to refuse to give effect to this provision. The rule in s. 114 of the Evidence Act coincides with the rule observed in England, that though the evidence of an accomplice should be carefully examined and received with caution, and may be treated as unworthy of credit, yet, if the jury or the Court credits the evidence, a conviction proceeding upon it is not illegal. —REG. v. RAMASAMI PADAYACHI, I. L. R., 1 Mad. 394. [Morgan, C.J., and Kindersley, J. Mar. 15, 1878.]

31. *Per* Field, J.—That there is a grave doubt whether the deposition of an approver, taken before the committing Magistrate, may be used as evidence against his accomplices on their trial before the Sessions Court, the conditional pardon of the approver having been withdrawn. Where a conditional pardon, granted to an approver, is withdrawn under s. 349 of the Criminal Procedure Code by the Sessions Court, the Judge ought to wait till the conclusion of the trial of the accomplices, and then, before passing judgment on them, if found guilty, proceed against the approver.—IN THE MATTER OF JOYUDDEE PARAMANICK, 7 C. L. R. 66. [White and Field, JJ. 1880.] S. 133

32. *Quære.*—Whether the deposition of an approver taken before the committing Magistrate may be used in the Sessions Court as evidence against accomplices, the approver having retracted his former statement, and the conditional pardon having, in consequence, been withdrawn. See *Joyuddee Paramanick*, 7 C. L. R. 66.—NANHA MALLA v. EMPRESS, 13 C. L. R. 326. [Prinsep and Tottenham, JJ. Aug. 31, 1883.]

33. It is open to a Judge, in charging the jury, to express his opinion as to the effect of a certain portion of the evidence; but he should always be careful to add that it is for the jury to form their own opinion. Exact correspondence in details of several statements made by an approver in the course of a trial is not corroborative evidence such as is ordinarily required to make it safe to convict a particular prisoner. Confessions of prisoners are not, as against their fellow-prisoners, who were not present when the confessions were made, such corroborative evidence of the statement of an approver as would justify the conviction of the other prisoners thereon. Confessions of two of several accused persons made in the absence of the others are of no weight against the latter. Such confessions, as well as the statements of approvers, are always regarded as tainted; because, from the position occupied by the person making them, they are not entitled to the same weight as the evidence of ordinary witnesses. An accused person is not bound to account for his movements at or about the time an offence was committed, unless there has been given legal evidence sufficient, *primâ facie*, to convict him of the offence. —QUEEN-EMPRESS v. BEPIN BISWAS, I. L. R., 10 Cal 970. [Prinsep and Macpherson, JJ. June 26, 1884.]

34. A Court of Session, under s. 338 of the Criminal Procedure Code, tendered a pardon to an accused person charged jointly with two others for the same offence, who had pleaded guilty. The tender was accepted, and such person was examined as a witness against the other accused. *Held* that the tender of pardon was not improperly made, and the evidence of the approver was admissible. *Per* Duthoit, J.—The word "supposed" in s. 338 must be taken merely as intended to exclude the

S. 133. case of a man who has actually been convicted of the crime, and not the case of a man who, although admitted to be a party to the crime, is unconvicted.—QUEEN-EMPRESS v. KALLU, I. L. R., 7 All. 160. [Petheram, C.J., and Duthoit, J. Nov. 14, 1884.]

35. Criminal Courts dealing with an approver's evidence in a case where several persons are charged should require corroboration of his statements in respect of the identity of each of the individuals accused. *Queen-Empress* v. *Ram Saran* (I. L. R., 8 All. 306), *Queen-Empress* v. *Kure* (2 Weekly Notes, 1886, p. 65), and *Reg.* v *Mullins* (3 Cox C. C. 526) referred to. A, B, M, R, and N, were tried together on a charge under s. 460 of the Penal Code. The principal evidence against all of them was that of an approver. Against A, B, and M, there was the further evidence that they produced certain portions of the property stolen on the night of the crime from the house where the crime was committed. With regard to R, it was proved that he was present when B pointed out the place where some of the property was dug up, but he did not appear to have said anything, or give any directions about it. *Held*, with reference to A, B, and M, that it could not be said that their recent possession of part of the stolen property, so soon after it had been stolen, was not such corroboration of the approver's evidence of their participation in the crime as entitled the Court to act upon his story in regard to those particular persons. *Held* that, inasmuch as there was no sufficient material to warrant the inference of guilty knowledge on R's part, and, with regard to N, no property was found with him, or produced through his instrumentality, both R and N ought to have been acquitted—QUEEN-EMPRESS v. BALDEO, I. L. R., 8 All. 509. [Straight, Offg. C J. June 28, 1886.]

36. *Per* Edge, C.J.: Although, as a general rule it would be most unsafe to convict an accused person on the uncorroborated evidence of an accomplice, such evidence must, like that of any other witness, be considered and weighed by the Judge, who, in doing so, should not overlook the position in which the accomplice, at the time of giving his evidence, may stand, and the motives which he may have for stating what is false. If the Judge, after making due allowance for these considerations and the probabilities of the story, comes to the conclusion that the evidence of the accomplice, although uncorroborated, is true, and the evidence, if believed, establishes the guilt of the prisoner, it is his duty to convict. *Reg.* v. *Ramasami Padayachi* (I. L. R., 1 Mad. 394), *Empress* v. *Hardeo Das* (Weekly Notes, 1884, p. 286), and *Queen-Empress* v. *Ram Saran* (I. L. R., 8 All. 306) referred to. *Queen-Empress* v. *Ram Saran* (I. L. R., 8 All. 306) explained and distinguished by Straight, J. *Per* Brodhurst, J., *contra*: Observations as to the necessity of corroboration in material particulars of the evidence of accomplice-witnesses. *Queen-Empress* v. *Ram Saran* (I. L. R., 8 All. 306), *Queen* v. *Ramsodoy Chuckerbutty* (20 W. R. Cr. 19), and *Reg.* v. *Budhu Nanku* (I. L. R., 1 Bom. 475) referred to. *Per* Edge, C.J., and Straight, J.: Every case, as it arises, must be decided on its own facts, and not on supposed analogies to other cases. *Queen-Empress* v. *Gayadin* (I. L. R., 4 All. 148) distinguished. *Queen-Empress* v. *Gayadin* (I. L. R., 4 All. 148) followed by Brodhurst, J., as to the principles applicable to the determination of appeals preferred by the Local Government from judgments of acquittal *Per* Edge, C.J.: In capital cases, where the Local Government appeals, under s. 417 of the Criminal Procedure Code, from an order of acquittal, it is, generally speaking, undesirable that the prisoner's fate should be discussed while he remains at large; and the Government should, in such cases, apply for the arrest of the accused under s 427 of the Code.—QUEEN-EMPRESS v. GOBARDHAN, I. L R, 9 All. 528 [Edge, C J, and Straight and Brodhurst, JJ. June 10, 1887.]

37. A Judge should caution a jury not to accept the evidence of an approver unless it is corroborated: the omission to do so amounts to misdirection. — QUEEN-EMPRESS v. ARUMUGA, I. L. R., 12 Mad. 196. [Collins, C J., and Muttusami Ayyar, J. Nov. 22, 1888.]

38. A prisoner charged before a Magistrate at Benares with offences punishable under ss. 471, 472, and 474 of the Penal Code, made a confession to the Magistrate in respect of those offences. He was then sent in custody to Calcutta, and was there, together with other persons, charged before a Magistrate with offences punishable under ss. 467, 473, and 475. The conduct to which these charges related was closely connected and mixed up with that to which the charges first mentioned had reference. Under s. 337 of the Criminal Procedure Code, the Magistrate at Calcutta tendered a pardon to the prisoner upon the conditions specified in that section, and the prisoner accepted the pardon, and gave evidence for the prosecution. The Magistrate held that this evidence was not sufficiently corroborated, and accordingly discharged all the accused, but the pardon was not withdrawn, and there was nothing to show that the Magistrate was dissatisfied with the prisoner's statements, or considered that he had not complied with the conditions on which the pardon was tendered. Subsequently, the pri-

sooner was committed by the Magistrate of Benares for trial before the Court of Session upon the charges under ss. 471, 472, and 474 of the Penal Code. He pleaded not guilty, but did not in terms plead the pardon as a bar to the trial, though he made some reference to the subject; and the Sessions Judge, having made a brief inquiry as to the proceedings at Calcutta, came to the conclusion that there was no sufficient [illegible] of any conditional pardon, and convicted and sentenced the accused. *Held* that, by the terms of the conditional pardon granted to the accused by the Calcutta Magistrate, the conditions of which were satisfied as was shown by its never having been withdrawn, the accused was protected from trial at Benares in respect of the offences under ss. 471, 472, and 474, and was not liable to be proceeded against in respect of them, and that the trial and conviction were, therefore, illegal. Although s. 337 of the Criminal Procedure Code does not in terms cover a case where a Magistrate, holding a preliminary inquiry for committal against several persons, tenders a conditional pardon to one of them, examines him as a witness, and subsequently discharges all the accused for want of a *primâ-facie* case against them, the words, "every person accepting a tender under this section shall be examined as a witness in the case," mean that for all purposes (subject to failure to satisfy the conditions of the pardon as provided for by s. 339) such a person ceases to be triable for the offence or offences under inquiry, or (with reference to s. 339) for "any other offence of which he appears to have been guilty in connection with the same matter," while making "a full and true disclosure of the whole of the circumstances within his knowledge relative to the offences" directly under inquiry. The words last quoted refer to the importance, when a pardon is tendered, of encouraging the approver to give the fullest details so that points may be found in his evidence which may be capable of corroboration. The question of how far the pardon protects him, and what portion of it should not protect him, ought not to be treated in a narrow spirit.—QUEEN-EMPRESS v. GUNGA CHARAN, I. L. R., 11 All. 79. [Straight, J. Nov. 23, 1888.]

S. 133.

39. The accused, who were classers employed in the Revenue Survey Department, were charged, under s. 161 of the Indian Penal Code, with taking bribes from the rayats of certain villages. The only evidence against the accused was that of persons who had either subscribed to the bribes, or collected subscription, or paid the money to the accused. They stated that they had offered the bribes, because the classers had threatened to raise the assessment, cut down the hedges, and erect new boundary-marks. As regards this evidence, the trying Magistrate remarked that, even if all the witnesses for the prosecution were treated as accomplices, it was open to him to convict on their uncorroborated testimony, as "there was inherent truth in their statements, and circumstances existed which negatived the presumption of a conspiracy, and evidenced signs of truthfulness." The Magistrate was also of opinion that there was a distinction between accomplices who volunteered to assist in the receipt of illegal gratifications and those who assisted under compulsion. In the opinion of the Magistrate, the witnesses in the present case belonged to the latter class, and there was no reason to disbelieve their evidence. He therefore convicted the accused under s. 161 of the Indian Penal Code, and sentenced them to rigorous imprisonment and fine. *Held* (Scott, J., dissenting) that the convictions were illegal, there being no evidence to corroborate the witnesses for the prosecution, all of whom were accomplices. *Held* also (Scott, J., dissenting) that there was such error in the consideration by the Magistrate of the evidence as to prejudice the accused, and such a failure of justice as to justify the Court, in revision, in setting aside the convictions. *Per Curiam*: The limits of the application of the doctrine of necessity as an excuse for an act otherwise criminal are those prescribed in s. 94 of the Penal Code. Therefore, witnesses, who, in order to avoid pecuniary injury or personal molestation, had offered or given bribes to a public servant, were abettors of the offence of taking an illegal gratification, and their evidence should be treated as that of accomplices. By the law, both of India and England, the evidence of an accomplice is admissible, and a conviction is not illegal, because it proceeds upon the uncorroborated testimony of an accomplice (s 133 of the Evidence Act, I. of 1872). But the presumption that an accomplice is unworthy of credit, unless corroborated in material particulars, has become a rule of practice of almost universal application. *Per* Scott, J.: There may be, however, cases of an exceptional character in which the accomplice-evidence alone convinces a Judge; and, if he acts on that conviction, with the character of the witnesses clearly present in his mind, a Revisional Court ought not to interfere in the absence of other circumstances showing a want of judicial discretion. *Per* Jardine, J.: The mere circumstance of a person being present on a lawful occasion does not raise a presumption of that person's complicity in an offence then committed, so as to make s. 34 of the Penal Code applicable — *Reg.* v. *Farler* (8 C. & P. 106). Where the Magistrate, on that ground, did make that presumption against an accused person,

Ss. 34-36. and applied the provisions of s. 34, he committed an error in law, and the High Court, as a Court of Rivision, might acquit the accused. — QUEEN-EMPRESS *v.* MAGANLAL AND MOTILAL, I. L. R., 14 Bom. 115. [Bayley, Scott, and Jardine, JJ. Sep 24, 1889.]

See REG. *v.* MALAPA BIN KAPANA, 12 Bom. H. C. R. 196, ruling 13, under s. 30, p. 34.

See QUEEN-EMPRESS *v.* RAM SARAN, I. L. R., 8 All. 306, ruling 2, under s. 114, p. 72.

See QUEEN-EMPRESS *v.* O'HARA, I. L. R., 17 Cal. 642, ruling 4, under s. 114, pp. 72-73.

Number of witnesses.

**134.** No particular number of witnesses shall in any case be required for the proof of any fact.

*Rulings.*

1. Held by the majority of the Court (Campbell, J., dissenting) that the evidence of one witness uncorroborated is not legally sufficient for a conviction of perjury.—QUEEN *v.* LAL CHAND COWRAH CHOWKEEDAR, 5 W. R. 23; I. Ind Jur. N. S. 83. [Peacock, C.J., and Bayley, Norman, Pundit, and Campbell, JJ Feb. 7, 1866.]

2. Comparison of signatures is one kind of corroboration which would justify a conviction on the testimony of a single witness in a case of false evidence.—QUEEN *v.* BAKHOREE CHOWREY, 5 W. R. 98 [Seton-Karr, J. June 5, 1866.]

3. A person accused of perjury is entitled to have the specific charge made against him tried quite independently of a like charge against another person, and the Court of Session must find judicially whether all, or, if not all, which of the particular charges of perjury, where there is more than one charge, is made out against each prisoner. A conviction for perjury, moreover, should not be sustained on the bare testimony of one witness.—QUEEN *v.* KHOAB LAL, 9 W. R. 66. [Phear and Hobhouse, JJ. May 12, 1868.]

4. The evidence of one witness in cases of perjury is sufficient to establish the *factum* of the statement which is charged as being false. The measure of punishment is a matter entirely in the discretion of the Court of Session.—QUEEN *v.* ISSEN CHUNDER GHOSE PATRI, 14 W. R. 53. [Jackson and Mitter, JJ. Sep. 12, 1870.]

## CHAPTER X.—OF THE EXAMINATION OF WITNESSES.

Order of production and examination of witnesses.

**135.** The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

Judge to decide as to admissibility of evidence.

**136.** When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

*Illustrations.*

(*a*.) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 32.

The fact that the person is dead must be proved by the person proposing to prove the statement before evidence is given of the statement.

(*b*.) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(*c.*) A is accused of receiving stolen property, knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.

(*d.*) It is proposed to prove a fact (A), which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C, and D), which must be proved to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C, or D is proved, or may require proof of B, C, and D before permitting proof of A.

Examination-in-chief.

**137.** The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination.

The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination.

The examination of a witness, subsequent to the cross-examination, by the party who called him, shall be called his re-examination.

*Ruling.*

One accused person may cross-examine a witness called by another co-accused for his defence when the case of the second accused is adverse to that of the first.—RAM CHAND CHATTERJEE v. HANIF SHEIKH, I. L. R., 21 Cal. 401. [Trevelyan and Rampini, JJ. Nov. 17, 1893.]

Order of examinations. Direction of re-examination.

**138.** Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

*Rulings.*

1. It is irregular to allow a witness to be examined on behalf of the prosecution *after* the prisoner had made his defence, when the witness is not a witness to contradict any new case set up by the prisoner. Where, however, the prisoner had full notice of the evidence which was to be given by such witness, and made his defence in allusion to the evidence of the witness, the High Court refused to set aside the conviction, having regard to s. 439 of the Criminal Procedure Code.—QUEEN v. SHAM KISHORE HOLDAR, 13 W. R. 36. [Norman, Offg. C.J., and Bayley, J. Mar. 5, 1870.]

2. Where a riot occurred and complaints were lodged by both parties, the witnesses for the prosecution were in each case in turn examined-in-chief, then also in turn cross-examined, and in like manner re-examined, and the Court thereupon discharged the accused in one case, and called upon the accused in the other to go into his defence. *held* that the procedure adopted was improper, and there should be a new trial. *Empress* v. *Chandra Nath Sircar* (I. L. R., 7 Cal. 65; 8 C. L R. 352) followed. The provisions of s. 439 of the Criminal Procedure Code in no way affects the powers of the High Court as a Court of Revision vested in it by the High Courts Act.—IN THE MATTER OF CHAKOWRI LALL, 13 C. L. R. 275 [Prinsep, J. Aug. 13, 1883.]

3 At the trial of a party of Hindus for rioting, the Magistrate, instead of examining the witnesses for the prosecution, caused to be produced copies of the examination-in-chief of the same witnesses which had been recorded at a previous trial of a party of

s. 139-45. Muhammadans who were opposed by the Hindus in the same riot. These copies were read out to the witnesses, who were then cross-examined by the prisoners, and no objection to this procedure was taken on the prisoner's behalf. The accused were convicted. *Held* that, although the procedure adopted by the Magistrate was irregular, the irregularity was cured by the provisions of s. 537 of the Criminal Procedure Code and of s. 167 of the Evidence Act (I. of 1872), as it was not shown that there had been any failure of justice, or that the accused had been substantially prejudiced, and as the matters elicited in cross-examination were sufficient to sustain the conviction.—QUEEN-EMPRESS *v.* NAND RAM, I. L. R., 9 All. 609. [Mahmood, J. April 30, 1887.]

See NOOR BUX KAZI *v.* EMPRESS, I. L. R., 6 Cal. 279; 7 C. L. R. 385, ruling 24, under s. 30, pp. 35-36.

Cross-examination of person called to produce a document.

**139.** A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.

Witnesses to character.

**140.** Witnesses to character may be cross-examined and re-examined.

Leading questions.

**141.** Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

When they must not be asked.

**142.** Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

When they may be asked

**143.** Leading questions may be asked in cross-examination.

Evidence to matters in writing.

**144.** Any witness may be asked, whilst under examination, whether any contract, grant, or other disposition of property as to which he is giving evidence, was not contained in a document; and, if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

*Explanation.*—A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

*Illustration.*

The question is, whether A assaulted B:

C deposes that he heard A say to D, "B wrote a letter accusing me of theft, and I will be revenged on him." This statement is relevant as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

Cross-examination as to previous statements in writing.

**145.** A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing,* his attention must, before the writing can be

* This applies to police-diaries.—See s. 172, Act V. of 1898.

proved, be called to those parts of it which are to be used for the purpose of contradicting him. Ss. 146-148

*Rulings.*

1. Remarks upon the objectionable practice of permitting police-officers to conduct prosecutions in the Sessions Court. A witness, when under examination-in-chief before the Court of Session, should not have his attention directed to his deposition before the Magistrate. He may, under s 23, Act II. of 1855, be cross-examined as to previous statements made by him in writing, when his attention may be drawn to the parts of the former writing which are to be used for the purpose of contradicting him. —QUEEN *v.* RAM CHANDER SIRCAR, 13 W. R. 18. [Kemp and Jackson, JJ. Jan 29, 1870.]

2. Although previous statements made by witnesses may be used, under s. 145 of the Evidence Act, for the purpose of contradicting statements made by them subsequently at the trial of an accused person, they cannot, if they have been made in the absence of the accused, be treated as independent evidence of his guilt or innocence; s. 288 of the Criminal Procedure Code will not avail anything for this purpose. Where witnesses appeared to have taken an active part in carrying away a person after he had been grievously assaulted and was in a helpless condition, and then leaving him in a field where he was subsequently found dead, *held* that their evidence was no better than that of accomplices; at any rate, it would be most unsafe for the Court to rely upon their evidence, unless corroborated in material respects. in convicting the accused.—ALIMUDDIN *v* QUEEN-EMPRESS, I. L. R., 23 Cal. 361. [Ghose and Hill, JJ. Oct. 11, 1895.]

**146.** When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend—

Questions lawful in cross-examination.

(1) to test his veracity;

(2) to discover who he is, and what is his position in life, or

(3) to shake his credit by injuring his character, although the answer to such questions might tend, directly or indirectly, to criminate him, or might expose, or tend, directly or indirectly, to expose him to a penalty or forfeiture.

**147.** If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto.

When witness to be compelled to answer.

**148.** If any such question relates to a matter not relevant to the suit or proceeding except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations:—

Court to decide when question shall be asked, and when witness compelled to answer.

(1) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(2) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies:

(3) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence:

(4) the Court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer, if given, would be unfavourable.

Ss. 149-53.

*Ruling.*

See QUEEN v. GOPAL DASS, I. L. R., 3 Mad. 271, ruling 2, under s. 132, at pp. 79-80.

**149.** No such question as is referred to in section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

Question not to be asked without reasonable grounds.

*Illustrations.*

(*a.*) A barrister is instructed by an attorney or vakil that an important witness is a dakait: This is a reasonable ground for asking the witness whether he is a dakait.

(*b.*) A pleader is informed by a person in Court that an important witness is a dakait. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement This is a reasonable ground for asking the witness whether he is a dakait.

(*c.*) A witness, of whom nothing whatever is known, is asked at random whether he is a dakait · There are here no reasonable grounds for the question.

(*d.*) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers: This may be a reasonable ground for asking him if he is a dakait.

**150.** If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil, or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil, or attorney, is subject in the exercise of his profession.

Procedure of Court in case of question being asked without reasonable grounds.

**151.** The Court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Indecent and scandalous questions.

**152.** The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

Questions intended to insult or annoy.

**153.** When a witness has been asked, and has answered, any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but, if he answers falsely, he may afterwards be charged with giving false evidence.

Exclusion of evidence to contradict answers to questions testing veracity.

*Exception 1.*—If a witness is asked whether he has been previously convicted of any crime, and denies it, evidence may be given of his previous conviction.

*Exception 2.*—If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted.

*Illustrations.*

(*a.*) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it,

Evidence is offered to show that he did make such a claim:

The evidence is inadmissible.

(*b*) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty:

The evidence is not admissible.

(c.) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Calcutta. He denies it.

Evidence is offered to show that A was on that day at Calcutta:

The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(d.) A is asked whether his family has not had a blood-feud with the family of B against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

*Rulings.*

S. 11 of the Evidence Act should not be construed in its widest signification, but considered as limited in the effect by s. 34 of the Act. So construed, s 11 renders inadmissible the evidence of one crime (not reduced to legal certainty by a conviction) to prove the existence of another unconnected crime, even though it be cognate Accordingly, the possession by an accused person of a number of documents suspected to be forged is evidence to prove that he has forged the particular document, with the forgery of which he is charged. *Per* West, J.—Where a person charges another with having forged a promissory note, and denies having ever executed any promissory note at all, the evidence that a note, similar to the one alleged to be forged, was, in fact, executed by that person, is not admissible, nor even would a judgment founded upon such note be so (ss. 43 and 153 of the Evidence Act).—REG. *v.* PARBHUDAS AMBARAM, 11 Bom. H. C. R 90. [Melvill and West, JJ. Jan. 2, 1874.]

See REG. *v.* SAKHARAM MUKUNDJI, 11 Bom H. C. R. 166, ruling 1, under s. 5, p. 5.

Question by party to his own witness.

**154.** The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

*Ruling.*

The mere fact that at a Sessions trial a witness tells a different story from that told by him before the Magistrate does not necessarily make him hostile. The proper inference to be drawn from contradictions going to the whole texture of the story is not that the witness is hostile to this side or to that, but that the witness is one who ought not to be believed unless supported by other satisfactory evidence.—KALACHAND SIRCAR *v.* QUEEN-EMPRESS, I. L. R., 13 Cal. 53. [Wilson and Porter, JJ. April 16, 1886].

Impeaching credit of witness.

**155.** The credit of a witness may be impeached in the following ways by the adverse party or, with the consent of the Court, by the party who calls him—

(1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(2) by proof that the witness has been bribed, or has accepted* the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

(4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

* The word "accepted" has been substituted for the word "had" by Act XVIII. of 1872, s. 11.

*Explanation.*—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

*Illustrations.*

(*a.*) A sues B for the price of goods sold and delivered to B. C says that he delivered the goods to B :

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B;

The evidence is admissible.

(*b.*) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A, or in his presence:

The evidence is admissible.

*Rulings.*

A statement reduced to writing by a police-officer under s. 162 of the Code of Criminal Procedure (Act X. of 1882) cannot be used as evidence for the accused. But though it is not evidence, the police-officer to whom it was made may use it to refresh his memory under s. 159 of the Evidence Act (I. of 1872), and may be cross-examined upon it by the party against whom the testimony aided by it is given. The person making the statement may also be questioned about it; and, with a view to impeach his credit, the police-officer, or any other person in whose hearing the statement was made, can be examined on the point under s. 155 of the Evidence Act. *Reg. v. Uttamchand* (11 Bom. H. C. R. 120) followed. — QUEEN-EMPRESS *v.* SITARAM VITHAL, I. L. R., 11 Bom. 657. [West and Birdwood, JJ. Mar. 24, 1887.]

See REG. *v.* UTTAMCHAND KAPURCHAND, 11 Bom. H. C. R. 120, ruling 2, under s. 91, p 64.

See REG. *v.* SAKHARAM MUKUNDJI, 11 Bom. H C. R. 166, ruling 1, under s. 5, p. 5

**156.** When a witness, whom it is intended to corroborate, gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Questions tending to corroborate evidence of relevant fact, admissible.

*Illustration.*

A, an accomplice, gives an account of a robbery in which he took part He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed :

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

*Ruling.*

See REG. *v.* SAKHARAM MUKUNDJI, 11 Bom. H. C. R. 166, ruling 1, under s. 5, p. 5.

**157.** In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

Former statements of witness may be proved to corroborate later testimony as to same fact.

*Rulings.*

See REG. v. MALAPA BIN KAPANA, 11 Bom. H. C. R. 196, ruling 13, under s. 30, p. 34.

See QUEEN-EMPRESS v. ISHRI SINGH, I. L. R., 8 All. 672, ruling 4, under s. 33, p. 42.

The accused complained to the police that A and B had robbed him. After inquiry the police reported to the Magistrate that the charge was false. The Magistrate thereupon struck off the case without holding any further inquiry himself. The accused was subsequently charged and convicted under s. 211 of the Penal Code of making a false charge. On appeal it was contended that as the accused had not been given an opportunity of substantiating his complaint before a Magistrate, his prosecution was illegal, or at the most he ought to have been charged under s. 182, and not s. 211. *Held* that, in order to constitute an offence under s. 211, it was not necessary that the complaint should be made to a Magistrate. It was enough that it was made to the police-authorities and related to a cognizable offence, and that action was thereupon taken by the police. *Held*, also, that the fact that no opportunity was allowed to the accused by the Magistrate to substantiate his complaint before striking it off was not a circumstance which invalidated the commitment duly made, and the conviction otherwise good could not be set aside on account of such omission. The trial before the committing Magistrate and in the Sessions Court gave ample opportunity to the accused to substantiate his complaint, and he was not prejudiced by the omission. The positive prohibition under s. 162 of the Criminal Procedure Code (Act X. of 1882), viz., that statements to the police other than dying declarations shall not be used in evidence against the accused, cannot be set aside by reference to s. 157 of the Evidence Act (I. of 1872).—IMPERATRIX v. JIJIBHAI GOVIND, I. L. R., 22 Bom. 596. [Parsons and Ranade, JJ. Dec. 14, 1896.]

What matters may be proved in connection with proved statement relevant under section 32 or 33.

**158.** Whenever any statement relevant under section 32 or 33 is proved, all matters may be proved, either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness, and had denied upon cross-examination the truth of the matter suggested.

Refreshing memory.

**159.** A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person and read by the witness within the time aforesaid, if, when he read it, he knew it to be correct.

When witness may use copy of document to refresh memory.

Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document: Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

*Rulings.*

1. In giving evidence a police-officer may *refresh his memory by referring* to documents in which he has, under s. 119 of Act X. of 1872, reduced into writing statements of persons examined by him during an investigation, but the documents themselves cannot be used as evidence, and a Judge should not read such documents to a jury in order to point out discrepancies between the evidence and previous statements of the witnesses. The evidence of a medical man who has seen, and has made a *post-mortem* examination of, the corpse of the person touching whose death the inquiry is, is admissible, firstly, to prove the nature of injuries which he observed; and, secondly, as evidence of the opinion of an expert as to the manner in which those injuries were inflicted, and as to the cause of death. A medical man who has not seen the corpse is

Ss. 160-64. only in a position to give evidence of his opinion as an expert. The proper mode of eliciting such evidence is to put to the witness hypothetically the facts which the evidence of the other witnesses attempts to prove, and to ask the witness's opinion on those facts. S. 323 of Act X. of 1872 does not in any way preclude the Judge at a Sessions trial from calling and examining the medical witness who has been examined before the Magistrate, and in every case in which the deposition taken by the Magistrate is essentially deficient or requires further elucidation, such witness should be called and examined by the Sessions Judge. A medical man, in giving evidence, may refresh his memory by referring to a report which he has made of his *post-mortem* examination, but the report itself cannot be treated as evidence, and no facts can be taken therefrom.—ROGHUNI SINGH *v* EMPRESS, I. L. R., 9 Cal. 455. [Mitter and Field, JJ. Sep. 22, 1882.]

See REG. *v.* UTTAMCHAND KAPURCHAND, 11 Bom H. C. R. 120, ruling 2, under s. 91, p. 64.

See QUEEN-EMPRESS *v.* SITARAM VITHAL, I. L. R., 11 Bom. 657, ruling under s. 155, p. 92.

Testimony to facts stated in document mentioned in section 159.

**160.** A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

*Illustration.*

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

Right of adverse party as to writing used to refresh memory.

**161.*** Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party, if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

Production of documents.

**162.** A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

Translation of documents.

If, for such a purpose, it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence; and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code.

Giving, as evidence, of document, called for and produced on notice.

**163.** When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence, if the party producing it requires him to do so.

Using, as evidence, of document, production of which was refused on notice.

**164.** When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence, without the consent of the other party, or the order of the Court.

*Illustration.*

A sues B on an agreement, and gives B notice to produce it. At the trial, A calls for the document, and B refuses to produce it. A gives secondary evidence of its contents.

* As to the application of s. 161 to police-diaries, see the Code of Criminal Procedure (Act V. of 1898), s. 172.

**B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped: He cannot do so.**



**165.** The Judge may, in order to discover, or to obtain proper proof of, relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing: and neither the parties, nor their agents, shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

**Judge's power to put questions or order production.**

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document, which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked, or the document were called for, by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

*Rulings.*

1. Witnesses summoned on behalf of the prosecution, and not called, ought to be placed in the box for cross-examination, in order that the defence may have the opportunity of exercising this right, and *à fortiori*, if such a witness is called and examined by the Court under s 165 of the Evidence Act, the prisoner should be allowed to cross-examine.—IN THE MATTER OF GRISH CHUNDER TALUKDAR: EMPRESS *v.* GRISH CHUNDER TALUKDAR I. L. R. 5 Cal 614; 5 C. L. R. 346 [Jackson and Tottenham, JJ Nov. 28, 1879.]

2. Under s. 165 of the Evidence Act (I. of 1872), a Judge has the power of asking irrelevant questions to a witness, if he does so in order to obtain proof of relevant facts; but if he asks questions with a view to criminal proceedings being taken against witness, the witness is not bound to answer them, and cannot be punished for not answering them, under s. 179 of the Penal Code (Act XLV. of 1860).—QUEEN-EMPRESS *v.* HARI LAKSHMAN, I. L. R., 10 Bom. 185. [Nanabhai Haridas and Wedderburn, JJ. Oct. 14, 1885.]

3. Where, in the course of a criminal proceeding, a Magistrate himself summoned a witness, and examined her under s. 165 of the Evidence Act, but refused to allow the attorney who appeared for the complainant to cross-examine the witness, *held* that the Magistrate was wrong in not allowing the complainant's attorney to cross-examine the witness when she was summoned. *Held*, also, that there is nothing in s 165 debarring or disqualifying a party to a proceeding from cross-examining any witness summoned by the Court.—GOPAL LALL SEAL *v.* MANICK LALL SEAL, I. L. R., 24 Cal. 288. [Ghose and Gordon, JJ. Jan. 12, 1897.]

**166.** In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the Judge, which the Judge himself might put, and which he considers proper.

**Power of jury or assessors to put questions.**

## CHAPTER XI.—OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

**167.** The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

**No new trial for improper admission or rejection of evidence.**

S. 167. *Rulings.*

1. The transfer of a permanent tenure under s. 12 of the Bengal Tenancy Act is complete as soon as the document is registerred.—KRISTO BULLUV GHOSE *v.* KRISTO LAL SINGH, I. L. R., 16 Cal. 642. [Petheram, C.J., and Gordon, J. May 29, 1889.]

2. *Per* FIELD, J.: The grounds upon which the opposite party is permitted to inspect a writing, and to refresh the memory of a witness, are threefold. (i) to secure the full benefit of the witness's recollection as to the whole of the facts; (ii) to check the use of improper documents; (iii) to compare his oral testimony with his written statement. *Per* Field, J.: The opposite party has a right to look at any particular writing before or at the moment when the witness uses it to refresh his memory in order to answer a particular question; but if he then neglects to exercise his right, he cannot continue to retain the right throughout the whole of the subsequent examination of the witness. *Per* Field, J.: Under the provisions of s. 323 of the Code of Criminal Procedure, the examination of a medical witness taken and duly attested may be given in evidence in any criminal trial; but in order that such evidence may be admissible against any individual accused person, the examination must have been taken in the presence of the accused person. *Per* Field, J.: It is the duty of a Judge to give a direction upon the law to the jury so far as to make them understand the law as bearing upon the facts; and if he does not give them an explanation of the law sufficiently comprehensive to enable them to decide the particular issue, it is a misdirection. *Per* Field, J.: Where a prisoner is constructively guilty of murder under s. 34 of the Penal Code, it is doubtful if he can be said to have committed the offence of murder within the meaning of s. 149, so as to make other prisoners, by a double construction, guilty of murder. *Per* Field, J.: Irregularities under s. 240 of the Criminal Procedure Code in the selection of the jurors, and in the admission of the deposition of a medical witness treated, it not being shown that the prisoners had been thereby prejudiced, as being objections which ought not to be entertained for the purpose of interfering with the verdict, regard being had to the provisions of s 283 of the Criminal Procedure Code and s. 167 of the Evidence Act.—EMPRESS *v* JHUBBOO MAHTON, I. L. R., 8 Cal. 739. [McDonell and Field, JJ. April 28, 1882.]

See REG. *v.* NAVROJI DADABHAI, 9 Bom. H. C. R 358, ruling 3, under s. 24, p. 18.

See REG. *v.* HURRIBOLE CHUNDER GHOSE, I. L R., 1 Cal. 207; 25 W. R. 86, ruling 6, under s. 25, p 22.

See EMPRESS *v* PITAMBER JINA, I. L. R., 2 Bom. 61, ruling 7, under s. 25, p. 22

See QUEEN-EMPRESS *v.* NAND RAM, I. L. R., 9 All. 609, ruling 3, under s. 138, pp. 87-88.

See QUEEN-EMPRESS *v.* RAMCHANDRA GOBIND HARSHE, I. L. R., 19 Bom. 749, ruling 6, under s. 33, pp. 42-43.

## SCHEDULE.

### ENACTMENTS REPEALED.

*(See section 2.)*

| Number and year. | Title. | Extent of repeal. |
|---|---|---|
| Stat. 26 Geo III., cap. 57. | For the further regulation of the trial of persons accused of certain offences committed in the East Indies; for repealing so much of an Act, made in the twenty-fourth year of the reign of His present Majesty (intituled "An Act for the better regulation and management of the affairs of the East India Company, and of the British possessions in India, and for establishing a Court of Judicature for the more speedy and effectual trial of persons accused of offences committed in the East Indies"), as requires the servants of the East India Company to deliver inventories of their estates and effects; for rendering the laws more effectual against persons unlawfully resorting to the East Indies; and for the more easy proof, in certain cases, of deeds and writings executed in Great Britain or India. | Section 38, so far as it relates to Courts of Justice in the East Indies. |
| Stat. 14 & 15 Vict., cap. 99. | To amend the Law of Evidence ... | Section 11, and so much of section 19 as relates to British India. |
| Act XV. of 1852 ... | To amend the Law of Evidence ... | So much as has not been heretofore repealed. |
| Act XIX. of 1853 ... | To amend the Law of Evidence in the Civil Courts of the East India Company in the Bengal Presidency. | Section 19. |
| Act II. of 1855 ... | For the further improvement of the Law of Evidence. | So much as has not been heretofore repealed. |
| Act XXV. of 1861 ... | For simplifying the procedure of the Courts of Criminal Judicature not established by Royal Charter. | Section 237. |
| * * * | * * * * * * * | * * ** |

* The entry relating to ss. 7 and 8 of the General Clauses Act (I of 1868) has been repealed by the General Clauses Act (X. of 1897).

# ACT NO. XVIII. OF 1891.

## THE BANKERS' BOOKS EVIDENCE ACT, 1891.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*Received the G.-G.'s assent on the 1st October 1891.*

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*An Act to amend the Law of Evidence with respect to Bankers' Books.*

WHEREAS it is expedient to amend the Law of Evidence with respect to Bankers' Books; It is hereby enacted as follows:—

Title, extent, and commencement.

**1.** (*1*) This Act may be called "The Bankers' Books Evidence Act, 1891."

(*2*) It extends to the whole of British India; and

(*3*) It shall come into force at once.

Definitions.

**2.** In this Act, unless there is something repugnant in the subject or context,—

(*1*) "company" means a company registered under any of the enactments relating to companies from time to time in force in British India, or incorporated by an Act of Parliament or of the Governor General in Council, or by Royal Charter or Letters Patent:

(*2*) "bank" and "banker" mean—

(*a*) any company carrying on the business of bankers;

(*b*) any partnership or individual to whose books the provisions of this Act shall have been extended as hereinafter provided;

(*c*)* any Post Office Savings Bank or Money-order-Office:

(*3*) "bankers' books" include ledgers, day-books, cash-books, account-books, and all other books used in the ordinary business of a bank:

(*4*) "legal proceeding" means any proceeding or inquiry in which evidence is or may be given, and includes an arbitration.

(*5*) "the Court" means the person or persons before whom a legal proceeding is held or taken:

(*6*) "Judge" means a Judge of a High Court:

(*7*) "trial" means any hearing before the Court at which evidence is taken; and

(*8*) "certified copy" means a copy of any entry in the books of a bank, together with a certificate written at the foot of such copy that it is a true copy of such entry; that such entry is contained in one of the ordinary books of the bank, and was made in the usual and ordinary course of business; and that such book is still in the custody of the bank, such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title.

Power to extend provisions of Act.

**3.** The Local Government may, from time to time, by notification in the official Gazette extend the provisions of this Act to the books of any partnership or individual carrying on the business of bankers within the territories under its administration, and keeping

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* Cl. (*c*) has been added by s. 2 of the Bankers' Books Evidence Act (I. of 1893).

a set of not less than three ordinary account-books, namely, a cash-book, a day-book or journal, and a ledger, and may, in like manner, rescind any such notification.

Mode of proof of entries in bankers' books.

**4.** Subject to the provisions of this Act, a certified copy of any entry in a banker's book shall, in all legal proceedings, be received as *prima-facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions, and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.

Case in which officer of bank not compellable to produce books.

**5.** No officer of a bank shall, in any legal proceeding to which the bank is not a party, be compellable to produce any banker's book, the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions, and accounts therein recorded, unless by order of the Court or a Judge made for special cause.

Inspection of books by order of Court or Judge.

**6.** (*1*) On the application of any party to a legal proceeding, the Court or a Judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceeding, or may order the bank to prepare and produce, within a time to be specified in the order, certified copies of all such entries, accompanied by a further certificate that no other entries are to be found in the books of the bank relevant to the matters in issue in such proceeding, and such further certificate shall be dated and subscribed in manner hereinbefore directed in reference to certified copies.

(*2*) An order under this or the preceding section may be made either with or without summoning the bank, and shall be served on the bank three clear days (exclusive of bank holidays) before the same is to be obeyed, unless the Court or Judge shall otherwise direct.

(*3*) The bank may, at any time before the time limited for obedience to any such order as aforesaid, either offer to produce their books at the trial, or give notice of their intention to show cause against such order, and thereupon the same shall not be enforced without further order.

Costs.

**7.** (*1*) The costs of any application to the Court or a Judge under or for the purposes of this Act, and the costs of anything done or to be done under an order of the Court or a Judge made under or for the purposes of this Act, shall be in the discretion of the Court or Judge, who may further order such costs or any part thereof to be paid to any party by the bank if they have been incurred in consequence of any fault or improper delay on the part of the bank.

(*2*) Any order made under this section for the payment of costs to or by a bank may be enforced as if the bank were a party to the proceeding.

(*3*) Any order under this section awarding costs may, on application to any Court of Civil Judicature designated in the order, be executed by such Court as if the order were a decree for money passed by itself:

Provided that nothing in this sub-section shall be construed to derogate from any power which the Court or Judge making the order may possess for the enforcement of its or his directions with respect to the payment of costs.

# ACT NO. I. OF 1893.*

## THE BANKERS' BOOKS EVIDENCE ACT, 1893.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

*Received the G.-G.'s assent on the 20th January 1893.*

*An Act to extend the provisions of the Bankers' Books Evidence Act, 1891,† to the Books of Post Office Savings Banks and Money Order Offices.*

WHEREAS it is expedient to extend the provisions of the Bankers' Books Evidence Act, 1891,† to the books of the Savings Banks and Money Order Offices of the Post Office; It is hereby enacted as follows:—

Short title and commencement.

**1.** (*1*) This Act may be called "The Bankers' Books Evidence Act, 1893;" and

(*2*) It shall come into force once.

Addition to definition of "bank" and "banker" in section 2, sub-section (*2*), of Act XVIII. of 1891.

**2.** After clause (*b*) of sub-section (*2*) of section 2 of the said Bankers' Books Evidence Act, 1891,† the following clause shall be added, namely:—

[*Vide supra*, p. 98.]

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* For Statement of Objects and Reasons, see Gazette of India, 1893, Pt. V., p. 15; for Proceedings in Council, see *ibid*, Pt. VI, pp. 12 and 27.

Act I. of 1893 has been extended to the Santhal Parganas.—See Gazette of India, 1895, Pt. I., p. 541.

† Act XVIII. of 1891.—See p. 98, *supra*.

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THE

# CODE OF CRIMINAL PROCEDURE,

BEING

## ACT V. OF 1898,

WITH

## A MOST COPIOUS INDEX.

BY

D. E. CRANENBURGH,

*PLEADER.*

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SCHEDULE I.—ENACTMENTS REPEALED.

SCHEDULE II.—TABULAR STATEMENT OF OFFENCES.

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SCHEDULE. IV.—ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY BE INVESTED.

SCHEDULE V.—FORMS.

# THE

# CODE OF CRIMINAL PROCEDURE, 1898,*

BEING

# ACT NO. V. OF 1898.†

RECEIVED THE G.-G.'S ASSENT ON THE 22ND MARCH 1898.

*An Act to consolidate and amend the Law relating to Criminal Procedure.*

WHEREAS it is expedient to consolidate and amend the law relating to Criminal Procedure; It is hereby enacted as follows:—

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* Portions in italics indicate modifications.

† For statements of Objects and Reasons, see Gazette of India, 1897, Pt. V., p. 363; for Report of the Select Committee, see *ibid*, 1898, Pt V., p. 19; and for proceedings in Council, see *ibid*, 1897, Pt. VI., pp. 238 and 254, and *ibid*, 1898, pp 22, 101, and 175.

Act V. of 1898 has been declared, under s 3 of the Santhál Parganas Settlement Regulation (III. of 1872) as amended by the Santhál Parganas Laws Regulation (III of 1886), to be in force in the Santhál Parganas—See Calcutta Gazette, 1898, Pt. I, p. 665.

It has been extended, under s. 5 of the Angul District Regulation (I. of 1894), to the District of Angul, with effect from the 1st August 1898.—See Calcutta Gazette, 1898, Pt. I, p. 779

It has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act XIII. of 1898).

It had ceased to be in force, by notification under s. 2 of the Assam Frontier Tracts Regulation (II. of 1880), in the following places, namely:—

The Gáro Hills, the Khási and Jaintiá Hills, the Nága Hills, the North Cachar Subdivision of the Cachar District, the Mikir Hill-tracts in the Nowgong District, the Dibrugarh Frontier Tract in the Lakhimpur District, and the Lushái Hills.—See Assam Gazette, 1898, Pt II., p 788.

It has been declared in force, by notification under s. 3 *(a)* of the Sheduled Districts Act (XIV. of 1874), in the Scheduled section and section 5 A, in the following other Districts in Ganjam and Vizagapatam (see Fort St. George Gazette, 1898, Pt. I., p. 306, and Gazette of India, 1898, Pt. I., p. 869); and, by notification under the same Scheduled Districts, namely:—

The Districts of Házaribágh, Lohárdaga (now the Ranchi District, see Calcutta Gazette, 1899, Pt I., p 44), Mánbhum, and Palamau, and in pargana Dhálbhum and the Kolhan in the Singbhum District—See Calcutta Gazette, 1898, Pt. I., p. 714, and Gazette of India, 1899, Pt. I., p 779

It has been extended, by notification under ss. 5 and 5A of the Act last mentioned, to British Baluchistan.—See Gazette of India 1898, Pt II., p 221.

It has been extended, by notification under s. 8 *(1)* of the Upper Burma Laws Act (XX. of 1886), and ss 4 and 5 of the Shan States Act (XV. of 1888), to the Shan States—See Burma Gazette, 1898, Pt I., p 305.

Certain portions of the Code have been declared, by notification under s. 3 *(2)* of the Kachin Hill-tribes Regulation (I. of 1895), to be applicable to members of a hill-tribe in a hill-tract; and, under s. 3 *(2)* of the Chin Hills Regulation (V of 1896), certain portions have been declared to be applicable to Chins in the Chin Hills.—See Burma Gazette, 1898, Pt. I, p 322.

## PART I.—PRELIMINARY.

### CHAPTER I.

Short title. Commencement.

**1.** (*1*) This Act may be called the Code of Criminal Procedure, *1898*; and *it* shall come into force on the first day of *July 1898*.

Extent.

(*2*) It extends to the whole of British India; but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power* conferred or any special form of procedure prescribed, by any other law *for the time being* in force,† or shall apply to—

(*a*) the Commissioners of Police in the towns of Calcutta, Madras, and Bombay, or the police in the towns of Calcutta and Bombay;‡

(*b*) heads of villages in the Presidency of Fort St. George;§ or

(*c*) village police-officers in the Presidency of Bombay:‖

*Provided that the Local Government may, if it thinks fit, with the sanction of the Governor-General in Council by notification in the official Gazette, extend any of the provisions of this Code, with any necessary modifications, to such excepted persons.*

Repeal of enactments.

**2.** (*1*) On and from the first day of *July 1898*, the enactments mentioned in the first schedule shall be repealed to the extend specified in the *fourth* column thereof, but not so as to restore any jurisdiction or form of procedure not then existing or followed, or to render unlawful the continuance of any confinement which is then lawful.

Notifications, &c., under repealed Acts.

(*2*) All notifications published, proclamations issued, powers conferred, forms prescribed, local limits defined, sentences passed, and orders, rules, and appointments made, under any enactment hereby repealed, or under any enactment repealed by any such enactment, and which are in force immediately before the first day of *July 1898*, shall be deemed to have been respectively published, issued, conferred, prescribed, defined, passed, and made under the corresponding section of this Code.

*Pending cases.*

(*3*) *The provisions of this Code shall apply to all proceedings instituted after the commencement of this Code, and so far as may be, to all cases pending in any Criminal Court when this Code comes into force.*

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* For power to exempt the Judicial Commissioner of Lower Burma and the Recorder of Rangoon, or the Special Court in Burma from the operation of such parts of the Code as relate to the mode of recording judgments, orders, and sentences, and of taking down the evidence of witnesses, see the Lower Burma Courts Act (XI. of 1889), s 92 (2).

As to power of Governor General in Council to make rules conferring powers of original criminal jurisdiction on Indian Marine Courts, see the Indian Marine Courts Act (XIV. of 1887), s 70 (2)

† See for example the Indian Articles of War (Act V. of 1869).

‡ As to Calcutta see the Calcutta Police Act (Ben. Act IV of 1866); as to Madras, see the Madras City Police Act (Mad. Act III. of 1888); as to Bombay, see Act XIII. of 1856 and Act XLVIII of 1860 as amended by Bom Act IV. of 1882.

§ See Mad Reg XI of 1816 and Mad. Reg. IV. of 1821.

‖ See the Bombay Village Police Act (Bom. Act VIII. of 1867).

**3** (*1*) In every enactment passed before this Code comes into force, in which reference is made to, or to any chapter or section of, the Code of Criminal Procedure, Act XXV. of 1861, or Act X. of 1872, *or Act X of 1882*, or to any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code, or to its corresponding chapter or section.

References to Code of Criminal Procedure and other repealed enactments.

(*2*) In every enactment passed before this Code comes into force, the expressions, "Officer exercising (or 'having') the powers (or 'the full powers') of a Magistrate," "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," shall respectively be deemed to mean "Magistrate of the first class," "Magistrate of the second class," and "Magistrate of the third class;" the expression, "Magistrate of a division of a district," shall be deemed to mean 'Sub-divisional Magistrate;" the expression, "Magistrate of the district," shall be deemed to mean "District Magistrate;" the expression, "Magistrate of Police," shall be deemed to mean "Presidency Magistrate;" *and the expression, "Joint Sessions Judge," shall mean "Additional Sessions Judge."*

Expressions in former Acts.

**4.** (*1*) In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context:—

Definitions.

(*a*) "Advocate-General" includes also a Government Advocate, or, where there is no Advocate-General or Government Advocate, such officer as the Local Government may, from to time time, appoint in this behalf:

(*b*) "bailable offence" means an offence shown as bailable in the second schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence:

(*c*) "*charge*" *includes any head of charge when the charge contains more heads than one:*

(*d*) "Chief Justice" includes also the *Chief* Judge of the Chief Court of the Punjab and the Recorder of Rangoon:

(*e*) "Clerk of the Crown" includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the Crown:

(*f*) "cognizable offence" means an offence for, and "cognizable case" means a case in, which a police-officer, within or without the presidency-towns, may, in accordance with the second schedule, or under any law for the time being in force, arrest without warrant:

(*g*) "*Commissioner of Police*" *includes a Deputy Commissioner of Police:*

(*h*) "complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action, under this Code, that some person, whether known or unknown has committed an offence, but *it* does not include the report of a police-officer:

(*i*) "European British subject" means—

(i) any subject of Her Majesty born, naturalized, or domiciled in the United Kingdom of Great Britain and Ireland, or in any of

the European, American, or Australian Colonies or Possessions *of Her Majesty*, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal;

(ii) any child or grandchild of any such person by legitimate descent:

(*j*) "High Court"* means, in reference to proceedings against European British subjects, or persons jointly charged with European British subjects † the High Courts of Judicature at Fort William, Madras, and Bombay, the High Court of Judicature for the North-Western Provinces the Chief Court of the Punjab, and *the Court of* the Recorder of Rangoon; in other cases "High Court" means the highest Court of criminal appeal or revision for any local area, or, where no such Court is established under any law for the time being in force, such officer as the Governor-General in Council may appoint in this behalf:

(*k*) "inquiry" includes every inquiry *other than a trial* conducted under this Code by a Magistrate or Court:

(*l*) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by *a police officer* or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf:

(*m*) "judicial proceeding"‡ *includes* any proceeding in the course of which evidence is or may be legally taken *on oath*:

(*n*) "non-cognizable offence" means an offence for, and "non-cognizable case" means a case in, which a police-officer, within or without a presidency-town, may not arrest without warrant:

(*o*) "offence" means any act or omission made punishable by any law for the time being in force;

*it also includes any act in respect of which a complaint may be made under section 20 of the Cattle Trespass Act, 1871*:§

(*p*) "officer in charge of a police-station"‖ includes, when the officer in charge of the police-station is absent from the station-house, or unable, from illness *or other cause*, to perform his duties, the police-officer present at the station-house who is next in rank to such officer, and is above the rank of constable, or, when the Local Government so directs, any other police-officer so present:

(*q*) "place" includes also a house, building, tent, and vessel:

(*r*) "pleader," used with reference to any proceeding in any Court, means a pleader authorized under any law¶ for the time being in force to practise in such Court, and includes (1) an advocate, a vakil, and an attorney of a High Court so authorized, and (2) any

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* For meaning of "High Court" in Upper Burma, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., s. I. See also another definition at s. 266, *infra*.

† See Ch. XXIII., *infra*.

‡ Cf. the Indian Penal Code (Act XLV. of 1860), s. 193, *Expl. I.*

§ Act I. of 1871.

‖ Cf. the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., and ss. VI. and VII.

¶ See the Legal Practitioners Act (I of 1846); the Legal Practitioners Act (XX. of 1853); the Legal Practitioners Act (XVIII. of 1879); the Legal Practitioners Act (IX. of 1884).

mukhtar or other person appointed with the permission of the Court to act in such proceeding:

(*s*) "police-station" means any post *or place* declared, generally or specially, by the Local Government to be a police-station, and includes any local area specified by the Local Government in this behalf:

(*t*) "Public Prosecutor" means any person appointed under section 492, and includes any person acting under the directions of a Public Prosecutor and any person conducting a prosecution on behalf of Her Majesty in any High Court in the exercise of its original criminal jurisdiction:

(*u*) "sub-division" means a sub-division of a district:*

(*v*) "summons-case" means a case relating to an offence, and *not being a warrant-case;* and

(*w*) "warrant-case" means a case relating to an offence punishable with death, transportation, or imprisonment for a term exceeding six months.

Words referring to acts.

(*z*) Words which refer to acts done extend also to illegal omissions; and

all words and expressions used herein, and defined in the Indian Penal Code,† and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code †

Words to have same meaning as in Indian Penal Code.†

**5.** (*1*) All offences under the Indian Penal Code† shall be *investigated*, inquired into, tried, *and otherwise dealt with* according to the provisions hereinafter contained.

Trial of offences under Penal Code.

(*2*) All offences under any other law shall be *investigated*, inquired into tried, *and otherwise dealt with* according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of *investigating*, inquiring into, trying, or *otherwise dealing with* such offences.

Trial of offences against other laws.

## PART II.—CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES.

### CHAPTER II.—OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

#### *A.—Classes of Criminal Courts.*‡

**6.** Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be five classes of Criminal Courts in British India, namely:—

Classes of Criminal Courts.

I.—Courts of Session:

II.—Presidency Magistrates:

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* See s 8, *infra.* † Act XLV. of 1860.

‡ In places where the Punjab Frontier Crimes Regulation is in force, cases may be tried by a Council of Elders.—See the Punjab Frontier Crimes Regulation (IV. of 1887), s. 13 (*1*); see also s. 15 of the same Regulation for executing sentences passed see the finding of Council of Elders. For bar of second trial before any of these Courts, on same Regulation, s. 17 (*3*).

III.—Magistrates of the first class:

IV.—Magistrates of the second class:

V.—Magistrates of the third class.

*B.—Territorial Divisions.**

Sessions divisions and districts.

**7.** (*1*) Every province (excluding the presidency towns) shall be a sessions division, or shall consist of sessions divisions; and every sessions division shall, for the purposes of this Code, be a district, or consist of districts.

Power to alter divisions and districts.

(*2*) The Local Government may alter the limits, or, with the previous sanction of the Governor General in Council, the number, of such divisions and districts.

Existing divisions and districts maintained till altered.

(*3*) The sessions divisions and districts existing when this Code comes into force shall be sessions divisions and districts, respectively, unless and until they are so altered.

Presidency-towns to be deemed districts.

(*4*) Every presidency-town shall, for the purposes of this Code, be deemed to be a district.

Power to divide districts into sub-divisions.

**8.** (*1*) The Local Government may divide any district outside the presidency-towns into sub-divisions, or make any portion of any such district a sub-division, and may alter the limits of any sub-division.

Existing sub-divisions maintained.

(*2*) All existing sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

*C.—Courts and Offices outside the Presidency-towns.*

Court of Session.

**9.** (*1*) The Local Government shall establish a Court of Session for every sessions division, and appoint a Judge of such Court.

(*2*) *The Local Government may, by general or special order in the official Gazette, direct at what place or places the Court of Session shall hold its sitting; but, until such order be made, the Courts of Session shall hold their sittings as heretofore.*

(*3*) The Local Government may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

(*4*) *A Sessions Judge of one sessions division may be appointed by the Local Government to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in either division as the Local Government may direct.*

(*5*) All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

District Magistrate.

**10** (*1*) In every district outside the presidency-towns the Local Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

(*2*) *The Local Government may appoint any Magistrate of the first class to be an Additional District Magistrate for a period not exceeding six months, and*

* As to Courts of Session in Upper Burma, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., s. II.; in Lower Burma, see the Lower Burma Courts Act (XI. of 1889), s. 26.

*such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code as the Local Government may direct.*

Officers temporarily succeeding to vacancies in office of District Magistrate.

**11.** Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the district, such officer shall, pending the orders of the Local Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

Subordinate Magistrates.

Local limits of their jurisdiction.

**12.** (*1*) The Local Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second, or third class in any district outside the presidency-towns; and the Local Government, or the District Magistrate subject to the control of the Local Government, may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

(*2*) Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such district.

Power to put Magistrate in charge of sub-division.

**13.** (*1*) The Local Government may place any Magistrate of the first or second class in charge of a sub-division, and relieve him of the charge as occasion requires.

(*2*) Such Magistrates shall be called Sub-divisional Magistrates.

Delegation of powers to District Magistrate.

(*3*) The Local Government may delegate its powers under this section to the District Magistrate.

Special Magistrates.

**14.** (*1*) The Local Government may confer upon any person all or any of the powers conferred or conferrable by or under this Code on *a* Magistrate of the first, second, or third class in respect to particular cases, or to a particular class or particular classes of cases, or in regard to cases generally in any local area outside the presidency-towns.

(*2*) Such Magistrates shall be called Special Magistrates, *and shall be appointed for such term as the Local Government may by general or special order direct.*

(*3*) With the previous sanction of the Governor-General in Council, the Local Government may delegate, with such limitations as it thinks fit, to any officer under its control the power conferred by *sub-section (1)*.

(*4*) No powers shall be conferred under this section on any police-officer below the grade of Assistant District Superintendent, and no powers shall be conferred *on a police-officer* except so far as may be necessary for preserving the peace, preventing crime, and detecting apprehending, and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.*

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* Notwithstanding anything contained in s 14, any police-officer in Assam not below the grade of Assistant District Superintendent may be invested with all or any of the powers conferred or conferrable on a Magistrate of the first, second, or third class in respect to non-cognizable cases.—See the Assam Police-officers Regulation (II. of 1883), s. 4.

As to conferment of magisterial powers on police-officers in Upper Burma, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., s. III; in the Salween and Arakan Districts, see the Burma Laws Act (XIII. of 1898), s. 9.

**15.** (*1*) The Local Government may direct any two or more Magistrates in any place outside the presidency-towns to sit together as a Bench, and may by order invest such Bench with any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second, or third class, and direct it to exercise such powers in such cases, or such classes of cases only, and within such local limits, as the Local Government thinks fit.

Benches of Magistrates.

(*2*) Except as otherwise provided by any order under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members who is present taking part in the proceedings as a member of the Bench belongs, and as far as practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

Powers exerciseable by Bench in absence of special direction.

**16.** The Local Government may, or, subject to the control of the Local Government, the District Magistrate may, from time to time, make rules consistent with this Code for the guidance of Magistrates' Benches in any district respecting the following subjects:—

Power to frame rules for guidance of Benches.

(*a*) the classes of cases to be tried;

(*b*) the times and places of sitting;

(*c*) the constitution of the Bench for conducting trials;

(*d*) the mode of settling differences of opinion which may arise between the Magistrates in session.

**17.** (*1*) All Magistrates appointed under sections 12, 13, and 14, and all Benches constituted under section 15, shall be subordinate to the District Magistrate, and he may, from time to time, make rules or give special orders consistent with this Code as to the distribution of business among such Magistrates and Benches; and

Subordination of Magistrates and Benches to District Magistrate;

(*2*) every Magistrate (other than a Sub-divisional Magistrate) and every Bench exercising powers in a sub-division shall *also* be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

to Sub divisional Magistrate.

(*3*) All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessions Judges.

Subordination of Assistant Sessions Judges to Sessions Judge

(*4*) *The Sessions Judge may also, when he himself is unavoidably absent or incapable of acting, make provision for the disposal of any urgent application by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Judge, by the District Magistrate, and such Judge or Magistrate shall have jurisdiction to deal with any such application.*

(*5*) Neither the District Magistrate, nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14, and 15, shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

*D.—Courts of Presidency Magistrates.*

**18.** (*1*) The Local Government shall, from time to time, appoint a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for each of the presidency-towns, and shall appoint one of such persons to be Chief *Presidency* Magistrate for each such town.

Appointment of Presidency Magistrates.

(*2*) *The powers of a Presidency Magistrate under this Code shall be exercised by the Chief Presidency Magistrate, or by a salaried Presidency Magistrate, or by any other Presidency Magistrate empowered by the Local Government to sit singly, or by any Bench of Presidency Magistrates.*

**19.** Any two or more of such persons may (subject to the rules made by the Chief *Presidency* Magistrate under the power hereinafter conferred) sit together as a Bench.

*Benches.*

**20.** Every Presidency Magistrate shall exercise jurisdiction in all places within the presidency-town for which he is appointed, and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law* for the time being in force for the regulation of ports and port-dues.

Local limits of jurisdiction.

**21.** (*1*) Every Chief *Presidency* Magistrate shall exercise within the local limits of his jurisdiction all the powers conferred on him by this Code, or which, by any law or rule in force immediately before this Code comes into force, are required to be exercised by any Senior or Chief *Presidency* Magistrate, and may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Code to regulate—

Chief *Presidency* Magistrate.

(*a*) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town;

(*b*) the times and places at which Benches of Magistrates shall sit;

(*c*) the constitution of such Benches;

(*d*) the mode of settling differences of opinion which may arise between Magistrates in session; and

(*e*) *any other matter which could be dealt with by a District Magistrate under his general powers of control over the Magistrates subordinate to him.*

(*2*) *The Local Government may, for the purposes of this Code, declare what Presidency Magistrates are subordinate to the Chief Presidency Magistrate, and may define the extent of their subordination.*

*E.—Justices of the Peace.*

**22.** The Governor-General in Council, so far as regards the whole or any part of British India outside the presidency-towns, and every Local Government, so far as regards the territories subject to its administration (other than the towns aforesaid),

Justices of the Peace for the Mufassal.

may, by notification in the official Gazette, appoint such European British subjects as he or it thinks fit to be Justices of the Peace within and for the territories mentioned in such notification.

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* See the Indian Ports Act (X. of 1889).

**23.** *The Local Government, so far as regards the towns of Calcutta, Madras, and Bombay,* may, by notification in the official Gazette, appoint to be Justices of the Peace within the limits of the town mentioned in such notification any persons resident within British India, and not being the subjects of any foreign State whom *the* Local Government thinks fit.

Justices of the Peace for the presidency-towns.

**24.** (*1*) Every person now acting as a Justice of the Peace within and for any part of British India other than the said towns, under any commission issued by a High Court, shall be deemed to have been appointed under section 22 by the Governor-General *in Council* to act as a Justice of the Peace for the whole of British India other than the said towns.

Present Justices of the Peace.

(*2*) Every person now acting as a Justice of the Peace within the limits of any of the said towns under any such commission shall be deemed to have been appointed under section 23 by the Local Government.

**25.*** In virtue of their respective offices, the Governor-General, *Governors, Lieutenant-Governors, and Chief Commissioners,* the Ordinary Members of the Council of the Governor-General, the Judges of the High Courts, and the Recorder of Rangoon, are Justices of the Peace within and for the whole of British India; Sessions Judges and District Magistrates are Justices of the Peace within and for the whole of the territories administered by the Local Government under which they are serving; and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates.

*Ex-officio* Justices of the Peace.

*F.—Suspension and Removal.*

**26.** All Judges of Criminal Courts other than the High Courts established by Royal Charter, and all Magistrates, may be suspended or removed from office by the Local Government:

Suspension and removal of Judges and Magistrates.

Provided that such Judges and Magistrates as now are liable to be suspended or removed from office by the Governor-General in Council only shall not be suspended or removed from office by any other authority.

**27.** The Governor-General in Council may suspend or remove from office any Justice of the Peace appointed by him, and the Local Government may suspend or remove from office any Justice of the Peace appointed by it.

Suspension and removal of Justices of the Peace.

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## CHAPTER—III.—POWERS OF COURTS.

*A.—Description of Offences cognizable by each Court.*

**28.** Subject to the other provisions of this Code,† any offence under the Indian Penal Code‡ may be tried—

Offences under Penal Code.

(*a*) *by the High Court, or*

(*b*) *by the Court of Session, or*

(*c*) *by any other Court by which such offence is shown in the eighth column of the second schedule to be triable.*

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* *Cf.* the East India Company Act, 1772 (13 Geo III., Ch. 63), s. 38.

† *E.g.*, ss. 193 and 194 ‡ Act XLV. of 1860.

*Illustration.*

*A is committed to the Sessions Court on a charge of culpable homicide. He may be convicted of voluntarily causing hurt, an offence triable by a Magistrate.*

Offences under other laws.

**29.** (*1*) *Subject to the provisions of section 447*, any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court.

(*2*) When no Court is so mentioned, it may be tried by the High Court, or by any Court constituted under this Code *by which such offence is shewn in the eighth column of the second schedule to be triable.*

Offences not punishable with death.

**30.** In the territories respectively administered by the Lieutenant-Governors of the Punjab and Burma, and the Chief Commissioners of Oudh, the Central Provinces, Coorg, and Assam, *in Sind*, and in those parts of the other Provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may, notwithstanding anything contained in section 29, invest the District Magistrate *or any Magistrate of the first class* with power to try as a Magistrate all offences not punishable with death.

*B.—Sentences which may be passed by Courts of various Classes.*

Sentences which High Courts and Sessions Judges may pass.

**31.** (*1*) A High Court may pass any sentence authorized by law.

(*2*) A Sessions Judge or Additional Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.*

(*3*) An Assistant Sessions Judge may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years, or of imprisonment for a term exceeding seven years.

Sentences which Magistrates may pass.

**32.** (*1*) The Courts of Magistrates may pass the following sentences, namely:—

| | |
|---|---|
| (*a*) Courts of Presidency Magistrates and of Magistrates of the first class: | Imprisonment for a term not exceeding two years, including such solitary confinement as is authorized by law;† |
| | Fine not exceeding one thousand rupees; |
| | Whipping.‡ |
| (*b*) Courts of Magistrates of the second class: | Imprisonment for a term not exceeding six months, including such solitary confinement as is authorized by law;† |
| | Fine not exceeding two hundred rupees; |
| | Whipping (*if specially empowered*).§ |
| (*c*) Courts of Magistrates of the third class: | Imprisonment for a term not exceeding one month; |
| | Fine not exceeding fifty rupees. |

(*2*) The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.

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* See s. 374, *infra*.

† See the Indian Penal Code (Act XLV. of 1860), ss. 73 and 74.

‡ As to powers of Magistrates in Upper Burma to pass sentences of whipping, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., s. IV.

§ See the Whipping Act (VI. of 1864).

(3) No Court of any Magistrate of the second class shall pass a sentence of whipping unless it is specially empowered in this behalf by the Local Government.

Power of Magistrates to sentence to imprisonment in default of fine.

**33** (1) The Court of any Magistrate may award such term of imprisonment in default of payment of fine as is authorized by law in case of such default:

Provided that—

(a) the term is not in excess of the Magistrate's powers under this Code:

(b) in *any* case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence, the period of imprisonment awarded in default of payment of the fine *shall not* exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

Proviso as to certain cases

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

**34.** The Court of a Magistrate specially empowered under section 30 may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years or imprisonment for a term exceeding seven years.

Higher powers of certain District Magistrates

**35.** (1) When a person is convicted at one trial of two or more distinct offences the Court may sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict, such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct, *unless the Court directs that such punishments shall run concurrently*.

Sentence in cases of conviction of several offences at one trial.

(2) *In the case of consecutive sentences*, it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided as follows:—

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years:

Maximum term of punishment.

(b) if the case is tried by a Magistrate (other than a Magistrate acting under section 34), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

(3) For the purpose of appeal, aggregate sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

*Explanation.—Separable offences which come within the provisions of section 71 of the Indian Penal Code* are not distinct offences within the meaning of this section.*

* Act XLV of 1860

*Illustration.*

*A breaks into a house with intent to commit theft, and steals property therein. A has not committed distinct offences.*

### *C.—Ordinary and Additional Powers.*

Ordinary powers of Magistrates.*

**36.** All District Magistrates, Sub-divisional Magistrates, and Magistrates of the first, second, and third classes, have the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their "ordinary powers."

Additional powers conferrable on Magistrates.*

**37.** In addition to his ordinary powers, any Sub-divisional Magistrate, or any Magistrate of the first, second, or third class, may be invested by the Local Government or the District Magistrate, as the case may be, with any powers specified in the fourth schedule as powers with which he may be invested by the Local Government or the District Magistrate.

Control of District Magistrate's investing power.

**38.** The power conferred on the District Magistrate by section 37 shall be exercised subject to the control of the Local Government.

### *D.—Conferment, Continuance, and Cancellation of Powers.*

Mode of conferring powers

**39.** (*1*) In conferring powers under this Code, the Local Government may, by order, empower persons specially by name or in virtue of their office, or classes of officials generally by their official titles.

(*2*) Every such order shall take effect from the date on which it is communicated to the person so empowered.

Continuance of powers of officers transferred.

**40.** Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is transferred to an equal or higher office of the same nature within a like local area under the same Local Government, he shall, unless the Local Government otherwise directs, or has otherwise directed, continue to exercise the same powers in the local area to which he is so transferred.

Powers may be cancelled.

**41.** (*1*) The Local Government may withdraw *all or any of the* powers conferred under this Code on any person by it or by any officer subordinate to it.

(*2*) *Any powers conferred by the District Magistrate may be withdrawn by the District Magistrate.*

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* As to powers of Magistrates in Upper Burma, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., s. V.

## PART III.—GENERAL PROVISIONS.

### CHAPTER IV.—OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE, AND PERSONS MAKING ARRESTS.

Public when to assist Magistrates and police.

**42.** Every person is bound to assist a Magistrate or police-officer reasonably demanding his aid, whether within or without the presidency-towns,—

(*a*) in the taking *or preventing the escape* of any other person whom such Magistrate or police-officer is authorized to arrest;

(*b*) in the prevention *or suppression* of a breach of the peace, or *in the prevention* of any injury attempted to be committed to any railway, canal, telegraph, or public property.

Aid to person, other than police-officer, executing warrant.

**43.** When a warrant is directed to a person other than a police-officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

Public to give information of certain offences.

**44.** (*1*) Every person, whether within or without the presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under *any of* the following sections of the Indian Penal Code* (namely), 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 143, 144, 145, 147, 148, 302, 303, 304, 382, 392, 393 394, 395, 396, 397, 398, 399, 402, 435, 436, 449 450, 456, 457, 458, 459, and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police-officer of such commission or intention.

(*2*) *For the purposes of this section the term "offence" includes any act committed at any place out of British India which would constitute an offence if committed in British India.*

Village-headmen, accountants, landholders, and others bound to report certain matters.

**45.**† (*1*) Every village-headman, village accountant, village-watchman, village-police-officer, owner or occupier of land, and the agent of any such owner or occupier, and every officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate, or to the officer in charge of the nearest police-station, whichever is the nearer, any information which he may obtain respecting—

(*a*) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, accountant, watchman, or police-officer, or in which he owns or occupies land, or is agent, or collects revenue or rent;

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* Act XLV. of 1860.

† For section in force in Upper Burma, instead of this section, see s. 4 of the Upper Burma Village Regulation (XIV. of 1887).

As to the section in force in those parts of Lower Burma to which the Lower Burma Village Act (III. of 1889) is extended, see s. 5 of that Act.

(*b*) the resort to any place within, or the passage through, such village of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict, or proclaimed offender ;

(*c*) the commission of, or intention to commit, in or near such village, any non-bailable offence, or any offence punishable under section 143, 144, 145, 147, or 148 of the Indian Penal Code ;*

(*d*) the occurrence, in or near such village, of any sudden or unnatural death, or of any death under suspicious circumstances ;

(*e*) the commission of, or intention to commit, at any place out of British India near such village, any act which, if committed in British India, would be an offence punishable under any of the following sections of the Indian Penal Code,* namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460 ;

(*f*) any matter likely to affect the maintenance of order, or the prevention of crime, or the safety of person or property, respecting which the District Magistrate by general or special order made with the previous sanction of the Local Government, has directed him to communicate information.

(*2*) In this section—

(*i*) "village" includes village-lands ; and

(*ii*) the expression "proclaimed offender" includes any person proclaimed as an offender by any Court or authority established or continued by the Governor-General in Council in any part of Indian respect of any act which, if committed in British India, would be punishable under any of the following sections of the Indian Penal Code,* namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460.

**Appointment of village-headmen by District Magistrate in certain cases for purposes of this section**

(*3*) Subject to rules in this behalf to be made by the Local Government, the District Magistrate may, from time to time, appoint one or more persons to be village-headmen for the purposes of this section in any village for which there is no such headman appointed under any other law.

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## CHAPTER V.—OF ARREST, ESCAPE, AND RETAKING.

### *A.—Arrest generally.*

**Arrest how made.**

**46.** (*1*) In making an arrest, the police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

**Resisting endeavour to arrest.**

(*2*) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police-officer or other person may use all means necessary to effect the arrest.

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* Act XLV. of 1860.

(*3*) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death, or with transportation for life.*

Search of place entered by person sought to be arrested.

**47.** If any person acting under a warrant of arrest, or any police-officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or being in charge of, such place, shall, on demand of such person acting as aforesaid, or such police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Procedure where ingress not obtainable.

**48.** If ingress to such place cannot be obtained under section 47, it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police-officer to enter such place and search therein, and, in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance:

Breaking open zanána.

Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested), who, according to custom, does not appear in public, such person or police-officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

Power to break open doors and windows for purposes of liberation.

**49.** Any police-officer or other person authorized to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

No unnecessary restraint.

**50.** The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.†

Search of arrested persons.

**51.** Whenever a person is arrested by a police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail, but the person arrested cannot furnish bail, and

whenever a person is arrested without warrant, or by a private person under a warrant and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest, or, when the arrest is made by a private person, the police-officer to whom he makes over the person arrested may search such person, and place in safe custody all articles, other than necessary wearing apparel, found upon him ‡

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* As to addition with which s 46 is to be read in places in which the Punjab Frontier Crimes Regulation (IV. of 1887) is in force, see s 37 (*2*) of that Regulation, and s. 3 of this Act, *supra*.

† For penalty for unwarrantable personal violence by a police-officer to a person in his custody, see s. 29 of the Police Act (V. of 1861).

‡ As to disposal of such property, see s. 523, *infra*.

Mode of searching women.

**52.** Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency.

Power to seize offensive weapons.

**53.** The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

*B.—Arrest without Warrant.*

When police may arrest without warrant.

**54.** (*1*) Any police officer may, without an order from a Magistrate, and without a warrant, arrest—

*first*—any person who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned;

*secondly*—any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking;

*thirdly*—any person who has been proclaimed as an offender, either under this Code or by order of the Local Government;

*fourthly*—any person in whose possession anything is found which may reasonably be suspected to be stolen property, *or* who may reasonably be suspected of having committed an offence with reference to such thing;

*fifthly*—any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody;

*sixthly*—any person reasonably suspected of being a deserter from Her Majesty's Army or Navy, or of belonging to Her Majesty's Indian Marine Service, and being illegally absent from that service;

*seventhly*—any person who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of British India, which, if committed in British India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or under the Fugitive Offenders Act, 1881,* or otherwise, liable to be apprehended or detained in custody in British India; *and*

*eighthly* †—*any released convict committing a breach of any rule made under section 565, sub-section (3).*

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* Stat. 44 & 45 Vict., c. 69.

† For some other cases in which the police may arrest without warrant, see pp. 135 and 136 of Wigley's Index of Indian Statutes, Ed. 1897, and the following Acts:—
the Indian Emigration Act (XXI of 1883), s 82;
the Rangoon Tramways Act (XXII of 1883), s. 19;
the Explosives Act (IV. of 1884), s 13;
the Punjab Municipalities Act (XXI. of 1891), ss 81 to 83;
the Burma Gaming Act (XVI. of 1884), s 7;
the Burma Municipal Act (Burma Act III. of 1898), s. 194;
the Upper Burma Forest Regulation (V. of 1898), s. 63.

(2) This section applies *also* to the police in the towns of Calcutta and Bombay.

Arrest of vagabonds, habitual robbers, &c.

**55.*** (1) Any officer in charge of a police-station may, in like manner, arrest or cause to be arrested—

(*a*) any person found taking precautions to conceal his presence within the limits of such station, under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence; or

(*b*) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself; or

(*c*) any person who is by repute an habitual robber house-breaker, or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion, or, in order to the committing of extortion, habitually puts, or attempts to put, persons in fear of injury.

(2) This section applies *also* to the police in the towns of Calcutta and Bombay.

Procedure when police officer deputes subordinate to arrest without warrant.

**56.** (1) When any officer in charge of a police-station requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence *or other cause* for which the arrest is to be made.

(2) This section applies *also* to the police in the towns of Calcutta and Bombay.

Refusal to give name and residence.

**57**† (1) When any person who, in the presence of a police-officer, has committed, or has been accused of committing, a non-cognizable offence, refuses, on demand of such officer, to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) *When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required:*

*Provided that, if such person is not resident in British India, the bond shall be secured by a surety or sureties resident in British India.*

(3) *Should the true name and residence of such person not be ascertained within twenty four hours from the time of arrest, or should he fail to execute the bond, or, if so required to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.*

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* In Upper Burma, any police-officer may exercise the powers conferred by this section on a police-officer in charge of a police-station.—See Sch. (s. VI.) to the Upper Burma Criminal Justice Regulation (V. of 1892).

† As to power of detention by officer in charge of a police-station in Upper Burma, see Upper Burma Criminal Justice Regulation (V. of 1892).

**58.** A police-officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest under this chapter, pursue such person into any place in British India.

Pursuit of offenders into other jurisdictions.

**59.** (*1*) Any private person may arrest any person who, in his view, commits a non-bailable and cognizable offence, or who has been proclaimed as an offender;

Arrest by private persons.

and shall, without unnecessary delay, make over any person so arrested to a police officer, or, in the absence of a police-officer, take such person to the nearest police-station.

Procedure on such arrest.

(*2*) If there is reason to believe that such person comes under the provisions of section 54, a police-officer shall re-arrest him.

(*3*) If there is reason to believe that he has committed a non cognizable offence, and he refuses, on the demand of a police-officer, to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 57. If there is no *sufficient* reason to believe that he has committed any offence, he shall be at once *released.*

**60.** A police-officer making an arrest without warrant shall, without unnecessary delay, and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police-station.

Person arrested to be taken before Magistrate or officer in charge of police-station.

**61.*** No police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Person arrested not to be detained more than twenty-four hours.

**62.** Officers in charge of police-stations shall report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

Police to report apprehensions.

**63.** No person who has been arrested by a police-officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.

Discharge of person apprehended.

**64.** When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest, or order any person to arrest, the offender, and may thereupon, subject to the provisions herein contained as to bail,† commit the offender to custody.

Offence committed in Magistrate's presence.

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* As to power of detention by officer in charge of a police-station in Upper Burma, see the Upper Burma Criminal Justice Regulation (V. of 1892).

† See Ch. XXXIX., *infra.*

**65.** Any Magistrate may at any time arrest or direct the arrest, in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent, at the time and in the circumstances, to issue a warrant.

Arrest by or in presence of Magistrate.

**66** If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in British India.

Power, on escape, to pursue and retake.

**67.** The provisions of sections 47, 48, and 49, shall apply to arrests under section 66, although the person making any such arrest is not acting under a warrant, and is not a police-officer having authority to arrest.

Provisions of sections 47, 48, and 49 to apply to arrests under section 66

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## CHAPTER VI.—OF PROCESSES TO COMPEL APPEARANCE.

### *A.—Summons.*

**68.** (*1*) Every summons* issued by a Court under this Code shall be in writing, in duplicate, signed and sealed by the presiding officer of such Court or by such other officer as the High Court may from time to time, by rule direct.

Form of summons.

(*2*) Such summons shall be served by a police-officer, or, subject to such rules as the Local Government may prescribe in this behalf, by an officer of the Court issuing it, *or other public servant.*

Summons by whom served.

(*3*) This section applies *also* to the police in the towns of Calcutta and Bombay.

**69.** (*1*) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons

Summons how served.

(*2*) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Signature of receipt for summons.

(*3*) *Service of a summons on an incorporated company or other body corporate may be effected by serving it on the secretary, local manager, or other principal officer of the corporation, or by registered post-letter addressed to the chief officer of the corporation in British India. In such case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.*

**70** Where the person summoned cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family, or in a presidency-town, with his servant residing with him;

Service when person summoned cannot be found.

* For forms, see Sch. V., Forms I. and XXXI., *infra.*

and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Procedure *when service cannot be effected as before provided.*

**71.** If *service in the manner* mentioned in sections 69 and 70 cannot, by the exercise of due diligence, be *effected*, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.

Service on servant of Government or of Railway Company.

**72.** (*1*) Where the person summoned is in the active service of the Government or of a Railway Company, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 69, and shall return it to the Court *under his signature* with the endorsement required by that section.

(*2*) *Such signature shall be evidence of due service.*

Service of summons outside local limits.

**73.** When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

Proof of service in such cases, and when serving officer not present.

**74.** (*1*) When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in manner provided by section 69 or section 70) by the person to whom it was delivered or tendered, or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

(*2*) The affidavit mentioned in this section may be attached to the duplicate of the summons, and returned to the Court.

### *B.—Warrant of Arrest* *

Form of warrant of arrest.

**75.** (*1*) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer or, in the case of a Bench of Magistrates, by any member of such Bench, and shall bear the seal of the Court.

Continuance of warrant of arrest.

(*2*) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

Court may direct security to be taken.

**76.** (*1*) Any Court issuing a warrant for the arrest of any person may, in its discretion, direct, by endorsement on the warrant, that, if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security, and shall release such person from custody.

* These provisions apply to warrants issued under s. 10 of the Upper Burma Ruby Regulation (XII. of 1887), sub s. (*2*) of that section.

(2) The endorsement* shall state—

(a) the number of sureties;

(b) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound; and

(c) the time at which he is to attend before the Court.

Recognizance to be forwarded.

(3) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

Warrants to whom directed.

**77.** (1) A warrant of arrest shall ordinarily be directed to one or more police-officers, and, when issued by a Presidency Magistrate, shall always be so directed; but any other Court issuing such a warrant may, if its immediate execution is necessary, and no police-officer is immediately available, direct it to any other person or persons; and such person or persons shall execute the same.

Warrant to several persons.

(2) When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more, of them.

Warrant may be directed to landholder, &c.

**78.** (1) A District Magistrate or Sub-divisional Magistrate may direct a warrant to any landholder, farmer, or manager of land within his district or sub-division for the arrest of any escaped convict, proclaimed offender, or person who has been accused of a non-bailable offence, and who has eluded pursuit.

(2) Such landholder, farmer, or manager, shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued is in, or enters on, his land or farm, or the land under his charge.

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police-officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 76.

Warrant directed to police-officer.

**79.** A warrant directed to any police-officer may also be executed by any other police-officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

Notification of substance of warrant.

**80.** The police-officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

Person arrested to be brought before Court without delay.

**81.** The police-officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security), without unnecessary delay, bring the person arrested before the Court before which he is required by law to produce such person.

Where warrant may be executed.

**82.** A warrant of arrest may be executed at any place in British India.

* For forms, see Sch. V., Form II, *infra*.

**88.** (*1*) When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a police-officer, forward the same by post or otherwise to any Magistrate *or District Superintendent* of Police, *or the Commissioner of Police in a Presidency-town*, within the local limits of whose jurisdiction it is to be executed.

Warrant forwarded for execution outside jurisdiction.

(*2*) The Magistrate, *or District Superintendent*, or Commissioner to whom such warrant is so forwarded, shall endorse his name thereon, and, if practicable, cause it to be executed, *in manner hereinbefore provided*, within the local limits of his jurisdiction

**84.** (*1*) When a warrant directed to a police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to a Magistrate, or to a police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

Warrant directed to police officer for execution outside jurisdiction.

(*2*) Such Magistrate or police-officer shall endorse his name thereon, and such endorsement shall be sufficient authority to the police officer to whom the warrant is directed to execute the same within such limits, and the local police shall, if so required, assist such officer in executing such warrant

(*3*) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police-officer within the local limits of whose jurisdiction the warrant is to be executed will prevent such execution, the police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

(*4*) This section applies *also* to the police in the towns of Calcutta and Bombay.

**85.** When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall unless the Court which issued the warrant is within twenty miles of the place of arrest or is nearer than the Magistrate, *or District Superintendent* of Police, *or the Commissioner of Police in a Presidency-town*, within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 76, be taken before such Magistrate, or Commissioner, *or District Superintendent*.

Procedure on arrest of person against whom warrant issued.

**86.** (*1*) Such Magistrate, *or District Superintendent*, or Commissioner, shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court :

Procedure by Magistrate before whom person arrested is brought.

Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, *District Superintendent, or Commissioner*, or a direction has been endorsed under section 76 on the warrant, and such person is ready and willing to give the security required by such direction, the Magistrate, *District Superintendent, or Commissioner* shall take such bail or security * as the case may be, and forward the bond to the Court which issued the warrant.

(*2*) Nothing in this section shall be deemed to prevent a police-officer from taking security undersection 76.

* See Sch. V., Form III., *infra*.

*C.—Proclamation and Attachment.*

Proclamation for person absconding.

**87.** (*1*) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded, or is concealing himself, so that such warrant cannot be executed, such Court may publish a written proclamation* requiring him to appear at a specified place, and at a specified time not less than thirty days from the date of publishing such proclamation.

(*2*) The proclamation shall be published as follows:—

(*a*) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(*b*) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides, or to some conspicuous place of such town or village; and

(*c*) a copy thereof shall be affixed to some conspicuous part of the Court-house.

(*3*) A statement *in writing* by the Court issuing the proclamation, to the effect that the proclamation was duly published on a specified day, shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

Attachment of property of person absconding.

**88.** (*1*) The Court issuing a proclamation under section 87 *may at any time* order the attachment of any property, moveable or immoveable, or both, belonging to the proclaimed person.

(*2*) Such order shall authorize the attachment of any property belonging to such person within the district in which it is made; and it shall authorize the attachment of any property belonging to such person without such district when endorsed by the District Magistrate or Chief Presidency Magistrate within whose district such property is situate.

(*3*) If the property ordered to be attached *is a debt* or other moveable property, the attachment under this section shall be made—

(*a*) by seizure; or

(*b*) by the appointment of a receiver; or

(*c*) by an order in writing prohibiting the delivery of such property to the proclaimed person, or to any one on his behalf; or

(*d*) by all or any two of such methods, as the Court thinks fit.

(*4*) If the property ordered to be attached *is* immoveable, the attachment under this section shall, in the case of land paying revenue to Government, be made through the Collector of the district in which the land is situate, and in all other cases—

(*e*) by taking possession; or

(*f*) by the appointment of a receiver; or

(*g*) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person, or to any one on his behalf; or

(*h*) by all or any two of such methods, as the Court thinks fit.

* See Sch. V., Forms IV. and V., *infra*.

(5) *If the property ordered to be attached consists of live-stock, or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court.*

(6) The powers, duties, and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Chapter XXXVI. of the Code of Civil Procedure.*

(7) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government; but it shall not be sold until the expiration of six months from the date of the attachment, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which cases, the Court may cause it to be sold whenever it thinks fit.

**89.** If, within two years from the date of the attachment, any person whose property is, or has been, at the disposal of Government under *sub-section (7)* of section 88, appears voluntarily, or is apprehended and brought before the Court by whose order the property was attached, *or the Court to which such Court is subordinate*, and proves, to the satisfaction of such Court, that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property or, if the same has been sold, the nett proceeds of the sale, or, if part only thereof has been sold, the nett proceeds of the sale and the residue of the property, shall after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

Restoration of attached property.

*D.—Other Rules regarding Processes.*

**90.** A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person other than a juror or assessor, issue, after recording its reasons in writing, a warrant† for his arrest—

Issue of warrant in lieu of, or in addition to, summons.

(*a*) if, either before the issue of such summons, or after the issue of the same, but before the time fixed for his appearance, the Court see reasons to believe that he has absconded, or will not obey the summons; or

(*b*) if at such time he fails to appear, and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith, and no reasonable excuse is offered for such failure.

**91.** When any person, for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court.

Power to take bond for appearance.

**92.** When any person, who is bound, by any bond taken under this Code, to appear before a Court, does not so appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him

Arrest on breach of bond for appearance.

* Act XIV. of 1882.

† See Sch. V. Form VII., *infra*.

**93.** The provisions contained in this chapter relating to a summons and warrant, and their issue, service, and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

Provisions of this chapter generally applicable to summonses and warrants of arrest.

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## CHAPTER VII.—OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVEABLE PROPERTY, AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED.

### *A.—Summons to produce.*

**94.** (*1*) Whenever any Court, or, in any place beyond the limits of the towns of Calcutta and Bombay, any officer in charge of a police-station, considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial, or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it at the time and place stated in the summons or order.

Summons to produce document or other thing.

(*2*) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition, if he causes such document or thing to be produced instead of attending personally to produce the same.

(*3*) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872,* sections 123 and 124, or to apply to a letter, post-card, telegram, or other document, *or any parcel or thing* in the custody of the Postal or Telegraph Authorities.

**95.** (*1*) If any document, *parcel or thing* in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session, wanted for the purpose of any investigation, inquiry, trial, or other proceeding under this Code, such Magistrate or Court may require the Postal or Telegraph Authorities, as the case may be, to deliver such document, *parcel, or thing* to such person as such Magistrate or Court directs.

Procedure as to letters and telegrams.

(*2*) If any such document, *parcel, or thing* is, in the opinion of any other Magistrate, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for and to detain such document, *parcel, or thing* pending the orders of any such District Magistrate, Chief Presidency Magistrate, or Court.

### *B.—Search-warrants.*†

**96.** (*1*) Where any Court has reason to believe that a person to whom a summons or order under section 94, or a requisition under section 95, *sub-section (1)*, has been or might be addressed, will not or would not produce the document or thing as required by such summons or requisition,

When search-warrant may be issued.

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* Act I. of 1872.

† These provisions apply to searches under s. 9 (*1*) and (*2*) of the Upper Burma Ruby Regulation (XII. of 1887).—See s. 9 (*3*) of that Regulation.

For power to invest any forest-officer with power to issue such warrants, see Upper Burma Forest Regulation (V. of 1898), s. 71 (*c*).

or where such document or thing is not known to the Court to be in the possession of any person,

or where the Court considers that the purposes of any inquiry trial, or other proceeding under this Code will be served by a general search or inspection,

it may issue a search-warrant; and the person to whom such warrant is directed may search or inspect in accordance therewith and the provisions hereinafter contained.

(*2*) Nothing herein contained shall authorize any Magistrate other than a District Magistrate or Chief Presidency Magistrate to grant a warrant to search for a document, *parcel, or other thing* in the custody of the Postal or Telegraph Authorities.

Power to restrict warrant.

**97.** The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

Search of house suspected to contain stolen property, forged documents, &c.

**98.** (*1*) If a District Magistrate, Sub-divisional Magistrate, Presidency Magistrate, or Magistrate of the first class, upon information, and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property,

or for the deposit, or sale, or manufacture of forged documents false seals, or counterfeit stamps or coins, or instruments or materials for counterfeiting coin or stamps, or for forging,

or that any forged documents, false seals, or counterfeit stamps or coin or instruments or materials used for counterfeiting coin or stamps, or for forging, are kept or deposited in any place,

he may, by his warrant,* authorize any police-officer above the rank of a constable—

(*a*) to enter, with such assistance as may be required, such place, and

(*b*) to search the same in manner specified in the warrant, and

(*c*) to take possession of any property, documents, seals, stamps, or coins therein found, which he reasonably suspects to be stolen, unlawfully obtained forged false, or counterfeit, and also of any such instruments and materials as aforesaid, and

(*d*) to convey such property, documents, seals, stamps, coins, instruments, or materials before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(*e*) to take into custody, and carry before a Magistrate, every person found in such place who appears to have been privy to the deposit, sale, or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments, or materials, knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments, or materials to have been forged, falsified, or counterfeited, or the said instruments or materials to have

* See Sch. V, Form IX, *infra*

been or to be intended to be used for counterfeiting coin or stamps, or for forging.

(*z*) The provisions of this section with respect to—

(*a*) counterfeit coin,

(*b*) coin suspected to be counterfeit, and

(*c*) instruments or materials for counterfeiting coin,

shall, so far as they can be made applicable, apply, respectively, to—

(*a*) pieces of metal made in contravention of the Metal Tokens Act, 1889,* or brought into British India in contravention of any notification for the time being in force under section 19 of the Sea Customs Act, 1878,†

(*b*) pieces of metal suspected to have been so made, or to have been so brought into British India, or to be intended to be issued in contravention of the former of those Acts, and

(*c*) instruments or materials for making pieces of metal in contravention of that Act.

Disposal of things found on search beyond jurisdiction.

**99.** When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, any of the things for which search is made are found, such things together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorizing them to be taken to such Court.

### *C.—Discovery of Persons wrongfully confined.*

Search for persons wrongfully confined.

**100** If any Presidency Magistrate, Magistrate of the first class, or Sub-divisional Magistrate, has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as, in the circumstances of the case, seems proper.

### *D.—General Provisions relating to Searches.*

Direction, &c., of search-warrants.

**101.** The provisions of sections 43, 75, 77, 79, 82, 83, and 84, shall, so far as may be, apply to all search warrants issued under section 96, section 98, or section 100.

Persons in charge of closed place to allow search.

**102.** (*1*) Whenever any place liable to search or inspection under this chapter is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and, on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(*2*) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 48.

* Act I. of 1889 † Act VIII of 1878.

*(3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched. If such person is a woman, the directions of section 52 shall be observed*

**103.** (1) Before making a search under this chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search.

Search to be made in presence of witnesses.

(2) The search shall be made in their presence and a list of all things seized in the course of such search, and of the places in which they are respectively found, shall be prepared by such officer or other person, and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

(3) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person at his request.

Occupant of place searched may attend.

*(4) When any person is searched under section 102, sub section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person at his request.*

*E.—Miscellaneous.*

**104.** Any Court may, if it thinks fit, impound any document or thing produced before it under this Code.

Power to impound document, &c., produced.

**105.** Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

Magistrate may direct search in his presence.

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## PART IV.—PREVENTION OF OFFENCES.

### CHAPTER VIII.*—OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

*A.—Security for keeping the Peace on Conviction.*

**106.** (1) Whenever any person accused of rioting, assault, or other *offence involving a* breach of the peace, or of abetting the same, or of assembling armed men, or taking other unlawful measures with the evident intention of committing the same, or any person accused of committing criminal intimidation, is convicted of such offence before a High Court, a Court of Session, or the

Security for keeping the peace on conviction.

* Ss. 20 to 26 of the Sind Frontier Regulation (III. of 1892) are to be read with, and construed as part of, this chapter.—See s. 27 of that Regulation, and s. 3 of this Code, *supra*.

Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate, or a Magistrate of the first class,

and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

such Court may, at the time of passing sentence on such person, order him to execute a bond* for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

(2) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

*(3) An order under this section may also be made by an Appellate Court or by the High Court when exercising its powers of revision.*

*B.—Security for keeping the Peace in other cases and Security for Good Behaviour.*

**107.** (1) Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class, *is informed* that any person is likely to commit a breach of the peace *or disturb the public tranquillity*, or to do any wrongful act that may probably occasion a breach of the peace, *or disturb the public tranquillity*, the Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit to fix.

Security for keeping the peace in other cases.

*(2) Proceedings shall not be taken under this section unless either the person informed against, or the place where the breach of the peace or disturbance is apprehended, is within the local limits of such Magistrate's jurisdiction, and no proceedings shall be taken before any Magistrate, other than a Chief Presidency or District Magistrate, unless both the person informed against, and the place where the breach of the peace or disturbance is apprehended, are within the local limits of the Magistrate's jurisdiction.*

(3) When any Magistrate not empowered to proceed under *sub-section (1)* has reason to believe that any person is likely to commit a breach of the peace, *or disturb the public tranquillity*, or to do any wrongful act that may probably occasion a breach of the peace, *or disturb the public tranquillity*, and that such breach of the peace *or disturbance* cannot be prevented otherwise than by detaining such person in custody, such Magistrate may, *after recording his reasons*, issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case, *together with a copy of his reasons.*

Procedure of Magistrate not empowered to act under *sub-section (1)*.

(4) A Magistrate before whom a person is sent under this section may in his discretion detain such person in custody until the completion of the inquiry hereinafter prescribed.

**108.** *Whenever a Chief Presidency or District Magistrate, or a Presidency Magistrate, or Magistrate of the first class specially empowered by the Local Government in this behalf, has information that there is, within the limits of his jurisdiction, any person who, within or without such limits, either orally or in*

*Security for good behaviour from persons disseminating seditious matter.*

* See Sch. V., Form X., *infra*.

*writing, disseminates, or attempts to disseminate, or in anywise abets the dissemination of,—*

*(a) any seditious matter, that is to say, any matter the publication of which is punishable under section 124A of the Indian Penal Code,* or*

*(b) any matter the publication of which is punishable under section 153A of the Indian Penal Code,* or*

*(c) any matter concerning a Judge which amounts to criminal intimidation or defamation under the Indian Penal Code,**

*such Magistrate may (in manner hereinafter provided) require such person to show cause why he should not be ordered to execute a bond with or without sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.*

*No proceedings shall be taken under this section against the editor, proprietor, printer, or publisher of any publication registered under, or printed or published in conformity with, the rules laid down in the Press and Registration of Books Act, 1867,† except by the order or under the authority of the Governor-General in Council or the Local Government, or some officer empowered by the Governor-General in Council in this behalf.*

Security for good behaviour from vagrants and suspected persons.

**109**. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class, receives information—

(*a*) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing *any* offence, or

(*b*) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may, in manner hereinafter provided require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding *one year*, as the Magistrate thinks fit to fix.

Security for good behaviour from habitual offenders.

**110**. Whenever a Presidency Magistrate, District Magistrate, or Sub-divisional Magistrate, or a Magistrate of the first class specially empowered in this behalf by the Local Government, receives information that any person within the local limits of his jurisdiction—

*(a) is by habit a robber, house-breaker, or thief, or*

*(b) is by habit a receiver of stolen property knowing the same to have been stolen, or*

*(c) habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property, or*

*(d) habitually commits mischief, extortion, or cheating, or counterfeiting coin, currency notes, or stamps, or attempts so to do, or*

*(e) habitually commits, or attempts to commit, or abets the commission of, offences involving a breach of the peace, or*

* Act XLV. of 1860. † *Act XXV. of 1867.*

*(f) is so desperate and dangerous as to render his being at large without security hazardous to the community,*

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit to fix.*

Proviso as to European vagrants.

**111** The provisions of sections 109 and 110 do not apply to European British subjects in cases where they may be dealt with under the European Vagrancy Act, 1874.†

Order to be made.

**112**‡§ When a Magistrate acting under section 107, *section 108*, section 109, or section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character, and class of sureties (if any) required.

Procedure in respect of person present in Court.

**113.**‡§ If the person in respect of whom such order is made is present in Court, it shall be read over to him, or, if he so desires, the substance thereof shall be explained to him.

Summons or warrant in case of person not so present.

**114.**§ If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the Court:

Provided that, whenever it appears to such Magistrate, upon the report of a police-officer, or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

Copy of order under section 112 to accompany summons or warrant.

**115.**‡§ Every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

Power to dispense with personal attendance.

**116.**§ The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.

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* In Upper Burma information as to any person who earns his livelihood by carrying on, or assisting in carrying on, the game of "ti," or any other game or pretended game of a like nature, may be dealt with as information of the description mentioned in this section.—See s 8 of the Burma Gaming Act (XVI. of 1884).

† Act IX. of 1874.

‡ Ss. 112 and 113, 115, and 117, do not apply to an enquiry under s 41 of the Punjab Frontier Crimes Regulation (IV. of 1887).

§ Ss 112 to 125 apply to all cases requiring security for good behaviour under the Upper Burma Frontier Crossing and Disturbed Districts Regulation (IX. of 1887).—See s. 5 (2) of that Regulation.

**117.***† (*1*) When an order under section 112 has been read or explained under section 113 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which *action has been taken*, and to take such further evidence as may appear necessary.

Inquiry as to truth of information.

(*2*) Such inquiry shall be made, as nearly as may be practicable where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials *and recording evidence* in summons-cases; and, where the order requires security for good behaviour, in the manner hereinafter prescribed for conducting trials *and recording evidence* in warrant-cases, except that no charge need be framed.

(*3*) For the purposes of this section the fact that a person is a habitual offender may be proved by evidence of general repute or otherwise.

(*4*) *Where two or more persons have been associated together in the matter under inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.*

**118**† (*1*) If, upon such inquiry, it is proved that it is necessary, for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly:

Order to give security.

Provided,—

*first*, that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 112;

*secondly*, that the amount of every bond shall be fixed with due regard to the circumstances of the case, and shall not be excessive;

*thirdly*, that, when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

**119.**† If, on an inquiry under section 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the Magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

Discharge of person informed against.

*C.—Proceedings in all Cases subsequent to Order to furnish Security.*

**120.**† (*1*) If any person, in respect of whom an order requiring security is made under section 105 or section 118, is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

Commencement of period for which security is required.

* See foot-note (‡) on last-preceding page.
† See foot-note (†) on last-preceding page.

(2) In other cases such period shall commence on the date of such order, *unless the Magistrate, for sufficient reason, fixes a later date.*

Contents of bond.

**121.*** The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be; and, in the latter case, the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

Power to reject sureties.

**122.*** A Magistrate may refuse to accept any surety offered under this chapter on the ground that, for reasons to be recorded by the Magistrate, such surety is an unfit person.

Imprisonment in default of security.

**123.*** (1) If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison,† or, if he is already in prison, be detained in prison‡ until such period expires, or until within such period he gives the security § to the Court or Magistrate who made the order requiring it.

Proceedings when to be laid before High Court or Court of Session.

(2) When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the *Sessions Judge*, or, if such Magistrate is a Presidency Magistrate, pending the orders of the High Court; and the proceedings shall be laid, as soon as conveniently may be, before such Court.

(3) Such Court, after examining such proceedings, and requiring *from the Magistrate* any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit:

Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

(4) *If the security is tendered to the officer in charge of the jail, he shall forthwith refer the matter to the Court or Magistrate who made the order, and shall await the orders of such Court or Magistrate.*

Kind of imprisonment.

(5) Imprisonment for failure to give security for keeping the peace shall be simple.

(6) Imprisonment for failure to give security for good behaviour may be rigorous or simple, as the Court or Magistrate in each case directs.

Power to release persons imprisoned for failing to give security.

**124.*** (1) Whenever the District Magistrate or a *Chief* Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter, whether by the order of such Magistrate or that of his predecessor in office, or of some subordinate Magistrate, may be released without hazard to the community or to any other person, he may order such person to be discharged.

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* See foot-note (§) on p. 72 *supra*.

† See Sch. V, Forms XIII and XIV, *infra*.

‡ As to punishment for escaping or attempting to escape see s. 225 of the Indian Penal Code (Act XLV. of 1860).

§ See Sch. V, Form XV, *infra*

(2) *Whenever any person has been imprisoned for failing to give security under this chapter, the Chief Presidency or District Magistrate may (unless the order has been made by some Court superior to his own) make an order reducing the amount of the security or the number of sureties, or the time for which security has been required.*

(3) Whenever the District Magistrate or a *Chief* Presidency Magistrate is of opin on that any person imprisoned for failing to give security under this chapter, as ordered by the Court of Session or High Court, may be released without hazard *to the community*, such Magistrate shall make an immediate report of the case for the orders of the Court of Session or High Court, as the case may be, and such Court may, if it thinks fit, order such person to be discharged *

Power of District Magistrate to cancel any bond for keeping the peace or *good behaviour*.

**125** † The *Chief Presidency or* District Magistrate may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace, *or for good behaviour*, executed under this chapter by order of any Court in his district not superior to his Court.

Discharge of sureties.

**126.** (1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class, to cancel any bond executed under this chapter within the local limits of his jurisdiction.

(2) On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

(3) When such person appears or is brought before the Magistrate, such Magistrate shall cancel the bond, and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123, and 124, be deemed to be an order made under section 106 or section 118, as the case may be.

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## CHAPTER IX.—UNLAWFUL ASSEMBLIES.

Assembly to disperse on command of Magistrate or police-officer.

**127.** (1) Any Magistrate or officer in charge of a police-station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(2) This section applies *also* to the police in the towns of Calcutta and Bombay.

Use of civil force to disperse.

**128** If, upon being so commanded, any such assembly does not disperse or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a police station, whether within or without the presidency-towns, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an

* See Sch. V., Form XV., *infra*.

† See foot note (§) on p. 32, *supra*.

officer or soldier in Her Majesty's Army, or a volunteer enrolled under the Indian Volunteers Act, 1869,* and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly, or that they may be punished according to law.

Use of military force.

**129.** If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

Duty of officer commanding troops required by Magistrate to disperse assembly.

**130.** (*1*) When a Magistrate determines to disperse any such assembly by military force, he may require any commissioned or non-commissioned officer in command of any soldiers in Her Majesty's Army, or of any volunteers enrolled under the Indian Volunteers Act, 1869,* to disperse such assembly by military force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly, or to have them punished according to law.

(*2*) Every such officer shall obey such requisition in such manner as he thinks fit; but, in so doing, he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly, and arresting and detaining such persons.

Power of commissioned military officers to disperse assembly.

**131.** When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any commissioned officer of Her Majesty's Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it, in order to disperse such assembly, or that they may be punished according to law; but, if, while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thence forward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

Protection against prosecution for acts done under this chapter.

**132.** No prosecution against any *person* for any act purporting to be done under this chapter shall be instituted in any Criminal Court except with the sanction of the Governor-General in Council, and—

(*a*) no Magistrate or police-officer acting under this chapter in good faith,†

(*b*) no officer acting under section 131 in good faith,†

(*c*) no person doing any act in good faith† in compliance with a requisition under section 128 or section 130, and

(*d*) no inferior officer or soldier, or volunteer, doing any act in obedience to any order which he was bound to obey,

shall be deemed to have thereby committed an offence.

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* Act XX. of 1869.

† For definition of "good faith" see the Indian Penal Code (Act XLV. of 1860), ss. 52 and 76, and s. 3 (20) of the General Clauses Act (X. of 1897).

## CHAPTER X.—PUBLIC NUISANCES.

Conditional order for removal of nuisance.

**133.***† (*1*) Whenever a District Magistrate, a Sub-divisional Magistrate, or, when empowered by the Local Government in this behalf, a Magistrate of the first class, considers, on receiving a police-report or other information, and on taking such evidence (if any) as he thinks fit,

that any unlawful obstruction or nuisance should be removed from any way, river, or channel which is or may be lawfully used by the public, or from any public place, or that any trade or occupation, or the keeping of any goods or merchandise, by reason of its being injurious to the health or physical comfort of the community, should be suppressed or removed, or prohibited, or

that the construction of any building or the disposal of any substance as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building is in such a condition that it is likely to fall, and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that, in consequence, its removal, repair, or support is necessary, or

that any tank, well, or excavation adjacent to any such way or public place should be fenced in such a manner as to prevent danger arising to the public,

such Magistrate may make a conditional order‡ requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing, or controlling such building, substance, tank, well, or excavation, within a time to be fixed in the order,

to remove such obstruction or nuisance; or

to suppress or remove such trade or occupation; or

to remove such goods or merchandise; or

to prevent or stop the construction of such building; or

to remove, repair, or support it; or

to alter the disposal of such substance; or

to fence such tank, well, or excavation, as the case may be; or

to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside or modified in manner hereinafter provided.

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* Ss. 133 to 144 have been specially extended to the City of Madras.—See s. 29 of the City of Madras Municipal Act Amendment Act (Mad. Act VII. of 1884), and s. 3 (*t*) of this Act *supra*. And as to the meaning of "District Magistrate" in these sections, when applied as so extended, see s. 3 (*m*) of the City of Madras Municipal Act (Mad. Act I. of 1884) as amended by Acts VII of 1884 and II of 1892.

† The powers of a District Magistrate under the section may be conferred on municipal boards in the North Western Provinces and Oudh, and in municipal committees in the Central Provinces, and thereupon the provisions of ss. 133 to 142, both inclusive, with a modification in s. 133, apply to all proceedings taken in exercise of the powers so conferred.—See s. 57 of the North-Western Provinces and Oudh Municipalities Act (XV of 1883), and the Central Provinces Municipal Act (XVIII of 1889), s. 86, respectively.

‡ See Sch. V., Form XVI., *infra*.

(*a*) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

*Explanation.*—A "public place" includes also property belonging to the State, camping grounds, and grounds left unoccupied for sanitary and recreative purposes.

Service or notification of order

**134.*** (*1*) The order shall, if practicable, be served on the person against whom it is made in manner herein provided for service of a summons.

(*2*) If such order cannot be so served, it shall be notified by proclamation published in such manner as the Local Government may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

Person to whom order is addressed to obey.

**135.*** The person against whom such order is made shall—

(*a*) perform, within the time specified in the order, the act directed thereby; or

(*b*) appear in accordance with such order, and either show cause against the same, or apply to the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper.

Or show cause or claim jury.

Consequence of his failing to do so.

**136.*** If such person does not perform such act, or appear and show cause, or apply for the appointment of a jury as required by section 135, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code,† and the order shall be made absolute.

Procedure where he appears to show cause.

**137.*** (*1*) If he appears and shows cause against the order, the Magistrate shall take evidence in the matter *as in a summons-case.*

(*2*) If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

(*3*) If the Magistrate is not so satisfied, the order shall be made absolute.

Procedure where he claims jury.

**138.*** (*1*) On receiving an application under section 135 to appoint a jury, the Magistrate shall—

(*a*) forthwith appoint a jury‡ consisting of an uneven number of persons not less than five, of whom the foreman and one-half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant;

(*b*) summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and

(*c*) fix a time within which they are to return their verdict.

(*2*) *The time so fixed may, for good cause shown, be extended by the Magistrate.*

* See foot-notes (* †) on p. 37, *supra*

† Act XLV of 1860

‡ See Sch. V, Form XVII, *infra*.

Procedure where jury finds Magistrate's order to be reasonable.

**139.*** (*1*) If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made or subject to a modification which the Magistrate accepts the Magistrate shall make the order absolute, subject to such modification (if any).

(*2*) In other cases, no further proceedings shall be taken *under this chapter*.

Procedure on order being made absolute.

**140*** (*1*) When an order has been made absolute under section 136, section 137, or section 139 the Magistrate shall give notice† of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code.‡

Consequences of disobedience to order.

(*2*) If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods, or other property removed by his order, or by the distress and sale of any other moveable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found

(*3*) No suit shall lie in respect of anything done in good faith§ under this section.

Procedure on failure to appoint jury or omission to return verdict.

**141.*** If the applicant, by neglect or otherwise, prevents the appointment of the jury, or if from any cause, the jury appointed do not return their verdict within the time fixed, or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as he thinks fit, and such order shall be executed in the manner provided by section 140.

Injunction pending inquiry.

**142.*** (*1*) If a Magistrate, making an order under section 133, considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be or has been appointed or not, issue such an injunction‖ to the person against whom the order was made as is required to obviate or prevent such danger or injury *pending the determination of the matter*.

(*2*) In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger, or to prevent such injury.

(*3*) No suit shall lie in respect of anything done in good faith§ by a Magistrate under this section.

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* See both the foot-notes (* & †) on p. 37, *supra*.

† See Sch. V., Form XVIII., *infra*.

‡ Act XLV. of 1860

§ As to definition of "good faith," see the Indian Penal Code (Act XLV. of 1860), ss. 52 and 76, and s. 3 (*20*) of the General Clauses Act (X. of 1897)

‖ See Sch. V., Form XIX, *infra*

**148.*** A District Magistrate or Sub-divisional Magistrate, or any other Magistrate empowered by the Local Government or the District Magistrate in this behalf, may order† any person not to repeat or continue a public nuisance as defined in the Indian Penal Code‡ or any special or local law.

Magistrate may prohibit repetition or continuance of public nuisance.

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## CHAPTER XI.—TEMPORARY ORDERS IN URGENT CASES OF NUISANCE OR APPREHENDED DANGER.

**144.*** (*1*) In cases where, in the opinion of a District Magistrate, *a Chief Presidency Magistrate*, a Sub-divisional Magistrate, or of any other Magistrate specially empowered, by the Local Government *or the Chief Presidency Magistrate* or the District Magistrate, to act under this section, immediate prevention or speedy remedy is desirable,

Power to issue order absolute at once in urgent cases of nuisance *or apprehended danger*.

such Magistrate may, by a written order§ stating the material facts of the case, and served in manner provided by section 134, direct any person to abstain from a certain act, or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent obstruction annoyance, or injury, or risk of obstruction, annoyance, or injury, to any person lawfully employed, or danger to human life, health, or safety, *or a disturbance of the public tranquillity*, or a riot, or an affray.

(*2*) An order under this section may, in cases of emergency, or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*.

(*3*) An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

(*4*) Any Magistrate may rescind or alter any order made under this section by himself or any Magistrate subordinate to him, or by his predecessor in office.

(*5*) No order under this section shall remain in force for more than two months from the making thereof, unless, in cases of danger to human life, health, or safety, or a likelihood of a riot or an affray, the Local Government, by notification in the official Gazette, otherwise directs.

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## CHAPTER XII.—DISPUTES AS TO IMMOVEABLE PROPERTY.

**145.** (*1*) Whenever a District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class, is satisfied, from a police report or other information, that a dispute likely to cause a breach of the peace exists concerning any *land or water*, or the boundaries thereof, within the local limits of his jurisdiction

Procedure where dispute concerning land, &c., is likely to cause breach of peace.

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* See foot-note (*1*) on p. 37, *supra*.
† See Sch. V, Form XX, *infra*.
‡ Act XLV. of 1860.
§ See Sch. V, Form XXI, *infra*.

he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) *For the purposes of this section the expression "land or water" includes buildings, markets, fisheries, crops, or other produce of land, and the rents or profits of any such property.*

Inquiry as to possession.

(4) The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties receive the evidence produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties *was, at the date of the order before mentioned,* in such possession of the said subject:

*Provided that, if it appears to the Magistrate that any party has within two months next before the date of such order, been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date:*

*Provided also that, if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this section.*

(3) *A copy of the order shall be served in manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.*

(5) Nothing in this section shall preclude any party so required to attend, *or any other person interested,* from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order; and all further proceedings thereon shall be stayed, *but, subject to such cancellation, the order of the Magistrate under sub section (1) shall be final.*

Party in possession to retain possession until legally evicted.

(6) If the Magistrate decides that one of the parties was in such possession of the said subject, he shall issue an order* declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction.†

(7) *Proceedings under this section shall not abate by reason only of the death of any of the parties thereto.*

Power to attach subject of dispute.

**146.** (1) If the Magistrate decides that none of the parties *was* then in such possession, or is unable to satisfy himself as to which of them *was* then in such possession of the subject of dispute, he may attach it* until a competent Court has determined the rights of the parties thereto, or the person entitled to possession thereof.

(2) *When the Magistrate attaches the subject of dispute, he may, if he thinks fit, appoint a receiver thereof, who, subject to the control of the Magistrate, shall have all the powers of a receiver appointed under the Code of Civil Procedure.*‡

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* See Sch. V., Form XXIII., *infra*.

† For limitation of suits to recover possession of such property, see the Indian Limitation Act (XV. of 1877), Sch. II., art. 47.

‡ Act XIV. of 1882.

**147.** Whenever any such Magistrate is satisfied as aforesaid that a dispute likely to cause a breach of the peace exists concerning *the right of use of any land or water (including any right of way or other easement over the same)* within the local limits of his jurisdiction, he may inquire into the matter *in manner provided by section 145;* and may, if it appears to him that such right exists, make an order* permitting such thing to be done, or directing that such thing shall not be done, as the case may be, until the person objecting to such thing being done, or claiming that such thing may be done, obtains the decision of a competent Court adjudging him to be entitled to prevent the doing of, or to do, such thing as the case may be:

Disputes concerning easements, &c.

Provided that no order shall be passed under this section permitting the doing of anything where the right to do such thing is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry; or, where the right is exerciseable only at particular seasons, *or on particular occasions*, unless the right has been exercised during the *last of such seasons or occasions* before such institution.

**148.** (1) Whenever a local inquiry is necessary for the purposes of this chapter, any District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

Local inquiry.

(2) The report of the person so deputed may be read as evidence in the case.

(3) When any costs have been incurred by any party to a proceeding under this chapter for witnesses' or pleaders' fees, or both, the Magistrate passing a decision under section 145, section 146, or section 147, may direct by whom such costs shall be paid, whether by such party, or by any other party to the proceeding, and whether in whole or in part or proportion. All costs so directed to be paid may be recovered as if they were fines.

Order as to costs.

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CHAPTER XIII.—PREVENTIVE ACTION OF THE POLICE

**149.** Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.

Police to prevent cognizable offences.

**150** Every police officer, receiving information of a design to commit any cognizable offence, shall communicate such information to the police-officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

Information of design to commit such offences.

**151.** A police-officer, knowing of a design to commit any cognizable offence, may arrest, without orders from a Magistrate, and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

Arrest to prevent such offences.

* See Sch. V, Form XXIV *infra*.

**152.** A police-officer may, of his own authority, interpose to prevent any injury attempted to be committed in his view to any public property, moveable or immoveable, or the removal or injury of any public land-mark, or buoy, or other mark used for navigation.

Prevention of injury to public property.

**153** (*1*) Any officer in charge of a police-station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures, or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures, or instruments for weighing which are false.

Inspection of weights and measures.

(*2*) If he finds in such place any weights, measures, or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

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## PART V.—INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE.

### CHAPTER XIV.

**154.** Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police-station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing, or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf.

Information in cognizable cases.

**155.** (*1*) When information is given to an officer in charge of a police-station of the commission, within the limits of such station, of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information, and refer the informant to the Magistrate.

Information in non-cognizable cases.

(*2*) No police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case, or commit the same for trial, or of a Presidency Magistrate.

Investigation into non-cognizable cases.

(*3*) Any police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police-station may exercise in a cognizable case.

**156.** (*1*) Any officer in charge of a police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV, relating to the place of inquiry or trial.

Investigation into cognizable cases.

(*2*) No proceeding of a police-officer in any such case shall, at any stage, be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) *Any Magistrate empowered under section 190 may order such an investigation as above mentioned.*

**157.** (1) If, from information received or otherwise, an officer in charge of a police-station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police-report, and shall proceed in person, or shall depute one of his subordinate officers to proceed, to the spot to investigate the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and arrest of the offender:

Procedure where cognizable offence suspected:

Provided as follows:—

(a) when any information as to the commission of any such offence is given against any person by name, and the case is not of a serious nature, the officer in charge of a police-station need not proceed in person, or depute a subordinate officer to make an investigation on the spot;

where local investigation dispensed with:

(b) if it appear to the officer in charge of a police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

where police-officer in charge sees no sufficient ground for investigation.

(2) In each of the cases mentioned in clauses (a) and (b) *of the proviso to sub-section (1)*, the officer in charge of the police station shall state in his said report his reasons for not fully complying with the requirements of *that sub-section.*

**158.** (1) Every report sent to a Magistrate under section 157 shall, if the Local Government so directs, be submitted through such superior officer of police as the Local Government, by general or special order, appoints in that behalf.

Reports under section 157 how submitted.

(2) Such superior officer may give such instructions to the officer in charge of the police station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

**159.** Such Magistrate, on receiving such report, *may direct an investigation*, or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to *hold a preliminary inquiry into*, or otherwise to dispose of, the case in manner provided in this Code.

Power to hold investigation or preliminary inquiry

**160.** Any police-officer making an investigation under this chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

Police-officer's power to require attendance of witnesses.

**161.** (1) Any police-officer making an investigation under this chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

Examination of witnesses by police

(2) Such person shall be bound to answer all questions relating to such case put to him by such officer other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

Statements to police not to be signed or admitted in evidence.

**162.** (1) No statement made by any person to a police-officer in the course of an investigation under this chapter shall, if *taken down in* writing, be signed by the person making it, nor shall such writing be used as evidence:

*Provided that, when any witness is called for the prosecution whose statement has been taken down in writing as aforesaid the Court shall, on the request of the accused, refer to such writing, and may then, if the Court thinks it expedient in the interests of justice, direct that the accused be furnished with a copy thereof; and such statement may be used to impeach the credit of such witness in manner provided by the Indian Evidence Act, 1872.**

(2) Nothing in this section shall be deemed *to apply to any statement falling within* the provisions of section *32, clause (1),* of the Indian Evidence Act, 1872.*

No inducement to be offered.

**163.** (1) No police-officer or person in authority shall offer or make, or cause to be offered or made, any such inducement, threat, or promise as is mentioned in the Indian Evidence Act, 1872,* section 24.

(2) But no police officer or other person shall prevent, by any caution or otherwise, any person from making, in the course of any investigation under this chapter, any statement which he may be disposed to make of his own free-will.

Power to record statements and confessions.

**164.** (1) Every Magistrate, not being a police-officer, may record any statement or confession made to him in the course of an investigation under this chapter, or at any time afterwards before the commencement of the inquiry or trial.

(2) Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion, best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 364, and *such statements or confessions* shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

(3) No Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and, when he records any confession, he shall make a memorandum at the foot of such record to the following effect:—

"I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it, and admitted by him to be correct, and it contains a full and true account o the statement made by him

(*Signed*) A. B.,
*Magistrate.*"

*Explanation.—It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case.*

Search by police officer.

**165** (1) Whenever an officer in charge of a police-station, or a police-officer making an investigation, considers that the production of any document or thing is necessary to the conduct of an investigation into any offence which he is authorized to investi-

* Act I. of 1872.

gate, and there is reason to believe that a person to whom a summons or order under section 94 has been or might be issued will not or would not produce such document or thing *according to the directions of* the summons or order or when such document or thing is not known to be in the possession of any person, such officer may search, or cause search to be made, for the same, in any place within the limits of the station of which he is in charge, or to which he is attached.

(*2*) Such officer shall if practicable, conduct the search in person.

(*3*) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing specifying the document or thing for which search is to be made, and the place to be searched; and such subordinate officer may thereupon search for such thing in such place.

(*4*) The provisions of this Code as to search-warrants* shall, so far as may be, *apply to a search made under this section.*

When officer in charge of police-station may require another to issue search-warrant.

**166.** (*1*) An officer in charge of a police-station may require an officer in charge of another police-station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made within the limits of his own station.

(*2*) Such officer, on being so required, shall proceed according to the provisions of section 165 and shall forward the thing found, if any, to the officer at whose request the search was made.

Procedure when investigation cannot be completed in twenty-four hours.

**167** (*1*) Whenever it appears that any investigation under this chapter cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation *or information* is well-founded, the officer in charge of the police-station shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused (*if any*) to such Magistrate.

(*2*) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days *in the whole*. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

(*3*) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing

(*4*) If such order *is* given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

Report of investigation by subordinate police officer.

**168.** When any subordinate police-officer has made any investigation under this chapter, he shall report the result of such investigation to the officer in charge of the police-station.

* See ss. 96 to 99, *supra*.

**169.** If, upon an inves igation under this chapter, it appears to the officer in charge of the police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond,* with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cogn'zance of the offence on a police-report, and to try the accused, or commit him for trial.

Release of accused when evidence deficient.

**170.** (*1*) If, upon an investigation under this chapter, it appears to the officer in charge of the police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police-report, and to try the accused or commit him for trial, or, if the offence is bailable, and the accused is able to give security, shall take security* from him for his appearance before such Magistrate on a day fixed, and for his attendance from day to day before such Magistrate until otherwise directed.

Case to be sent to Magistrate when evidence is sufficient.

(*2*) When the officer in charge of a police-station forwards an accused person to a Magistrate, or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any), and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond† to appear before the Magistrate *as thereby directed*, and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

(*3*) If the Court of the District Magistrate or Sub-divisional Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons.

(*4*) The day fixed under this section shall be the day whereon the accused person is to appear if security for his appearance has been taken, or the day on which he may be expected to arrive at the Court of the Magistrate if he is to be forwarded in custody

(*5*) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

Complainants and witnesses not to be required to accompany police-officer.

**171.** No complainant or witness on his way to the Court of the Magistrate shall be required to accompany a police officer,

Complainants and witnesses not to be subjected to restraint.

or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond :

Recusant complainant or witness may be forwarded in custody.

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the police-station may forward him in custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

* See Sch. V., Form XXV, *infra*.
† See Sch V., Form XXVI., *infra*.

**172.** (*1*) Every police officer making an investigation under this chapter shall, day by day, enter his proceedings in the investigatoin in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

Diary of proceedings in investigation.

(*2*) Any Criminal Court may send for the police-diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police-officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police-officer, the provisions of the Indian Evidence Act, 1872,* section 161 or section 145, as the case may be, shall apply.

**173.** (*1*) Every investigation under this chapter shall be completed without unnecessary delay, and, as soon as it is completed the officer in charge of the police-station shall forward, to a Magistrate empowered to take cognizance of the offence on a police-report, a report in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused person has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties.

Report of police-officer.

(*2*) Where a superior officer of police has been appointed under section 158, the report shall, in any cases in which the Local Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation.

(*3*) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

**174**† (*1*) *The* officer in charge of a police-station, *or some other police officer specially empowered by the Local Government in that behalf*, on receiving information that a person—

Police to inquire and report on suicide, &c.

(*a*) has committed suicide, or

(*b*) has been killed by another, or by an animal, or by machinery, or by an accident, or

(*c*) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Local Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report

* Act I. of 1872.

† For form in which ss. 174 to 176 should be read in their application to the area comprised within the local limits of the ordinary original civil jurisdiction of the High Court at Madras see s. 42, of the Madras Coroners Act (V. of 1899).

of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(2) The report shall be signed by such police-officer and other persons, or by so many of them, as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

(3) When there is any doubt regarding the cause of death, or when, for any other reason, the police-officer considers it expedient so to do, he shall, subject to such rules as the Local Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon or other qualified medical man appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) In the Presidencies of Fort St. George and Bombay, investigations under this section may be made by the head of the village, who shall then report the result to the nearest Magistrate authorized to hold inquests.

(5) The following Magistrates are empowered to hold inquests, namely any District Magistrate or Sub-divisional Magistrate, and any Magistrate specially empowered in this behalf by the Local Government or the District Magistrate.

Power to summon persons.

**175.** (1) *A police-officer proceeding under section 174* may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

(2) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police-officer to attend a Magistrate's Court.

Inquiry by Magistrate into cause of death.

**176.** (1) When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in section 174, clauses (*a*), (*b*), and (*c*) *of sub section* (1), any Magistrate so empowered may hold an inquiry into the cause of death, either instead of, or in addition to, the investigation held by the police-officer; and, if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case.

Power to disinter corpses.

(2) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.*

* A similar power is entrusted to the Coroners of Calcutta and Bombay.—See the Coroners Act (IV. of 1871).

## PART VI.—PROCEEDINGS IN PROSECUTIONS.

### CHAPTER XV.—OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS.

#### *A.—Place of Inquiry or Trial.*

**177.** Every offence shall ordinarily be enquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

Ordinary place of inquiry and trial.

**178.** Notwithstanding anything contained in section 177, the Local Government may direct that any cases or class of cases committed for trial in any district may be tried in any sessions division:

Power to order cases to be tried in different sessions divisions.

Provided that such direction is not repugnant to any direction previously issued *by the High Court under section 15 of the Indian High Courts Act, 1861*,* or under this Code, section 526.

**179.** When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

Accused triable in district where act is done, or where consequence ensues.

*Illustrations.*

(*a.*) A is wounded within the local limits of the jurisdiction of Court X and dies within the local limits of the jurisdiction of Court Z. The offence of the culpable homicide of A may be inquired into or tried either by X or Z.

(*b.*) A is wounded within the local limits of the jurisdiction of Court X, and is during ten days within the local limits of the jurisdiction of Court Y, and during ten days more within the local limits of the jurisdiction of Court Z, unable, in the local limits of the jurisdiction of either Court Y or Court Z, to follow his ordinary pursuits. The offence of causing grievous hurt to A may be inquired into or tried by X, Y, or Z.

(*c.*) A is put in fear of injury within the local limits of the jurisdiction of Court X, and is thereby induced, within the local limits of the jurisdiction of Court Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into or tried either by X or Y.

(*d.*) *A is wounded in the Native State of Baroda, and dies of his wounds in Poona. The offence of causing A's death may be inquired into and tried in Poona.*

**180.** When an act is an offence by reason of its relation to any other act which is also an offence, or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

Place of trial where act is offence by reason of relation to other offence.

*Illustrations.*

(*a.*) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.

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* Stat. 24 & 25 Vict., c. 104 (printed in the "Collection of Statutes relating to India," Vol. I., Ed. 1899, p. 357).

(*b*.) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.

(*c*.) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping, took place.

Being a thug, or belonging to a gang of dacoits, escape from custody, &c.

**181.** (*1*) The offence of being a thug, of being a thug and committing murder, of dacoity, of dacoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.

Criminal misappropriation and criminal breach of trust.

(*2*) The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person, or the offence was committed.

Stealing.

(*3*) The offence of stealing anything may be inquired into or tried by a Court within the local limits of whose jurisdiction such thing was stolen or was possessed by the thief, or by any person who received or retained the same knowing or having reason to believe it to be stolen.

Kidnapping and abduction.

(*4*) *The offence of kidnapping or abduction may be inquired into or tried by a Court within the local limits of whose jurisdiction the person kidnapped or abducted was kidnapped or abducted, or was conveyed, or concealed, or detained.*

Place of inquiry or trial where scene of offence is uncertain,

**182.** When it is uncertain in which of several local areas an offence was committed, or

or not in one district only,

where an offence is committed partly in one local area and partly in another, or

or where offence is continuing,

where an offence is a continuing one, and continues to be committed in more local areas than one, or

or consists of several acts.

where it consists of several acts done in different local areas,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

Offence committed on a journey.

**183.** An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

**184.** All offences against the provisions of any law for the time being in force relating to Railways,* Telegraphs,† the Post office,‡ or Arms and Ammunition,§ may be inquired into or tried in a presidency-town, whether the offence is stated to have been committed within such town or not:

Offences against Railway, Telegraph, Post-office, and Arms Acts.

Provided that the offender and all the witnesses necessary for his prosecution are to be found within such town.

**185.** (*1*) Whenever any doubt arises as to the Court by which any offence should, under the preceding provisions of this chapter, be inquired into or tried, the High Court, within the local limits of whose appellate criminal jurisdiction the offender actually is, may decide by which Court the offence shall be inquired into or tried.

High Court to decide, in case of doubt, district where inquiry or trial shall take place.

(*2*) In *Lower* Burma, when the offender is an European British subject, *the Court of* the Recorder of Rangoon, and in all other cases *the Court of* the Judicial Commissioner, shall, for the purposes of this section, be deemed to be the High Court.

**186.** (*1*) When a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate, or, if he is specially empowered in this behalf by the Local Government, a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed, without such limits (whether within or without British India), an offence which cannot, under the provisions of sections 177 to 184 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is, under some law for the time being in force, triable in British India, such Magistrate may inquire into the offence as if it had been committed within such local limits, and compel such person in manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is bailable, take a bond, with or without sureties, for his appearance before such Magistrate.

Power to issue summons or warrant for offence committed beyond local jurisdiction.

Magistrate's procedure on arrest.

(*2*) When there are more Magistrates than one having such jurisdiction, and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent or bound to appear, the case shall be reported for the orders of the High Court.

**187.** (*1*) If the person has been arrested under a warrant issued under section 186 by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District *or Sub-divisional* Magistrate to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the police-officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

Procedure where warrant issued by subordinate Magistrate.

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* See the Indian Railways Act (IX. of 1890).
† See the Indian Telegraphs Act (XIII. of 1885).
‡ See the Indian Post-office Act (VI. of 1898).
§ See the Indian Arms Act (XI. of 1878).

(*a*) If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under section 186, such Magistrate shall send such person to such Court.

Liability of British subjects for offences committed out of British India.

**188.** When a Native Indian subject of Her Majesty commits an offence at any place *without and* beyond the limits of British India, or

when any British subject commits an offence in the *territories* of *any Native* Prince or *Chief* in India, or

*when a servant of the Queen (whether a British subject or not) commits an offence in the territories of any Native Prince or Chief in India,*

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found:

Political Agent to certify fitness of inquiry into charge

Provided that no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there is one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India; *and, where there is no Political Agent, the sanction of the Local Government shall be required:*

Provided, also, that any proceedings taken against any person under this section, which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in British India, shall be a bar to further proceedings against him under the Foreign Jurisdiction and Extradition Act, 1879,* in respect of the same offence in any territory beyond the limits of British India.

Power to direct copies of depositions and exhibits to be received in evidence

**189.** Whenever any such offence as is referred to in section 188 is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

*B.—Conditions requisite for Initiation of Proceedings.*

Cognizance of offences by Magistrates.

**190.** (*1*) Except as hereinafter provided, any Presidency Magistrate, District Magistrate, or Sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence— S. 191, Act X of 1882.

(*a*) upon receiving a complaint of facts which constitute such offence;

(*b*) upon a police-report of such facts;

(*c*) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

* Act XXI. of 1879.

(2) The Local Government, or the District Magistrate subject to the general or special orders of the Local Government, may empower any Magistrate to take cognizance, under *sub-section (1)*, clause (*a*) or clause (*b*), of offences for which he may try or commit for trial.

(3) The Local Government may empower any Magistrate of the first or second class to take cognizance, under *sub-section (1)*, clause (*c*), of offences for which he may try or commit for trial.

S. 191 (last para.), Act X., 1882.

Transfer or commitment on application of accused.

**191.** When a Magistrate takes cognizance of an offence under *sub-section (1)*, clause (*c*), *of the preceding section*, the accused shall, *before any evidence is taken, be informed that he is entitled to have the case tried by another Court, and if the accused, or any of the accused if there be more than one, objects to being tried by such Magistrate, the case shall, instead of being tried by such Magistrate*, be committed to the Court of Session, or transferred to another Magistrate.

Transfer of cases by Magistrates.

**192.** (1) Any *Chief Presidency Magistrate*, District Magistrate, or Sub-divisional Magistrate, may transfer any case, of which he has taken cognizance, for inquiry or trial to any Magistrate subordinate to him.

(2) Any District Magistrate may empower any Magistrate of the first class who has taken cognizance of any case to transfer it for inquiry or trial to any other specified Magistrate in his district who is competent under this Code to try the accused or commit him for trial, and such Magistrate may dispose of the case accordingly.

Cognizance of offences by Courts of Session.

**193.** (1) Except as otherwise expressly provided by this Code, or by any other law for the time being in force, no Court of Session* shall take cognizance of any offence as a Court of original jurisdiction unless the accused has been committed to it by a Magistrate duly empowered in that behalf.

(2) Additional Sessions Judges and *Assistant* Sessions Judges shall try such cases only as the Local Government, by general or special order, may direct them to try, or, *in the case of Assistant Sessions Judges*, as the Sessions Judge of the division, *by general or special order, may make* over to them for trial.

Cognizance of offences by High Court.

**194.** (1) The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided.

Nothing herein contained shall be deemed to affect the provisions of any Letters Patent granted under the *Indian High Courts Act, 1861*,† *or any other provisions of this Code.*

Informations by Advocate-General.

(2) (*a*) *Notwithstanding anything in this Code contained, the Advocate-General may, with the previous sanction of the Governor-General in Council or the Local Government, exhibit to the High Court, against persons subject to the jurisdiction of the High Court, informations for all purposes for which Her Majesty's Attorney-General may exhibit informations on behalf of the Crown in the High Court of Justice in England.*

* As to procedure of Courts of Session in Upper Burma, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., s. II, (3) (*b*). This procedure, however, does not affect the Code in its application to European British subjects in Upper Burma.—See s. XVII., *ibid*.

† Stat. 24 & 25 Vict., c. 104.

*(b) Such proceedings may be taken upon every such information as may lawfully be taken in the case of similar informations filed by Her Majesty's Attorney-General so far as the circumstances of the case and the practice and procedure of the said High Court will admit.*

*(c) All fines, penalties, forfeitures, debts, and sums of money recovered or levied under or by virtue of any such information shall belong to the Government of India.*

*(d) The High Court may make rules for carrying into effect the provisions of this section.*

**195.** (*1*) No Court shall take cognizance—

Prosecution for contempts of lawful authority of public servants.

(*a*) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code,* except with the previous sanction, or on the complaint, of the public servant concerned, or of some public servant to whom he is subordinate;

Prosecution for certain offences against public justice.

(*b*) of any offence punishable under section 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, or 228 of the same Code,* when such offence is committed in, or in relation to, any proceeding in any Court, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate;

Prosecution for certain offences relating to document given in evidence.

(*c*) of any offence described in section 463, or punishable under section 471, 475, or 476 of the same Code,* when such offence has been committed by a party to any proceeding in any Court in respect of a document *produced or* given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

*(2) In clauses (b) and (c) of sub-section (1), the term "Court" means a Civil, Revenue, or Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877.*†

*(3) The provisions of sub-section (1) with reference to the offences named therein apply also to the abetment of such offences, and attempts to commit them.*

Nature of sanction necessary.

(*4*) The sanction referred to in this section may be expressed in general terms, and need not name the accused person; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed.

(*5*) When sanction is given in respect of any offence referred to in this section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

(*6*) Any sanction *given or* refused under this section may be *revoked or* granted by any authority to which the authority *giving or* refusing it is subordinate; and no sanction shall remain in force for more than six months from the

* Act XLV. of 1860.
† Act III. of 1877.

date on which it was *given, provided that the High Court may, for good cause shown, extend the time.*

(*7*) For the purposes of this section every Court shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie, *that is to say,—*

(*a*) *where such appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;*

(*b*) *where such appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case in connection with which the offence is alleged to have been committed;*

(*c*) *where no appeal lies, such Court shall be deemed to be subordinate to the principal Court of original jurisdiction within the local limits of whose jurisdiction such first-mentioned Court is situate.*

Prosecution for offences against the State.

**196.** No Court shall take cognizance of any offence punishable under Chapter VI. of the Indian Penal Code* (except section 127), or punishable under *section 108A, or section 153A*, or section 294A, *or section 505* of the same Code, unless upon complaint made by order of, or under authority from, the Governor-General in Council, the Local Government, or some officer empowered by the Governor-General in Council in this behalf.

Prosecution of Judges and public servants.

**197.** (*1*) When any Judge, or any public servant not removable from his office without the sanction of the Government of India or the Local Government, is accused as such Judge or public servant of any offence, no Court shall take cognizance of such offence, except with the previous sanction of the Government having power to order his removal, or of some officer empowered in this behalf by such Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power to give such sanction has not been limited by such Government.

Power of Government as to prosecution.

(*2*) Such Government may determine the person by whom, the manner in which, *the offence or offences for which*, the prosecution of such Judge or public servant is to be conducted, and may specify the Court before which the trial is to be held.

Prosecution for breach of contract, defamation, and offences against marriage.

**198.** No Court shall take cognizance of an offence falling under Chapter XIX. or Chapter XXI. of the Indian Penal Code,* or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence.

Prosecution for adultery or enticing a married woman.

**199.** No Court shall take cognizance of an offence under section 497 or section 498 of the Indian Penal Code,* except upon a complaint made by the husband of the woman, or, in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed.

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* Act XLV. of 1860.

CHAPTER XVI.—OF COMPLAINTS TO MAGISTRATES.

Examination of complainant.

**200.** *Subject to the provisions of section 476*, a Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing, and shall be signed by the complainant, and also by the Magistrate:

Provided as follows—

(*a*) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192;

(*b*) where the Magistrate is a Presidency Magistrate, such examination may be on oath or not, as the Magistrate in each case thinks fit, and need not be reduced to writing; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing;

(*c*) when the case has been transferred under section 192, and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

Procedure by Magistrate not competent to take cognizance of the case.

**201.** (*1*) If the complaint has been made in writing *to a* Magistrate *who* is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper *Court* with an endorsement to that effect.

(*2*) *If the complaint has not been made in writing, such Magistrate shall direct the complainant to the proper Court.*

Postponement of issue of process.

**202.** (*1*) If the Chief Presidency Magistrate, or any other Presidency Magistrate whom the Local Government may from time to time authorize in this behalf, or any Magistrate of the first or second class, *is not satisfied as to* the truth of a complaint of an offence of which he is authorized to take cognizance, he may, when the complainant has been examined, record his reasons, and may then postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself, or direct a previous local investigation to be made by any officer subordinate to such Magistrate, or by a police-officer, or by such other person, not being a Magistrate, or police-officer, as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

(*2*) If such investigation is made by some person not being a Magistrate or a police-officer, he shall exercise all the powers conferred by this Code on an officer in charge of a police-station, except that he shall not have power to arrest without warrant.

(*3*) This section applies *also* to the police in the towns of Calcutta and Bombay.

Dismissal of complaint.

**203.** The Magistrate before whom a complaint is made, or to whom it has been transferred, may dismiss the complaint, if, after examining the complainant, and considering the result of the investigation (if any) made under section 202, there is, in his judgment, no sufficient ground for proceeding.* *In such case he shall briefly record his reasons for so doing.*

* See the Indian Penal Code (Act XLV. of 1860), s. 95.

## CHAPTER XVII.—OF THE COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES.

Issue of process.

**204.** (*1*) If, in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, and the case appears to be one in which, according to the fourth column of the second schedule, a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (*if he has not jurisdiction himself*) some other Magistrate having jurisdiction.

(*2*) Nothing in this section shall be deemed to affect the provisions of section 90.

(*3*) *When, by any law for the time being in force, any process-fees or other fees are payable, no process shall be issued until the fees are paid, and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.*

Magistrate may dispense with personal attendance of accused.

**205.** (*1*) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

(*2*) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

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## CHAPTER XVIII *—OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT

Power to commit for trial.

**206.** (*1*) *Subject to the provisions of section 443*, any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class, or any Magistrate empowered in this behalf by the Local Government, may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.

(*2*) But, save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court.

Procedure in inquiries preparatory to commitment.

**207.** The following procedure shall be adopted in inquiries before Magistrates where the case is triable exclusively by a Court of Session or High Court, or, in the opinion of the Magistrate, ought to be tried by such Court.

Taking of evidence produced.

**208.** (*1*) The Magistrate shall, when the accused appears or is brought before him, proceed to hear the complainant (if any), and take, in manner hereinafter provided, all such evidence as may be produced in support of the prosecution, or in behalf of the accused, or as may be called for by the Magistrate.

(*2*) *The accused shall be at liberty to cross-examine the witnesses for the prosecution, and in such case the prosecutor may re-examine them.*

Process for production of further evidence.

(*3*) If the complainant or officer conducting the prosecution or accused applies to the Magistrate to issue process to compel the attendance of any witness or the production of any

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* Magistrates exercising jurisdiction in the Town of Rangoon, when committing prisoners for trial, commit them to the Chief Court, *see* s. 13 of the Lower Burma Court Act (VI. of 1900). The Act came into operation on 16th April, 1900, see Gazette of India, Pt. I., p. 226.

document or thing, the Magistrate shall issue such process, unless, for reasons to be recorded, he deems it unnecessary to do so.

(*4*) Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons.

When accused person to be discharged.

**209.** (*1*) When the evidence referred to in section 208, *sub-sections (1) and (3)*, has been taken, and he has (*if necessary*) examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, *record his reasons, and* discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

(*2*) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

When charge is to be framed.

**210.** (*1*) When, upon such evidence being taken, and such examination (if any) being made, the Magistrate *is satisfied that* there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

Charge to be explained, and copy furnished, to accused.

(*2*) As soon as the charge has been framed, it shall be read and explained to the accused, and a copy thereof shall, if he so requires, be given to him free of cost.

List of witnesses for defence on trial.

**211.** (*1*) The accused shall be required at once to give in, orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial.

Further list.

(*2*) The Magistrate may, in his discretion, allow the accused to give in any further list of witnesses at a subsequent time; and, where the accused is committed for trial before the High Court, nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial, to the Clerk of the Crown, a further list of the persons whom he wishes to be summoned to give evidence on such trial.

Power of Magistrate to examine such witnesses.

**212.** The Magistrate may, in his discretion, summon and examine any witness named in any list given in to him under section 211.

Order of commitment.

**213.** (*1*) When the accused, on being required to give in a list under section 211, has declined to do so, or when he has given in such list, and the witnesses (if any) included therein, whom the Magistrate desires to examine, have been summoned and examined under section 212, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session (as the case may be), and (unless the Magistrate is a Presidency Magistrate) shall also record briefly the reasons for such commitment.

(*2*) *If the Magistrate, after hearing the witnesses for the defence, is satisfied that there are not sufficient grounds for committing the accused, he may cancel the charge, and discharge the accused.*

Person charged outside presidency-towns jointly with European British subject.

**214.** If any person (not being an European British subject) is accused, before a Magistrate other than a Presidency Magistrate, of having committed an offence conjointly with an European British subject who is about to be com-

mitted for trial, or to be tried, before the High Court on a similar charge arising out of the same transaction, and the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall commit him for trial before the High Court, and not before the Court of Session.

Quashing commitments under section 213 or 214.

**215.** A commitment once made under section 213 or section 214 by a competent Magistrate, *or by a Court of Session under section 477, or by a Civil or Revenue Court under section 478*, can be quashed by the High Court only, and only on a point of law.

Summons to witnesses for defence when accused is committed.

**216.** When the accused has given in any list of witnesses under section 211, and has been committed for trial, the Magistrate shall summon such as the witnesses included in the list as have not appeared before himself to appear before the Court to which the accused has been committed:

Provided that, where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the Crown, and such witnesses may be summoned accordingly:

Refusal to summon unnecessary witness unless deposit made.

Provided, also, that, if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and, if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may, before summoning him, require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness *and all other proper expenses.*

Bond of complainants and witnesses.

**217.** (*1*) Complainants and witnesses for the prosecution and defence, whose attendance before the Court of Session or High Court is necessary, and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance when called upon at the Court of Session or High Court to prosecute or to give evidence, as the case may be.

Detention in custody in case of refusal to attend or to execute bond.

(*2*) If any complainant or witness refuses to attend before the Court of Session or High Court, or execute the bond above directed the Magistrate may detain him in custody until he execute such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

Commitment when to be notified.

**218.** (*1*) When the accused is committed for trial, the Magistrate shall issue an order* to such person as may be appointed by the Local Government in this behalf, notifying the commitment, and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge;

Charge, &c., to be forwarded to High Court or Court of Session

and shall send the charge, the record of the inquiry, and any weapon or other *thing which is to be produced in evidence, to the* Court of Session, or (where the commitment is made to the High Court) to the Clerk of the Crown, or other officer appointed in this behalf by the High Court.

* See Sch. V., Form XXVII., *infra*.

(2) When the commitment is made to the High Court, and any part of the record is not in English, an English translation of such part shall be forwarded with the record.

English translation to be forwarded to High Court.

**219.** (1) The Magistrate may, *if he thinks fit*, summon and examine supplementary witnesses after a commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

Power to summon supplementary witnesses.

(2) Such examination shall, if possible, be taken in the presence of the accused; and, where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall, if the accused so require, be given to him free of cost.

**220.** Until and during the trial, the Magistrate shall, subject to the provisions of this Code regarding the taking of bail,* commit the accused, by warrant, to custody.

Custody of accused pending trial.

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## CHAPTER XIX.—OF THE CHARGE.

### *Form of Charges.*†

**221.** (1) Every charge under this Code shall state the offence with which the accused is charged.

Charge to state offence.

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

Specific name of offence sufficient description.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

How stated where offence has no specific name.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

What implied in charge.

(6) In the presidency-towns the charge shall be written in English; elsewhere it shall be written either in English, or in the language of the Court.

Language of charge.

(7) If the accused has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award,‡ the fact, date, and place of the previous conviction shall be stated in the charge. If such statement is omitted, the Court may add it at any time before sentence is passed.

Previous conviction when to be set out.

*Illustrations.*

(a.) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code;§ that it did not fall within any of the general exceptions of the same Code; and that it did not fall within any of the five exceptions to section 300; or that, if it did fall within Exception 1., one or other of the three provisos to that exception applied to it.

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* See Ch. XXXIX., *infra*.

† See Sch. V., Form XXVIII., *infra*.

‡ See the Indian Penal Code (Act XLV. of 1860), s. 75; see the Whipping Act (VI. of 1864), ss. 3 and 4. *See* also, *infra*, ss. 310, 348, and 511.

§ Act XLV. of 1860.

(*b.*) A is charged, under section 326 of the Indian Penal Code,* with voluntarily causing grievous hurt to B by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Indian Penal Code,* and that the general exceptions did not apply to it.

(*c.*) A is accused of murder, cheating, theft, extortion, adultery, or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code;* but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(*d.*) A is charged, under section 184 of the Indian Penal Code,* with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

**222.** (*1*) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

Particulars as to time, place, and person.

(*2*) *When the accused is charged with criminal breach of trust, or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates; and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 234:*

*Provided that the time included between the first and last of such dates shall not exceed one year.*

**223.** When the nature of the case is such that the particulars mentioned in sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

When manner of committing offence must be stated.

*Illustrations.*

(*a.*) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(*b.*) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(*c.*) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(*d.*) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(*e.*) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(*f.*) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged, and the law infringed.

**224.** In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

Words in charge taken in sense of law under which offence is punishable.

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* Act XLV. of 1860.

**225.** No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was, *in fact*, misled by such error or omission, *and it has occasioned a failure of justice*.

Effect of errors.

*Illustrations.*

(*a*.) A is charged, under section 242 of the Indian Penal Code,* with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge. Unless it appears that A was, in fact, misled by this omission, the error shall not be regarded as material.

(*b*.) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(*c*.) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in this case, a material error.

(*d*.) A is charged with the murder of Khoda Baksh on the 21st January 1882. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January 1882. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(*e*.) A was charged with murdering Haidar Baksh on the 20th January 1882 and Khoda Baksh (who tried to arrest him for that murder) on the 21st January 1882. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled and that the error was material.

**226.** When any person is committed for trial without a charge, or with an imperfect or erroneous charge, the Court, or, in the case of a High Court, the Clerk of the Crown, may frame a charge, or add to or otherwise alter the charge, as the case may be, having regard to the rules contained in this Code as to the form of charges.

Procedure on commitment without charge or with imperfect charge.

*Illustrations.*

(*a*.) *A is charged with the murder of C. A charge of abetting the murder of C may be added or substituted.*

(*b*.) *A is charged with forging a valuable security under section 467 of the Indian Penal Code.* * *A charge of fabricating false evidence under section 193 may be added.*

(*c*.) *A is charged with receiving stolen property knowing it to be stolen. During the trial it incidentally appears that he has in his possession instruments for the purpose of counterfeiting coin. A charge under section 235 of the Indian Penal Code* cannot be added.*

**227.** (*1*) Any Court may alter *or add to* any charge at any time before judgment is pronounced, or, in the case of trials before the Court of Session or High Court, before the verdict of the jury is returned, or the opinions of the assessors are expressed.

Court may alter charge.

(*2*) Every such alteration *or addition* shall be read and explained to the accused.

* Act XLV. of 1860.

When trial may proceed immediately after alteration.

**228.** If the charge framed, or alteration *or addition* made, under section 226 or section 227, is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence, or the prosecutor in the conduct of the case, the Court may, in its discretion, after such charge or alteration *or addition* has been framed or made, proceed with the trial as if the new or altered charge had been the original charge.

When new trial may be directed, or trial suspended.

**229.** If the new or altered *or added* charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial, or adjourn the trial for such period as may be necessary.

Stay of proceedings if prosecution of offence in altered charge require previous sanction.

**230.** If the offence stated in the new or altered *or added* charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

Recall of witnesses when charge altered.

**231.** Whenever a charge is altered *or added to* by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to re-call or re-summon, and examine with reference to such alteration *or addition*, any witness who may have been examined, *and also to call any further witness whom the Court may think to be material.*

Effect of material error.

**232.** (*1*) If any Appellate Court, or the High Court in the exercise of its powers of revision, or of its powers under Chapter XXVII., is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge, or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

(*2*) If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

*Illustration.*

A is convicted of an offence, under section 196 of the Indian Penal Code,* upon a charge which omits to state that he knew the evidence, which he corruptly used or attempted to use as true or genuine, was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but, if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.

## *Joinder of Charges.*

Separate charges for distinct offences.

**233.** For every distinct offence of which any person is accused, there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236, and 239.

*Illustration.*

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and causing grievous hurt.

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* Act XLV. of 1860.

**284.** (*1*) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, he may be charged with, and tried at one trial for, any number of them not exceeding three.

Three offences of same kind within year may be charged together.

(*2*) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code,* or of any special or local law.

**285.** (*1*) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

Trial for more than one offence.

(*2*) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

Offence falling within two definitions.

(*3*) If several acts, of which one or more than one would, by itself or themselves, constitute an offence, constitute, when combined, a different offence, the person accused of them may be charged with, and tried at one trial for, the offence constituted by such acts when combined, and for any offence constituted by any one or more of such acts

Acts constituting one offence, but constituting, when combined, a different offence.

(*4*) Nothing contained in this section shall affect the Indian Penal Code,* section 71.

*Illustrations—*

*to sub-section (1)*

(*a.*) A rescues B, a person in lawful custody, and, in so doing, causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and convicted of, offences under sections 225 and 333 of the Indian Penal Code.*

(*b.*) A commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with B's wife. A may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code.*

(*c.*) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 497 of the Indian Penal Code.*

(*d.*) A has in his possession several seals, knowing them to be counterfeit, and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code.* A may be separately charged with, and convicted of, the possession of each seal under section 473 of the Indian Penal Code.*

(*e.*) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding; and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charges. A may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code.*

(*f.*) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under sections 211 and 194 of the Indian Penal Code.*

(*g.*) A, with six others, commits the offences of rioting, grievous hurt, and assaulting a public servant endeavouring, in the discharge of his duty as such, to suppress the riot.

* Act XLV. of 1860.

A may be separately charged with, and convicted of, offences under sections 147, 325, and 152 of the Indian Penal Code.*

(*h.*) A threatens B, C, and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under section 506 of the Indian Penal Code.*

The separate charges referred to in Illustrations (*a*) to (*h*) respectively may be tried at the same time.

*to sub-section (2) :*

(*i.*) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code *

(*j.*) Several stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code.*

(*k.*) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure A may be separately charged with, and convicted of, offences under sections 317 and 304 of the Indian Penal Code.*

(*l.*) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 167 of the Indian Penal Code.* A may be separately charged with, and convicted of, offences under sections 471 (read with 466) and 196 of the same Code.*

*to sub-section (3) :*

(*m.*) A commits robbery on B, and in doing so, voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 392, and 394 of the Indian Penal Code *

**236.** If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once, or he may be charged in the alternative with having committed some one of the said offences.

Where it is doubtful what offence has been committed

*Illustrations.*

(*a*) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust, or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust, or cheating

(*b.*) *A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.*

**237.** (*1*) If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

When a person is charged with one offence, he can be convicted of another.

(*2*) *When the accused is charged with an offence, he may be convicted of having attempted to commit that offence, although the attempt is not separately charged.*

*Illustration.*

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods He may be convicted of criminal breach of trust, or of receiving stolen goods (as the case may be), though he was not charged with such offence.

* Act XLV. of 1860.

**238.** (*1*) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

When offence proved included in offence charged.

(*2*) When a person is charged with an offence, and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(*3*) Nothing in this section shall be deemed to authorize a conviction of any offence referred to in section 198 or section 199 when no complaint has been made as required by that section.

*Illustrations.*

(*a*) A is charged, under section 407 of the Indian Penal Code,* with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

(*b*) A is charged, under section 325 of the Indian Penal Code,* with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.*

**239.** When more persons than one are accused of the same offence, or of different offences committed in the same transaction, or when one person is accused of committing any offence, and another of abetment of, or attempt to commit, such offence, they may be charged and tried together or separately, as the Court thinks fit; and the provisions contained in the former part of this chapter shall apply to all such charges.

What persons may be charged jointly.

*Illustrations.*

(*a*) A and B are accused of the same murder. A and B may be charged and tried together for the murder.

(*b*) A and B are accused of a robbery, in the course of which A commits a murder with which B has nothing to do. A and B may be tried together on a charge, charging both of them with the robbery, and A alone with the murder.

(*c*) A and B are both charged with a theft, and B is charged with two other thefts committed by him in the course of the same transaction. A and B may be both tried together on a charge charging both with the one theft, and B alone with two other thefts.

**240.** *When a charge containing more heads than one is framed* against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court, of its own accord, may stay the inquiry into, or trial of, such charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into, or trial of, the charge or charges so withdrawn.

Withdrawal of remaining charges on conviction on one of several charges.

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* Act XLV. of 1860.

## CHAPTER XX.—OF THE TRIAL OF SUMMONS-CASES BY MAGISTRATES.

Procedure in summons-cases.

**241.** The following procedure shall be observed by Magistrates in the trial of summons-cases :—

Substance of accusation to be stated.

**242.** When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted; but it shall not be necessary to frame a formal charge.*

Conviction on admission of truth of accusation.

**243.** If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him; and, if he shows no sufficient cause why he should not be convicted, the Magistrate *shall* convict him accordingly.

Procedure when no such admission is made.

**244.** (*1*) If the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence.

(*2*) The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue process to compel the attendance of any witness, or the production of any document or other thing.

(*3*) The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

Acquittal.

**245.** (*1*) If the Magistrate, upon taking the evidence referred to in section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal.

Sentence.

(*2*) If he finds the accused guilty, he shall pass sentence upon him according to law †

Finding not limited by complaint or summons.

**246.** A Magistrate may, under section 243 or section 245, convict the accused of any offence triable under this chapter which, from the facts admitted or proved, he appears to have committed, whatever may be the nature of the complaint or summons.

Non-appearance of complainant.

**247.** If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day:

*Provided that, where the complainant is a public servant and his personal attendance is not required, the Magistrate may dispense with his attendance, and proceed with the case.*

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* Except in the case of trials of European British subjects by District Magistrates, see s. 451 (*4*), *infra*.

† See Sch. V., Form XXIX., *infra*.

Withdrawal of complaint.

**248.** If a complainant, at any time before a final order is passed in any case under this chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

Power to stop proceedings when no complainant.

**249.** In any case instituted otherwise than upon complaint, a Presidency Magistrate, a Magistrate of the first class, or, with the previous sanction of the District Magistrate, any other Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment, either of acquittal or conviction, and may thereupon release the accused.

*Frivolous Accusations in Summons and Warrant-cases.*

Frivolous or vexatious accusations.

**250.** (*1*) If, in any case instituted by complaint as defined in this Code, or upon information given to a police-officer or to a Magistrate, a person is accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is *heard* discharges or acquits the accused, and is satisfied that the accusation against him was frivolous or vexatious, the Magistrate may, in his discretion, by his order of discharge or acquittal, direct the person upon whose complaint or information the accusation was made to pay to the accused, or to each of the accused where there are more than one, such compensation, not exceeding fifty rupees, as the Magistrate thinks fit:

Provided that, before making any such direction, the Magistrate shall—

(*a*) record and consider any objection which the complainant or informant may urge against the making of the direction, and,

(*b*) if the Magistrate directs any compensation to be paid, state in writing, in his order of discharge or acquittal, his reasons for awarding the compensation.

(*2*) Compensation of which a Magistrate has ordered payment under sub-section (*1*) shall be recoverable as if it were a fine:

Provided that, if it cannot be recovered, the imprisonment to be awarded shall be simple, and for such term, not exceeding thirty days, as the Magistrate directs.

(*3*) A complainant or informant who has been ordered under sub-section (*1*) by a Magistrate of the second or third class to pay compensation to an accused person may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial held by such Magistrate.

(*4*) Where an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (*3*), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided.

(*5*) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any compensation paid or recovered under this section.

## CHAPTER XXI.—OF THE TRIAL OF WARRANT-CASES BY MAGISTRATES.

Procedure in warrant-cases.

**251.** The following procedure shall be observed by Magistrates in the trial of warrant-cases:—

Evidence for prosecution.

**252.** (*1*) When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution.

(*2*) The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case, and to be able to give evidence for the prosecution, and shall summon* to give evidence before himself such of them as he thinks necessary.

Discharge of accused.

**253.** (*1*) If, upon taking all the evidence referred to in section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(*2*) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

Charge to be framed when offence appears proved.

**254** † If, when such evidence and examination have been taken and made, *or at any previous stage of the case*, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

Plea.

**255.** (*1*) The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

(*2*) If the accused pleads guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon.

*Defence*

**256.** (*1*) *If the accused refuses to plead, or does not plead, or claims to be tried, he shall be required to state whether he wishes to cross-examine any, and, if so, which, of the witnesses for the prosecution whose evidence has been taken. If he says he does so wish, the witnesses named by him shall be re-called, and, after cross-examination and re-examination (if any), they shall be discharged. The evidence of any remaining witnesses for the prosecution shall next be taken, and, after cross-examination and re-examination (if any), they also shall be discharged. The accused shall then be called upon to enter upon his defence, and produce his evidence.*

(*2*) *If the accused puts in any written statement, the Magistrate shall file it with the record.*

*Process for compelling production of evidence at instance of accused.*

**257.** (*1*) *If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay, or for defeating the ends of justice. Such ground shall be recorded by him in writing:*

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* See Sch. V., Form XXXI., *infra*.

† See ss. 252 and 208, *supra*.

***Provided that, when the accused has cross-examined, or had the opportunity of cross-examining, any witness after the charge is framed, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the purposes of justice.***

(*a*) The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

**258.** (*1*) If, in any case under this chapter in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order of acquittal.

Acquittal.

Conviction.

(*2*) If, in any such case, the Magistrate finds the accused guilty, he shall pass sentence upon him according to law.*

**259.** When the proceedings have been instituted upon complaint, and, upon any day fixed for the hearing of the case, the complainant is absent, and the offence may be lawfully compounded,† the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

Absence of complainant.

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## CHAPTER XXII.—OF SUMMARY TRIALS.

Power to try summarily

**260.**‡ (*1*) Notwithstanding anything contained in this Code,—

(*a*) the District Magistrate,

(*b*) any Magistrate of the first class specially empowered in this behalf by the Local Government, and

(*c*) any Bench of Magistrates invested with the powers of a Magistrate of the first class, and specially empowered in this behalf by the Local Government,

may, *if he or they think fit*, try in a summary way all or any of the following offences:—

(*a*) offences not punishable with death, transportation, or imprisonment for a term exceeding six months;

(*b*) offences relating to weights and measures under sections 264, 265, and 266 of the Indian Penal Code;§

(*c*) hurt under section 323 of the same Code;§

(*d*) theft under section 379, 380, or 381 of the same Code,§ where the value of the property stolen does not exceed fifty rupees;

(*e*) *dishonest misappropriation of property under section 403 of the same Code,§ where the value of the property misappropriated does not exceed fifty rupees;*

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* See Sch. V., Form XXIX., *infra*.

† See s. 345, *infra*.

‡ As to powers of Magistrates in Upper Burma, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., s. V. As to European British subjects, however, see *ibid*, s. XVII. As to summary trial of forest offences, see the Indian Forest Act (VII. of 1878), s. 65.

§ Act XLV of 1860.

(*f*) receiving or retaining stolen property under section 411 of the same Code,* where the value of such property does not exceed fifty rupees;

(*g*) assisting in the concealment or disposal of stolen property under section 414 of the same Code,* where the value of such property does not exceed fifty rupees;

(*h*) mischief under section 427 of the same Code;*

(*i*) house-trespass under section 448, *and offences under sections 451, 456, and 457, of the same Code;**

(*j*) insult with intent to provoke a breach of the peace under section 504, and criminal intimidation under section 506, of the same Code;*

(*k*) abetment of any of the foregoing offences;

(*l*) an attempt to commit any of the foregoing offences, when such attempt is an offence;

(*m*) *offences under section 20 of the Cattle Trespass Act, 1871*.†

Provided that no case in which a Magistrate exercises the special powers conferred by section 34 shall be tried in a summary way.

(*z*) *When, in the course of a summary trial, it appears to the Magistrate or Bench that the case is one which is of a character which renders it undesirable that it should be tried summarily, the Magistrate or Bench shall recall any witnesses who may have been examined, and proceed to rehear the case in manner provided by this Code.*

**261.** The Local Government may confer, on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class, power to try summarily all or any of the following offences:—

Power to invest Bench of Magistrates invested with less power.

(*a*) offences against the Indian Penal Code,* sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426, and 447;

(*b*) offences against Municipal Acts and the conservancy clauses of Police Acts, *which are* punishable only with fine, or with imprisonment for a term not exceeding one month;

(*c*) abetment of any of the foregoing offences;

(*d*) an attempt to commit any of the foregoing offences, when such attempt is an offence.

**262.** (*1*) In trials under this chapter, the procedure prescribed for summons-cases shall be followed in summons-cases and the procedure prescribed for warrant-cases shall be followed in warrant-cases, except as hereinafter mentioned.

Procedure for summons and warrant-cases applicable.

(*2*) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this chapter.

Limit of imprisonment.

**263.** In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses, or frame a formal charge; but he or they shall enter in such form as the Local Government may direct the following particulars:—

Record in cases where there is no appeal.

(*a*) the serial number;

* Act XLV. of 1860. † Act I. of 1871.

(b) the date of the commission of the offence;
(c) the date of the report or complaint;
(d) the name of the complainant (if any);
(e) the name, parentage, and residence of the accused;
(f) the offence complained of and the offence (if any) proved, and, in cases coming under clause (d), clause (e), *clause (f), or clause (g) of sub-section (1)* of section 260, the value of the property in respect of which the offence has been committed;
(g) the plea of the accused and his examination (if any);
(h) the finding, and, in the case of a conviction, a brief statement of the reasons therefor;
(i) the sentence or other final order; and
(j) the date on which the proceedings terminated.

Record in appealable cases.

**264.** (1) In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall, before passing sentence, record a judgment embodying the substance of the evidence, and also the particulars mentioned in section 263.

(2) Such judgment shall be the only record in cases coming within this section.

Language of record and judgment.

**265.** (1) Records made under section 263 and judgments recorded under section 264 shall be written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother-tongue.

Bench may be authorized to employ clerk.

(2) The Local Government may authorize any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

(3) *If no such authorisation be given, the record prepared by a member of the Bench, and signed as aforesaid, shall be the proper record.*

(4) *If the Bench differ in opinion, any dissentient member may write a separate judgment.*

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## CHAPTER XXIII.—OF TRIALS BEFORE HIGH COURTS AND COURTS OF SESSION.*

### *A.—Preliminary.*

"High Court" defined.

**266.** In this chapter, except in sections 276 and 307, *and in Chapter XVIII.*, the expression "High Court" means a High Court of Judicature established or to be established under *the Indian High Courts Act, 1861*,† and includes the Chief Court of the Punjab, the "Chief Court of Lower Burma," ‡ and such other Courts§ as the Governor-General in Council may, by notification in the Gazette of India, declare to be High Courts for the purposes of this chapter.

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* As to Courts of Session in Upper Burma, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., s. II. As to European British subjects, see s. XXII., *ibid.*

† Stat. 24 & 25 Vict., c. 104, printed in the "Collection of Statutes relating to India," Vol. I., Ed. 1899, p. 355.

‡ These words were substituted for the words "Court of the Recorder of Rangoon" by the Lower Burma Courts Act (VI. of 1900), s. 47—and the first schedule.

§ In the Sonthal Parganas, the Commissioner is the High Court in certain cases, see s. 4 of the Sonthal Parganas Justice Regulation (V. of 1893), as modified up to 1st October, 1899.

Trials before High Court to be by jury.

**267.** All trials under this chapter before a High Court shall be by jury;

and, notwithstanding anything herein contained, in all criminal cases transferred to a High Court under this Code, or under the Letters Patent of any High Court established under the *Indian High Courts Act, 1861*,* the trial may, if the High Court so directs, be by jury.

Trials before Court of Session to be by jury or with assessors.

**268.** All trials before a Court of Session shall be either by jury, or with the aid of assessors.

Local Government may order trials before Court of Session to be by jury.

**269.** (*1*) The Local Government may, with the previous sanction of the Governor-General in Council, by order in the official Gazette, direct that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury in any district, and may, with the like sanction, revoke or alter such order.

(*2*) The Local Government, by like order, may also declare that, in the case of any district in which the trial of any offence is to be by jury, the trial of such offences shall, if the Judge, on application made to him, or of his own motion, so directs, be by jurors summoned from a special jury list, and may revoke or alter such order.

(*3*) When the accused is charged at the same trial with several offences of which some are, and some are not, triable by jury, he shall be tried by jury for such of those offences as are triable by jury, and, by the Court of Session, with the aid of the jurors as assessors for such of them as are not triable by jury.

Trial before Court of Session to be conducted by Public Prosecutor.

**270.** In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

*B.—Commencement of Proceedings.*

Commencement of trial.

**271.** (*1*) When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

Plea of guilty.

(*2*) If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon.

Refusal to plead, or claim to be tried.

**272.** If the accused refuses to, or does not, plead, or if he claims to be tried, the Court shall proceed to choose jurors or assessors as hereinafter directed, and to try the case:

Trial by same jury or assessors of several offenders in succession.

Provided that, subject to the right of objection hereinafter mentioned, the same jury may try, or the same assessors may aid in the trial of, as many accused persons successively as the Court thinks fit.

Entry on unsustainable charges.

**273.** (*1*) In trials before the High Court, when it appears to the High Court, at any time before the commencement of the trial of the person charged, that any charge or any portion thereof is clearly unsustainable, the Judge may make on the charge an entry to that effect.

Effect of entry.

(*2*) Such entry shall have the effect of staying proceedings upon the charge or portion of the charge, as the case may be.

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* Stat 24 & 25 Vic., c. 104, printed in the "Collection of Statutes relating to India," Vol. I., Ed. 1899, p. 355.

*C.—Choosing a Jury.*

Number of jury.

**274.** (*1*) In trials before the High Court, the jury shall consist of nine persons.

(*2*) In trials by jury before the Court of Session, the jury shall consist of such uneven number, not being less than three or more than nine, as the Local Government, by order applicable to any particular district, or to any particular class of offences in that district, may direct.

Jury for trial of persons not Europeans or Americans before Court of Session.

**275.** In a trial by jury before the Court of Session of a person not being an European or an American, a majority of the jury shall, if he so desires, consist of persons who are neither Europeans nor Americans.

Jurors to be chosen by lot.

**276.** The jurors shall be chosen by lot from the persons summoned to act as such, in such manner as the High Court may from time to time by rule direct:

Provided that—

Existing practice maintained;

*first*, pending the issue under this section of rules for any Court, the practice now prevailing in such Court in respect to the choosing of jurors shall be followed;

persons not summoned when eligible;

*secondly*, in case of a deficiency of persons summoned, the number of jurors required may, with the leave of the Court, be chosen from such other persons as may be present;

trials before special jurors.

*thirdly*, in the presidency-towns—

(*a*) if the accused person is charged with having committed an offence punishable with death, or

(*b*) if in any other case a Judge of the High Court so directs,

the jurors shall be chosen from the special jury list hereinafter prescribed; and

*fourthly*, in any district for which the Local Government has declared that the trial of certain offences may be by special jury, the jurors shall, in any case in which the Judge so directs, be chosen from the special jury list prescribed in section 325.

Names of jurors to be called.

**277.** (*1*) As each juror is chosen, his name shall be called aloud, and, upon his appearance, the accused shall be asked if he objects to be tried by such juror.

Objection to jurors

(*2*) Objection may then be taken to such juror by the accused or by the prosecutor; and the grounds of objection shall be stated:

Objection without grounds stated.

Provided that, in the High Court, objections without grounds stated shall be allowed to the number of eight on behalf of the Crown and eight on behalf of the person or all the persons charged.

Grounds of objection.

**278.** Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed:—

(*a*) some presumed or actual partiality in the juror;

(*b*) some personal ground, such as alienage, deficiency in the qualification required by any law or rule having the force of law for the time being in force, or being under the age of twenty-one or above the age of sixty years;

(*c*) his having by habit or religious vows relinquished all care of worldly affairs;

(*d*) his holding any office in or under the Court;

(*e*) his executing any duties of police, or being entrusted with police-duties;

(*f*) his having been convicted of any offence which, in the opinion of the Court, renders him unfit to serve on the jury;

(*g*) his inability to understand the language in which the evidence is given or, when such evidence is interpreted, the language in which it is interpreted;

(*h*) any other circumstance which, in the opinion of the Court, renders him improper as a juror.

Decision of objection.

**279.** (*1*) Every objection taken to a juror shall be decided by the Court, and such decision shall be recorded, and be final.

Supply of place of juror against whom objection allowed.

(*2*) If the objection is allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons, and chosen in manner provided by section 276; or if there is no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury:

Provided that no objection to such juror or other person is taken under section 278 and allowed.

Foreman of jury.

**280.** (*1*) When the jurors have been chosen, they shall appoint one of their number to be foreman.

(*2*) The foreman shall preside in the debates of the jury, deliver the verdict of the jury, and ask any information from the Court that is required by the jury or any of the jurors.

(*3*) If a majority of the jury do not, within such time as the Judge thinks reasonable, agree in the appointment of a foreman, he shall be appointed by the Court.

Swearing of jurors.

**281.** When the foreman has been appointed, the jurors shall be sworn under the Indian Oaths Act, 1873.*

Procedure when juror ceases to attend, &c.

**282.** (*1*) If, in the course of a trial by jury, at any time before the return of the verdict, any juror, from any sufficient cause, is prevented from attending throughout the trial, or if any juror absents himself, and it is not practicable to enforce his attendance, or if it appears that any juror is unable to understand the language in which the evidence is given, or, when such evidence is interpreted, the language in which it is interpreted, a new juror shall be added, or the jury shall be discharged, and a new jury chosen.

(*2*) In each of such cases the trial shall commence anew.

Discharge of jury in case of sickness of prisoner.

**283.** The Judge may also discharge the jury whenever the prisoner becomes incapable of remaining at the bar.

*D.—Choosing Assessors.*

Assessors how chosen.

**284.** When the trial is to be held with the aid of assessors, two or more shall be chosen, as the Judge thinks fit, from the persons summoned to act as such.

* Act X. of 1873.

**285.** (*1*) If, in the course of a trial with the aid of assessors, at any time before the finding, any assessor is, from any sufficient cause, prevented from attending throughout the trial, or absents himself, and it is not practicable to enforce his attendance, the trial shall proceed with the aid of the other assessor or assessors.

Procedure when assessor is unable to attend.

(*2*) If all the assessors are prevented from attending, or absent themselves, the proceedings shall be stayed, and a new trial shall be held with the aid of fresh assessors.

*E.—Trial to Close of Cases for Prosecution and Defence.*

**286.** (*1*) When the jurors or assessors have been chosen, the prosecutor shall open his case, by reading from the Indian Penal Code* or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused.

Opening case for prosecution.

(*2*) The prosecutor shall then examine his witnesses.

Examination of witnesses.

**287.** The examination of the accused duly recorded by or before the committing Magistrate shall be tendered by the prosecutor, and read as evidence.†

Examination of accused before Magistrate to be evidence.

**288.** The evidence of a witness duly taken in the presence of the accused before the committing Magistrate may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case.

Evidence given at preliminary inquiry admissible.

**289.** (*1*) When the examination of the witnesses for the prosecution and the examination (if any) of the accused are concluded, the accused shall be asked whether he means to adduce evidence.

Procedure after examination of witnesses for prosecution.

(*2*) If he says that he does not, the prosecutor may sum up his case; and, if the Court considers that there is no evidence that the accused committed the offence, it may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

(*3*) If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is no evidence that the accused committed the offence, the Court may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

(*4*) If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is evidence that he committed the offence, or, if, on his saying that he does not mean to adduce evidence, the prosecutor sums up his case, and the Court considers that there is evidence that the accused committed the offence, the Court shall call on the accused to enter on his defence.

**290.** The accused or his pleader may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution. He may then examine his witnesses (if any), and, after their cross-examination and re-examination (if any), may sum up his case.

Defence.

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* Act XLV. of 1860.

† See the Indian Evidence Act (I. of 1872), s. 80.

Right of accused as to examination and summoning of witnesses.

**291.** The accused shall be allowed to examine any witness not previously named by him, if such witness is in attendance; but he shall not, except as provided in sections 211 and 231, be entitled of right to have any witness summoned, other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial.

Prosecutor's right of reply.

**292.** If the accused, or any of the accused, adduces *any* evidence, the prosecutor shall be entitled to reply.

View by jury or assessors.

**293.** (*1*) Whenever the Court thinks that the jury or assessors should view the place in which the offence charged is alleged to have been committed, or any other place in which any other transaction material to the trial is alleged to have occurred, the Court shall make an order to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court.

(*2*) Such officer shall not, except with the permission of the Court, suffer any other person to speak to, or hold any communication with, any of the jury or assessors, and, unless the Court otherwise directs, they shall, when the view is finished, be immediately conducted back into Court.

When juror or assessor may be examined.

**294.** If a juror or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be sworn, examined, cross-examined, and re-examined in the same manner as any other witness.

Jury or assessors to attend at adjourned sitting.

**295.** If a trial is adjourned, the jury or assessors shall attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

Locking up jury.

**296.** The High Court may, from time to time, make rules as to keeping the jury together during a trial before such Court lasting for more than one day; and, subject to such rules, the presiding Judge may order whether and in what manner the jurors shall be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes.

### *F.—Conclusion of Trial in Cases tried by Jury.*

Charge to jury.

**297.** In cases tried by jury, when the case for the defence and the prosecutor's reply (if any) are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

Duty of Judge.

**298.** (*1*) In such cases it is the duty of the Judge—

(*a*) to decide all questions of law arising in the course of the trial, and especially all questions as to the relevancy of facts which it is proposed to prove, and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties; and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;

(*b*) to decide upon the meaning and construction of all documents given in evidence at the trial;

(*c*) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

(*d*) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors.

(*2*) The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding.

*Illustrations.*

(*a.*) It is proposed to prove a statement made by a person not being a witness in the case on the ground that circumstances are proved which render evidence of such statement admissible.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(*b.*) It is proposed to give secondary evidence of a document, the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

Duty of jury.

**299.** It is the duty of the jury—

(*a*) to decide which view of the facts is true, and then to return the verdict which, under such view, ought, according to the direction of the Judge, to be returned;

(*b*) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not;

(*c*) to decide all questions which, according to law, are to be deemed questions of fact;

(*d*) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

*Illustrations*

(*a.*) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(*b*) The question is whether a person entertained a reasonable belief on a particular point—whether work was done with reasonable skill or due diligence.

Each of these is a question for the jury.

Retirement to consider.

**300.** In cases tried by jury, after the Judge has finished his charge, the jury may retire to consider their verdict.

Except with the leave of the Court, no person other than a juror shall speak to, or hold any communication with, any member of such jury.

**301.** When the jury have considered their verdict, the foreman shall inform the Judge what is their verdict, or what is the verdict of a majority.

Delivery of verdict.

**302.** If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

Procedure where jury differ.

**303.** (*1*) Unless otherwise ordered by the Court, the jury shall return a verdict on all the *charges* on which the accused is tried, and the Judge may ask them such questions as are necessary to ascertain what their verdict is.

Verdict to be given on each charge.

Judge may question jury.

(*2*) Such questions and the answers to them shall be recorded.

Questions and answers to be recorded.

**304.** When, by accident or mistake, a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended.

Amending verdict.

**305.** (*1*) When, in a case tried before a High Court, the jury are unanimous in their opinion, or when as many as six are of one opinion, and the Judge agrees with them, the Judge shall give judgment in accordance with such opinion.

Verdict in High Court when to prevail.

(*2*) When in any such case the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

(*3*) If the Judge disagrees with the majority, he shall at once discharge the jury.

Discharge of jury in other cases.

(*4*) If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

**306.** (*1*) When, in a case tried before the Court of Session, the Judge does not think it necessary to express disagreement with the verdict of the jurors, or of a majority of the jurors, he shall give judgment accordingly.

Verdict in Court of Session when to prevail.

(*2*) If the accused is acquitted, the Judge shall record judgment of acquittal. If the accused is convicted, the Judge shall pass sentence on him according to law.

**307.** (*1*) If in any such case the Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which the accused has been tried, and is clearly of opinion that it is necessary for the ends of justice to submit the case to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed.

Procedure where Sessions Judge disagrees with verdict.

(*2*) Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which the accused has been tried, but he may either remand the accused to custody, or admit him to bail.

(*3*) In dealing with the case so submitted, the High Court may exercise any of the powers which it may exercise on an appeal, and subject thereto it shall, after considering the entire evidence, and after giving due weight to the opinions of the Sessions Judge and the jury, acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and

placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session.

*G.—Re-trial of Accused after Discharge of Jury.*

**308.** Whenever the jury is discharged, the accused shall be detained in custody or on bail (as the case may be), and shall be tried by another jury, unless the Judge considers that he should not be re-tried, in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.

Re-trial of accused after discharge of jury.

*H.—Conclusion of Trial in Cases tried with Assessors.*

**309.** (*1*) When, in a case tried with the aid of assessors, the case for the defence and the prosecutor's reply (if any) are concluded, the Court may sum up the evidence for the prosecution and defence, and shall then require each of the assessors to state his opinion orally, and shall record such opinion.

Delivery of opinions of assessors.

(*2*) The Judge shall then give judgment, but, in doing so, shall not be bound to conform to the opinions of the assessors.

Judgment.

(*3*) If the accused is convicted, the Judge shall pass sentence on him according to law.

*I.—Procedure in Case of Previous Conviction.*

**310.** In the case of a trial by jury or with the aid of assessors, where the accused is charged with an offence committed after a previous conviction for any offence, the procedure laid down in sections 271, 286, 305, 306, and 309, shall be modified as follows:—

Procedure in case of previous conviction.

(*a*) the part of the charge stating the previous conviction shall not be read out in Court, nor shall the accused be asked whether he had been previously convicted as alleged in the charge, unless and until he has either pleaded guilty to, or been convicted of, the subsequent offence:

(*b*) if he pleads guilty to, or is convicted of, the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the charge:

(*c*) if he answers that he has been so previously convicted, the Judge may proceed to pass sentence on him accordingly; but, if he denies that he has been so previously convicted, or refuses to, or does not, answer such question, the jury, or the Court and the assessors (as the case may be), shall then *hear evidence* concerning such previous conviction, and in such case (where the trial is by jury) it shall not be necessary to swear the jurors again.

**311.** Notwithstanding anything in the *last foregoing* section, evidence of the previous conviction may be given at the trial for the subsequent offence, if the fact of the previous conviction is relevant under the provisions of the Indian Evidence Act, 1872.*

S. 310 (last para.) of Act X. of 1882.

*When evidence of previous conviction may be given.*

*J.—List of Jurors for High Court, and summoning Jurors for that Court.*

**312.** The names of not more than four hundred persons shall at any one time be entered in the special jurors' list.

Number of special jurors.

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* Act I. of 1872.

**313.** (*1*) The Clerk of the Crown shall, before the first day of April in each year, and subject to such rules as the High Court from time to time prescribes, prepare—

Lists of common and special jurors.

(*a*) a list of all persons liable to serve as common jurors; and

(*b*) a list of persons liable to serve as special jurors only.

(*2*) Regard shall be had, in the preparation of the latter list, to the property, character, and education of the persons whose names are entered therein.

(*3*) No person shall be entitled to have his name entered in the special jurors' list merely because he may have been entered in the special jurors' list for a previous year.

(*4*) The Governor-General in Council, in the case of the High Court at *Fort William in Bengal*, and, in the case of other High Courts, the Local Government, may exempt any salaried officer of Government from serving as a juror.

(*5*) The Clerk of the Crown shall, subject to such rules as aforesaid, have full discretion to prepare the said lists as seems to him to be proper, and there shall be no appeal from, or review of, his decision.

Discretion of officer preparing lists.

**314.** (*1*) Preliminary lists of persons liable to serve as common jurors and as special jurors, respectively, signed by the Clerk of the Crown, shall be published once in the local official Gazette before the fifteenth day of April next after their preparation.

Publication of lists, preliminary and revised.

(*2*) Revised list of persons liable to serve as common jurors and special jurors, respectively, signed as aforesaid, shall be published once in the local official Gazette before the first day of May next after their preparation.

(*3*) Copies of the said lists shall be affixed to some conspicuous part of the Court-house.

**315.** (*1*) Out of the persons named in the revised lists aforesaid, there shall be summoned for each sessions in each presidency-town at least twenty-seven of those who are liable to serve on special juries, and fifty-four of those who are liable to serve on common juries.

Number of jurors to be summoned in presidency-towns.

(*2*) No person shall be so summoned more than once in six months, unless the number cannot be made up without him.

(*3*) If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such sessions.

Supplementary summons.

**316.** Whenever a High Court has given notice of its intention to hold sittings at any place outside the presidency-towns for the exercise of its original criminal jurisdiction, the Court of Session at such place shall, subject to any direction which may be given by the High Court, summon a sufficient number of jurors from its own list, in the manner hereinafter prescribed for summoning jurors to the Court of Session.

Summoning jurors outside the presidency-towns.

**317.** (*1*) In addition to the persons so summoned as jurors, the said Court of Session shall, if it thinks needful, after communication with the commanding officer, cause to be summoned such number of commissioned and non-commissioned officers in Her Majesty's Army resident within ten miles of its place of sitting as the Court con-

Military jurors.

siders to be necessary to make up the juries required for the trial of persons charged with offences before the High Court as aforesaid.

(*2*) All officers so summoned shall be liable to serve on such juries notwithstanding anything contained in this Code; but no such officer shall be summoned whom his commanding officer desires to have excused on the ground of urgent military duty, or for any other special military reason.

**318.** Any person summoned under section 315, section 316, or section 317, who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt, and be liable, by order of the Judge, to such fine as he thinks fit; and, in default of payment of such fine, to imprisonment *for a term not exceeding six months* in the civil jail until the fine is paid:

Failure of jurors to attend.

*Provided that the Court may in its discretion remit any fine or imprisonment so imposed.*

*K.—List of Jurors and Assessors for Court of Session, and summoning Jurors and Assessors for that Court.*

**319.** All male persons between the ages of twenty-one and sixty shall, except as next hereinafter mentioned, be liable to serve as jurors or assessors at any trial held within the district in which they reside,

Liability to serve as jurors or assessors.

or, if the Local Government, on consideration of local circumstances, has fixed any smaller area in this behalf, within the area so fixed.

**320.** The following persons are exempt from liability to serve as jurors or assessors, namely:—

Exemptions.

(*a*) officers in civil employ superior in rank to a District Magistrate;

(*b*) *salaried* Judges;

(*c*) Commissioners and Collectors of Revenue or Customs;

(*d*) *police-officers and* persons engaged in the Preventive Service in the Customs Department;

(*e*) persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty;

(*f*) persons actually officiating as priests or ministers of their respective religions;

(*g*) persons in Her Majesty's Army, except when, by any law in force for the time being, they are specially made liable to serve as jurors or assessors;

(*h*) surgeons and others who openly and constantly practise the medical profession;

(*i*) *legal practitioners (as defined by the Legal Practitioners Act, 1879*) in actual practice;*

(*j*) persons employed in the Post-office and Telegraph Departments;

(*k*) persons exempted from personal appearance in Court under the provisions of the Code of Civil Procedure,† sections 640 and 641;

(*l*) other persons exempted by the Local Government from liability to serve as jurors or assessors.

* Act XVIII. of 1879.

† Act XIV. of 1882.

List of jurors and assessors.

**321.** (*1*) The Sessions Judge and the Collector of the district, or such other officer as the Local Government appoints in this behalf, shall prepare and make out, in alphabetical order, a list of persons liable to serve as jurors or assessors, and qualified in the judgment of the Sessions Judge and Collector or other officer as aforesaid to serve as such, and not likely to be successfully objected to under section 278, clauses (*b*) to (*h*), both inclusive.

(*2*) The list shall contain the name, place of abode, and quality or business of every such person; and, if the person is an European or an American, the list shall mention the race to which he belongs.

Publication of list.

**322.** Copies of such list shall be stuck up in the office of the Collector or other officer as aforesaid, and in the Court-houses of the District Magistrate and of the District Court, *and extracts therefrom* in some conspicuous place in the town or towns in or near which the persons named in the *extract* reside.

Objections to list.

**323.** To every such copy or extract shall be subjoined a notice stating that objections to the list will be heard and determined by the Sessions Judge and Collector, or other officer as aforesaid, at the Sessions Court-house, and at a time to be mentioned in the notice.

Revision of list

**324.** (*1*) For the hearing of such objections the Sessions Judge shall sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror or as an assessor, or who may establish his right to any exemption from service given by section 320, and insert the name of any person omitted from the list whom they deem qualified for such service.

(*2*) In the event of a difference of opinion between the Sessions Judge and the Collector or other officer as aforesaid, the name of the proposed juror or assessor shall be omitted from the list.

(*3*) A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid, and sent to the Court of Session.

(*4*) Any order of the Sessions Judge and Collector or other officer as aforesaid in preparing and revising the list shall be final.

(*5*) Any exemption not claimed under this section shall be deemed to be waived until the list is next revised.

S. 325, Act X., 1882.

Annual revision of list.

(*6*) The list so prepared and revised shall be again revised once in every year.

S. 325A, Act X., 1882.

(*7*) The list so revised shall be deemed a new list, and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

Preparation of list of special jurors.

**325.** In the case of any district for which the Local Government has declared that the trial of certain offences shall, if the Judge so direct, be by special jury, the Sessions Judge and the Collector of such district or other officer as aforesaid shall prepare, in addition to the revised list hereinbefore prescribed, a special list containing the names of such jurors as are borne on the revised list, and are, in the opinion of such Sessions Judge and Collector, or other officer as aforesaid, by reason of their possessing superior qualifications in respect of property, character, or education, fit persons to serve as special jurors: Provided always that the inclu-

sion of the name of any person in such special list shall not involve the removal of his name from the revised list, nor relieve him of his liability to serve as an ordinary juror in cases not tried by special jury.

**326.** (*1*) The Sessions Judge shall ordinarily, *seven* days at least before the day which he may from time to time fix for holding the Sessions, send a letter* to the District Magistrate requesting him to summon as many persons named in the said revised list or the said special list as seem to the Sessions Judge to be needed for trials by jury and trials with the aid of assessors at the said Sessions, the number to be summoned not being less than double the number required for any such trial.

District Magistrate to summon jurors and assessors.

(*2*) The names of the persons to be summoned shall be drawn by lot in open Court, excluding those who have served within six months, unless the number cannot be made up without them; and the names so drawn shall be specified in the said letter.

**327.** The Court of Session may direct jurors or assessors to be summoned at other periods than the period specified in section 326, when the number of trials before the Court renders the attendance of one set of jurors or assessors for a whole session oppressive, or whenever, for other reasons, such direction is found to be necessary.

Power to summon another set of jurors or assessors.

**328.** Every summons† to a juror or assessor shall be in writing, and shall require his attendance as a juror or assessor, as the case may be, at a time and place to be therein specified.

Form and contents of summons.

**329.** When any person summoned to serve as a juror or assessor is in the service of Government or of a Railway Company, the Court to serve in which he is so summoned may excuse his attendance if it appears, on the representation of the head of the office in which he is employed, that he cannot serve as a juror or assessor, as the case may be, without inconvenience to the public.

When Government or Railway servant may be excused.

**330.** (*1*) The Court of Session may, for reasonable cause, excuse any juror or assessor from attendance at any particular session.

Court may excuse attendance of juror or assessor.

(*2*) The Court of Session may, if it shall think fit, at the conclusion of any trial by special jury, direct that the jurors who have served on such jury shall not be summoned to serve again as jurors for a period of twelve months.

Court may relieve special jurors from liability to serve again as jurors for twelve months.

**331.** (*1*) At each session the said Court shall cause to be made a list of the names of those who have attended as jurors and assessors at such session.

List of jurors and assessors attending.

(*2*) Such list shall be kept with the list of the jurors and assessors as revised under section 324.

(*3*) A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

**332.** (*1*) Any person summoned to attend as a juror or as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend

Penalty for non-attendance of juror or assessor.

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* See Sch. V., Form XXXII., *infra*.
† See Sch. V., Form XXXIII., *infra*.

after an adjournment of the Court after being ordered to attend, shall be liable, by order of the Court of Session, to a fine not exceeding one hundred rupees.

(*2*) Such fine shall be levied by the District Magistrate by attachment and sale of any moveable property belonging to such juror or assessor within the local limits of the jurisdiction of the Court making the order.

(*3*) *For good cause shewn, the Court may remit or reduce any fine so imposed.*

(*4*) In default of recovery of the fine by attachment and sale, such juror or assessor may, by order of the Court of Session, be imprisoned in the civil jail for the term of fifteen days, unless such fine is paid before the end of the said term.

### *L.—Special Provisions for High Courts.*

**333.** At any stage of any trial before a High Court under this Code, before the return of the verdict, the Advocate-General may, if he thinks fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the charge; and thereupon all proceedings on such charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal unless the presiding Judge otherwise directs.

Power of Advocate-General to stay prosecution.

**334.** For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

Time of holding sittings.

**335.** (*1*) The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as the Governor-General in Council in the case of the High Court at Fort William, or the Local Government in the case of the other High Courts, may direct.

Place of holding sittings.

(*2*) But it may, from time to time, in the case of the High Court at Fort William with the consent of the Governor-General in Council, and in all other cases with the consent of the Local Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

(*3*) Such officer as the Chief Justice directs shall give notice beforehand in the local official Gazette of all sittings intended to be held for the exercise of the original criminal jurisdiction of the High Court.

Notice of sittings.

**336.** The High Court may direct that all European British subjects and persons liable to be tried by it under section 214, who have been committed for trial by it within certain specified districts or during certain specified periods of the year, shall be tried at the ordinary place of sitting of the Court, or direct that they shall be tried at a particular place* named.

Place of trial of European British subjects.

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* As to the Court of the Recorder of Rangoon, such a direction may be given by the Local Government notwithstanding the provisions of this section.—See s. 37 (*4*) of the Lower Burma Courts Act (XI. of 1899).

## CHAPTER XXIV.—GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS.

Tender of pardon to accomplice.

**337.*** (*1*) In the case of any offence† triable exclusively by the Court of Session or High Court, the District Magistrate, a Presidency Magistrate, any Magistrate of the first class inquiring into the offence, or, with the sanction of the District Magistrate, any other Magistrate, may, with the view of obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, the offence under inquiry, tender a pardon to such person on condition of his making af ull and true disclosure of the whole of the circumstances within his knowledge relative to such offence, and to every other person concerned, whether as principal or abettor, in the commission thereof.

(*2*) Every person accepting a tender under this section shall be examined as a witness in the case.

(*3*) Such person, if not on bail, shall be detained in custody until the termination of the trial‡ by the Court of Session or High Court, as the case may be.

(*4*) Every Magistrate, other than a Presidency Magistrate, who tenders a pardon under this section, shall record his reasons for so doing; and, when any Magistrate has made such tender, and examined the person to whom it has been made, he shall not try the case himself, although the offence which the accused appears to have committed may be triable by such Magistrate.

Power to direct tender of pardon.

**338.** At any time after commitment, but before judgment is passed, the Court to which the commitment is made may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender, or order the committing Magistrate or the District Magistrate to tender, a pardon on the same condition to such person.

Commitment of person to whom pardon has been tendered.

**339.** (*1*) Where a pardon has been tendered under section 337 or section 338, and any person who has accepted such tender has, either by wilfully concealing anything essential, or by giving false evidence, not complied with the condition on which the tender was made, he may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter.

(*2*) The statement made by a person who has accepted a tender of pardon may be given in evidence against him when the pardon has been *forfeited* under this section.

(*3*) No prosecution for the offence of giving false evidence in respect of such statement shall be entertained without the sanction of the High Court.

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* As to tender of pardon to an accomplice in Upper Burma, and trial of the case by the Magistrate himself except in cases affecting European British subjects, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., ss. VIII. and XVII.

† In places where the Punjab Frontier Crimes Regulation (IV. of 1887) is in force, the words "triable exclusively by the Court of Session or High Court," are to be omitted.—See s. 9 of that Regulation.

‡ In places where the Punjab Frontier Crimes Regulation (IV. of 1887) is in force, the words "by the Court of Session or High Court, as the case may be," are to be omitted.—See s. 9 of the Regulation.

Right of accused to be defended.

**340.** Every person accused before any Criminal Court may of right be defended by a pleader.

Procedure where accused does not understand proceedings.

**341.** If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and, in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

Power to examine the accused.

**342.** (*1*) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial, without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined, and before he is called on for his defence.

(*2*) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answers as it thinks just.*

(*3*) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(*4*) No oath shall be administered to the accused.

No influence to be used to induce disclosures.

**343.** Except as provided in sections 337 and 338, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

Power to postpone or adjourn proceedings.

**344.**† (*1*) If, from the absence of a witness, or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, the Court may, *if it thinks fit*, by order in writing, stating the reasons therefor, from time to time, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Remand.

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

(*2*) Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge or Magistrate.

Reasonable cause for remand.

*Explanation.*—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

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* See the Indian Evidence Act (I. of 1872), s. 114, Ill. (*h*).

† *Cf.* the Indictable Offences Act, 1848 (11 & 12 Vict., c. 42), s. 21.

**345.*** (*1*) The offences punishable under the sections of the Indian Penal Code† described in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that table:—

*Compounding offences.*

| Offence. | Sections of Indian Penal Code applicable. | Persons by whom offence may be compounded. |
|---|---|---|
| Uttering words, &c., with deliberate intent to wound the religious feelings of any person. | 298 | The person whose religious feelings are intended to be wounded. |
| Causing hurt ... ... | 323, 334 | The person to whom the hurt is caused. |
| Wrongfully restraining or confining any person. | 341, 342 | The person restrained or confined. |
| Assault or use of criminal force. | 352, 355, 358 | The person assaulted or to whom criminal force is used. |
| Unlawful compulsory labour. | 374 | The person compelled to labour. |
| Mischief, when the only loss or damage caused is loss or damage to a private person. | 426, 427 | The person to whom the loss or damage is caused. |
| Criminal trespass ... ... | 447 | The person in possession of the property trespassed upon. |
| House-trespass ... ... | 448 | |
| Criminal breach of contract of service. | 490, 491, 492 | The person with whom the offender has contracted. |
| Adultery ... ... ... | 497 | The husband of the woman. |
| Enticing or taking away or detaining with a criminal intent a married woman. | 498 | |
| *Defamation* ... ... | 500 | The person defamed. |
| Printing or engraving matter knowing it to be defamatory. | 501 | |
| Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter. | 502 | |
| Insult intended to provoke a breach of the peace. | 504 | The person insulted. |
| Criminal intimidation, except when the offence is punishable with imprisonment for seven years. | 506 | The person intimidated |

* For the section applicable instead of this section to hill-tribes to which the Kachin Hill Tribes Regulation (I. of 1895) and the Chin Hills Regulation (V. of 1896) have been applied, see Notifications Nos. 14 and 15 respectively, dated 30th June 1898, Burma Gazette, 1898, Pt. I., p. 322.

† Act XLV. of 1860.

(2) The offences of causing hurt and grievous hurt, punishable under section 324, *section 325*, section 335, section 337, or section 338 of the Indian Penal Code,* may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the person to whom the hurt has been caused

(3) When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

(4) When the person who would otherwise be competent to compound an offence under this section is a minor, an idiot, or a lunatic, any person competent to contract on his behalf may compound such offence.

(5) *When the accused has been committed for trial, or when he has been convicted, and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.*

(6) The composition of an offence under this section shall have the effect of an acquittal of the accused.

(7) No offence shall be compounded *except as provided by this section.*

Procedure of Provincial Magistrate in cases which he cannot dispose of.

**346.** (1) If, in the course of an inquiry or a trial before a Magistrate in any district outside the presidency-towns, the evidence appears to him to warrant a presumption that the case is one which should be tried or committed for trial by some other Magistrate in such district, he shall stay proceedings, and submit the case, with a brief report explaining its nature, to any Magistrate to whom he is subordinate, or to such other Magistrate, having jurisdiction, as the District Magistrate directs.

(2) The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed.

**347.** (1) If, in any inquiry before a Magistrate, or in any trial before a Magistrate before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court, and if he is empowered to commit for trial, he shall stop further proceedings, and commit the accused under the provisions hereinbefore contained.

(2) If such Magistrate is not empowered to commit for trial, he shall proceed under section 346.

Trial of persons previously convicted of offences against coinage, stamp-law, or property.

**348.** Whoever, having been convicted of an offence punishable under Chapter XII. or Chapter XVII. of the Indian Penal Code* with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, *shall be committed to the Court of Session or High Court, as the case may be, unless the Magistrate before whom the proceedings are pending is of opinion that he can himself pass an adequate sentence if the accused is convicted:*

*Provided that, if the District Magistrate has been invested with powers under section 30, the case may be transferred to him instead of being committed to the Court of Session.*

* Act XLV. of 1860.

**349.*** (*1*) Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106, he may record the opinion, and submit his proceedings, and forward the accused, to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.

Procedure when Magistrate cannot pass sentence sufficiently severe.

(*2*) The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence, and shall pass such judgment, sentence, or order in the case as he thinks fit, and as is according to law:

Provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

**350.** (*1*) Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses and re-commence the inquiry or trial:

Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.

Provided as follows:—

(*a*) in any trial the accused may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard;

(*b*) the High Court or, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was held, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial.

(*2*) Nothing in this section applies to cases in which proceedings have been stayed under section 346.

**351.** (*1*) Any person attending a Criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of *inquiry into, or trial of*, any offence of which such Court can take cognizance, and which, from the evidence, may appear to have *been* committed, and may be proceeded against as though he had been arrested or summoned.

Detention of offenders attending Court.

(*2*) When the detention takes place in the course of an inquiry under Chapter XVIII., or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard.

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*In the Sonthal Parganas, any person convicted under this section by any Magistrate other than the Deputy Commissioner, may appeal to the Deputy Commissioner, and if convicted by the Deputy Commissioner, may appeal to the Commissioner as High Court. See Sonthal Parganas Justice Regulation (V. of 1893), s. 4.

**352.** The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

Courts to be open.

Provided that the presiding Judge or Magistrate may, if he thinks fit, order, at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person shall not have access to, or be or remain in, the room or building used by the Court.

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CHAPTER XXV.—OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS.

**353.** Except as otherwise expressly provided, all evidence taken under Chapters *XVIII.*, XX., XXI., XXII., and XXIII. shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader.

Evidence to be taken in presence of accused.

**354** In inquiries and trials (other than summary trials) under this Code by or before a Magistrate (other than a Presidency Magistrate) or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner:—

Manner of recording evidence outside presidency-towns.

**355.*** (*1*) In summons-cases tried before a Magistrate other than a Presidency Magistrate, and in cases of the offences mentioned in *sub-section (1) of* section 260, clauses (*b*) to (*m*), both inclusive, when tried by a Magistrate of the first or second class, *and in all proceedings under section 514 (if not in the course of trial)*, the Magistrate shall make a memorandum of the substance of the evidence of such witness as the examination of the witness proceeds.

Record in *summons* cases and in trials of certain offences by first and second-class Magistrates.

(*2*) Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

(*3*) If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same; and such memorandum shall form part of the record.

**356.*** (*1*) In all other trials before Courts of Session and Magistrates (other than Presidency Magistrates), and in all inquiries under Chapters XII. and XVIII., the evidence of each witness shall be taken down in writing in the language of the Court by the Magistrate or Sessions Judge, or in his presence and hearing, and under his personal direction and superintendence, and shall be signed by the Magistrate or Sessions Judge.

Record in other cases outside presidency-towns.

(*2*) When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is familiar with English, or the language of the Court is English, an authenticated translation of such evidence in the language of the Court shall form part of the record.

Evidence given in English.

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* Evidence recorded by Forest Officers under the Upper Burma Forest Regulation V. of 1898), in accordance with s. 355, 356, or 357 of the Code, are admissible in subsequent trials before Magistrates.—See s 71 (*2*) of that Regulation.

(*3*) In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record.

Memorandum when evidence not taken down by the Magistrate or Judge himself.

(*4*) If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to make it.

**357.*** (*1*) The Local Government may direct that in any district or part of a district, or in proceedings before any Court of Session, or before any Magistrate or class of Magistrates, the evidence of each witness shall, in the cases referred to in section 356, be taken down by the Sessions Judge or Magistrate with his own hand and in his mother-tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court.

Language of record of evidence.

(*2*) The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record:

Provided that the Local Government may direct the Sessions Judge or Magistrate to take down the evidence in the English language or in the language of the Court, although such language is not his mother-tongue.

**358.** In cases of the kind mentioned in section 355, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 356, or, if within the local limits of the jurisdiction of such Magistrate the Local Government has made the order referred to in section 357, in the manner provided in the same section.

Option to Magistrate in cases under section 355.

**359.** (*1*) Evidence taken under section 356 or section 357 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

Mode of recording evidence under section 356 or section 357.

(*2*) The Magistrate or Sessions Judge may, in his discretion, take down, or cause to be taken down, any particular question and answer.

**360.** (*1*) As the evidence of each witness taken under section 356 or section 357 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.

Procedure in regard to such evidence when completed.

(*2*) If the witness denies the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

(*3*) If the evidence is taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, the evidence so taken down shall be interpreted to him in the language in which it was given, or in a language which he understands.

**361.** (*1*) Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

Interpretation of evidence to accused or his pleader.

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* See the foot-note on the preceding page.

(*2*) If he appears by pleader, and the evidence is given in a language other than the language of the Court and not understood by the pleader, it shall be interpreted to such pleader in that language.

(*3*) When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

Record of evidence in Presidency Magistrates' Courts.

**362.** (*1*) In every case in which a Presidency Magistrate imposes a fine exceeding two hundred rupees, or imprisonment for a term exceeding six months, he shall either take down the evidence of the witnesses with his own hand, or cause it to be taken down in writing from his dictation in open Court. All evidence so taken down shall be signed by the Magistrate, and shall form part of the record.

(*2*) Evidence so taken down shall ordinarily be recorded in the form of a narrative, but the Magistrate may, in his discretion, take down, or cause to be taken down, any particular question or answer.

(*3*) Sentences passed under section 35 on the same occasion shall, for the purposes of this section, be considered as one sentence.

Remarks respecting demeanour of witness.

**363.** When a Sessions Judge or Magistrate has recorded the evidence of a witness, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

Examination of accused how recorded.

**364.** (*1*) Wherever the accused is examined by any Magistrate, or by any Court other than a High Court established by Royal Charter or the Chief Court of the Punjab, "*or the Chief Court of Lower Burma*,"* the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, in the language in which he is examined, or, if that is not practicable, in the language of the Court or *in* English: and such record shall be shown or read to him, or, if he does not undertand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

(*2*) When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing, and that the record contains a full and true account of the statement made by the accused.

(*3*) In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, unless he is a Presidency Magistrate, as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

(*4*) Nothing in this section shall be deemed to apply to the examination of an accused person under section 263.

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* The words quoted have been inserted by the Lower Burma Courts Act (VI of 1900), s. 47 and 1st schedule.

**365.** Every High Court established by Royal Charter,* the Chief Court of the Punjab, [*and the Chief Court of Lower Burma,*]* may, from time to time, by general rule, prescribe the manner in which evidence shall be taken down in cases coming before the Court, and the Judges of such Court shall take down the evidence or the substance thereof in accordance with the rule (if any) so prescribed.

Record of evidence in High Court.

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CHAPTER XXVI.—OF THE JUDGMENT.

**366.** (*1*) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced, or the substance of such judgment shall be explained—

Mode of delivering judgment.

(*a*) in open Court either immediately after the termination of the trial, or at some subsequent time, of which notice shall be given to the parties or their pleaders, and

(*b*) in the language of the Court, or in some other language which the accused or his pleader understands:

Provided that the whole judgment shall be read out by the presiding Judge, if he is requested so to do either by the prosecution or the defence.

(*2*) The accused shall, if in custody, be brought up, or, if not in custody, be required by the Court to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with, and the sentence is one of fine only, *or he is acquitted,* in *either of* which cases it may be delivered in the presence of his pleader.

(*3*) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

(*4*) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 537.

**367.** (*1*) Every such judgment shall, except as otherwise expressly provided by this Code be written by the presiding officer of the Court in the language of the Court, or in English; and shall contain the point or points for determination, the decision thereon, and the reasons for the decision; and shall be dated and signed by the presiding officer in open Court at the time of pronouncing it.

Language of judgment.
Contents of judgment.

(*2*) It shall specify the offence (if any) of which, and the section of the Indian Penal Code† or other law under which, the accused is convicted, and the punishment to which he is sentenced.

(*3*) When the conviction is under the Indian Penal Code,† and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

Judgment in alternative.

(*4*) If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted, and direct that he be set at liberty.

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* The word "and" was repealed, and the words "and the Chief Court of Lower Burma," have been inserted by the Lower Burma Courts Act (VI. of 1900), s. 47 and sch. I.

† Act XLV. of 1860.

(5) If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall, in its judgment, state the reason why sentence of death was not passed:

Provided that, in trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury.

Sentence of death.

**368.** (1) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

Sentence of transportation.

(2) No sentence of transportation shall specify the place to which the person sentenced is to be transported.

Court not to alter judgment.

**369.** No Court other than a High Court, when it has signed its judgment, shall alter or review the same, except as provided in sections 395 *and* 484, or to correct a clerical error.

Presidency Magistrate's judgment.

**370.** Instead of recording a judgment in manner hereinbefore provided, a Presidency Magistrate shall record the following particulars:—

(*a*) the serial number of the case;

(*b*) the date of the commission of the offence;

(*c*) the name of the complainant (if any);

(*d*) the name of the accused person and (except in the case of an European British subject) his parentage and residence;

(*e*) the offence complained of or proved;

(*f*) the plea of the accused and his examination (if any);

(*g*) the final order;

(*h*) the date of such order; and

(*i*) in all cases in which the Magistrate inflicts imprisonment, or fine exceeding two hundred rupees, or both, a brief statement of the reasons for the conviction.

Copy of judgment, &c., to be given to accused on application.

**371.** (1) On the application of the accused, a copy of the judgment, or when he so desires, a translation in his own language, if practicable, or in the language of the Court, shall be given to him without delay. Such copy shall, in any case other than a summons-case, be given free of cost.

(2) In trials by jury in a Court of Session, a copy of the heads of the charge to the jury shall, on the application of the accused, be given to him without delay and free of cost.

Case of person sentenced to death.

(3) When the accused is sentenced to death by a Sessions Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

Judgment when to be translated.

**372.** The original judgment shall be filed with the record of proceedings, and, where the original is recorded in a different language from that of the Court, and the accused so requires, a translation thereof into the language of the Court shall be added to such record.

Court of Session to send copy of finding and sentence to District Magistrate.

**373.** In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence (if any) to the District Magistrate within the local limits of whose jurisdiction the trial was held.

CHAPTER XXVII.—OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION.

Sentence of death to be submitted by Court of Session.

**374.** When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court,* and the sentence shall not be executed unless it is confirmed by the High Court.

Power to direct further inquiry to be made or additional evidence to be taken.

**375.** (*1*) If, when such proceedings are submitted, the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry, or take such evidence, itself, or direct it to be made or taken by the Court of Session.

(*2*) Such inquiry shall not be made, nor shall such evidence be taken, in the presence of jurors or assessors, and, unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when the same is made or taken.

(*3*) When the inquiry and the evidence (if any) are not made and taken by the High Court, the result of such inquiry and the evidence shall be certified, to such Court.

Power of High Court to confirm sentence or annul conviction.

**376.** In any case submitted under section 374, whether tried with the aid of assessors or by jury, the High Court—

(*a*) may confirm the sentence, or pass any other sentence warranted by law, or

(*b*) may annul the conviction, and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge, or

(*c*) may acquit the accused person:

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

Confirmation or new sentence to be signed by two Judges.

**377.** In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court shall, when such Court consists of two or more Judges, be made, passed, and signed by at least two of them.

Procedure in case of difference of opinion.

**378.** When any such case is heard before a Bench of Judges, and such Judges are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Procedure in cases submitted to High Court for confirmation.

**379.** In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order, under the seal of the High Court, and attested with his official signature, to the Court of Session.

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* See Sch. V., Form XXXIV., *infra*.

*Procedure in cases submitted by Magistrate not empowered to act under section 562.*

**380.** *Where proceedings are submitted to a Magistrate of the first class or a Sub-divisional Magistrate, as provided by section 562, such Magistrate may thereupon pass such sentence, or make such order, as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself, or direct such inquiry or evidence to be made or taken.*

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## CHAPTER XXVIII.—OF EXECUTION.

Execution of order passed under section 376.

**381.** When a sentence of death passed by a Court of Session is submitted to the High Court for confirmation, such Court of Session shall, on receiving the order of confirmation or other order of the High Court thereon, cause such order to be carried into effect by issuing a warrant,* or taking such other steps as may be necessary.

Postponement of capital sentence on pregnant woman.

**382.** If a woman sentenced to death *is* found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may, *if it thinks fit*, commute† the sentence to transportation for life.

Execution of sentences of transportation or imprisonment in other cases.

**383.** Where the accused is sentenced to transportation or imprisonment in cases other than those provided for by section 381, the Court passing the sentence shall forthwith forward a warrant to the jail in which he is, *or is* to be, confined, and, unless the accused is already confined in such jail, shall forward him to such jail with the warrant.

Direction of warrant for execution.

**384.** Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be confined.

Warrant with whom to be lodged.

**385.** When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

Warrant for levy of fine.

**386.**‡ Whenever an offender is sentenced to pay a fine, the Court passing the sentence may, in its discretion, issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the offender, although the sentence directs that, in default of payment of the fine, the offender shall be imprisoned.

Effect of such warrant.

**387.**‡ Such warrant may be executed within the local limits of the jurisdiction of such Court, and it shall authorize the distress and sale of any such property without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

Suspension of execution of sentence of imprisonment.

**388.**‡ (*1*) When an offender has been sentenced to fine only, and to imprisonment in default of payment of the fine, and the Court issues a warrant under section 386, it may suspend the execution of the sentence of imprisonment, and may release the offender on his executing a bond, with or without sureties, as the Court thinks fit, condi-

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* See Sch. V., Forms XXXV. and XXXVI. *infra*

† See Sch. V., Form XXXVI., *infra*

‡ The provisions of ss. 386 to 389 have been declared to apply to fines imposed (1) under the Andaman and Nicobar Islands Regulation (III. of 1876) [see s. 35 as amended by the Andaman and Nicobar Islands Regulation (I. of 1884), s. 7], and (2) under the Arakan Hill District Laws Regulation (IX. of 1874) (see s. 18 of the Regulation).

tioned to, his appearance before such Court on the day appointed for the return to such warrant, such day not being more than fifteen days from the time of executing the bond; and, in the event of the fine not having been realized, the Court may direct the sentence of imprisonment to be carried into execution at once.

(2) *In any case in which an order for the payment of money has been made, on non-recovery of which imprisonment may be awarded, and the money is not paid forthwith, the Court may require the person ordered to make such payment to enter into a bond as prescribed in sub-section (1), and, in default of his so doing, may at once pass sentence of imprisonment as if the money had not been recovered.*

Who may issue warant.

**389.*** Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence, or by his successor in office.

Execution of sentence of whipping only.

**390.** When the accused is sentenced to whipping only, the sentence shall be executed at such place and time as the Court may direct.

Execution of sentence of whipping in addition to imprisonment.

**391.** (1) When the accused is sentenced to whipping in addition to imprisonment in a case which is subject to appeal, the whipping shall not be inflicted until fifteen days from the date of the sentence, or, if an appeal is made within that time, until the sentence is confirmed by the Appellate Court; but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days, or, in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.

(2) The whipping shall be inflicted in the presence of the officer in charge of the jail, unless the Judge or Magistrate orders it to be inflicted in his own presence.

(3) *No accused person shall be sentenced to whipping in addition to imprisonment when the term of imprisonment to which he is sentenced is less than three months.*

Mode of inflicting punishment.

**392.** (1) In the case of a person of or over sixteen years of age, whipping shall be inflicted with a light ratan not less than half an inch in diameter, in such mode, and on such part of the person, as the Local Government directs; and, in the case of a person under sixteen years of age, it shall be inflicted in *such mode, and on such part of the person, and with such instrument as the Local Government directs.*†

Limit of number of stripes.

(2) In no case shall such punishment exceed thirty stripes.

Not to be executed by instalments.

Exemptions.

**393.** No sentence of whipping shall be executed by instalments; and none of the following persons shall be punishable with whipping (namely):—

(*a*) females;

(*b*) males sentenced to death, or to transportation, or to penal servitude, or to imprisonment for more than five years;

(*c*) males whom the Court considers to be more than forty-five years of age.

* See foot-note on last preceding page

† For manner in which whipping shall be inflicted—(1) In Assam, see Assam Gazette, 1899, Pt. II., p. 384 (2) In Burma, see Burma Gazette, 1898, Pt. I., p. 307. (3) In the Punjab, see Punjab Gazette, 1899, Pt. I. p. 314.

**394.** (*1*) The punishment of whipping shall not be inflicted unless a medical officer, if present, certifies, or, if there is not a medical officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

Whipping not to be inflicted if offender not in fit state of health.

(*2*) If, during the execution of a sentence of whipping, a medical officer certifies, or it appears to the Magistrate or officer present, that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

Stay of execution.

**395.** (*1*) In any case in which, under section 394, a sentence of whipping is, wholly or partially, prevented from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender, in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months, which may be in addition to any other punishment to which he may have been sentenced for the same offence.

Procedure if punishment cannot be inflicted under section 394.

(*2*) Nothing in this section shall be deemed to authorize any Court to inflict imprisonment for a term exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict.

**396.** (*1*) When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine, or whipping, shall, subject to the provisions hereinbefore contained, take effect immediately, and, if of imprisonment, penal servitude, or transportation, shall take effect according to the following rules, that is to say:—

Execution of sentences on escaped convicts.

(*2*) if the new sentence is severer in its *kind* than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately;

(*3*) When the new sentence is not severer in its *kind* than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude, or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

*Explanation.*—For the purposes of this section—

(*a*) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment;

(*b*) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and

(*c*) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

**397.** When a person already undergoing a sentence of imprisonment, penal servitude, or transportation, is sentenced to imprisonment, penal servitude, or transportation, such imprisonment, penal servitude, or transportation, shall commence at the expiration of the imprisonment, penal servitude, or transportation to which he has been previously sentenced:

Sentence on offender already sentenced for another offence.

Provided that, if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction is one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced.

Saving as to sections 396 and 397.

**398.** (*1*) Nothing in section 396 or section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

(*2*) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment, or to a sentence of transportation or penal servitude for an offence punishable with imprisonment, and the person undergoing the sentence is, after its execution, to undergo a further substantive sentence, or further substantive sentences, of imprisonment, transportation, or penal servitude, effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences.

Confinement of youthful offenders in reformatories.

**399.*** (*1*) When any person under the age of *fifteen* years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Local Government prescribes with regard to the discipline and training of persons confined therein.

(*2*) All persons confined under this section shall be subject to the rules so prescribed.

(*3*) *This section shall not apply to any place in which the Reformatory Schools Act, 1897,† is for the time being in force.*

Return of warrant on execution of sentence.

**400.** When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

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## CHAPTER XXIX.—OF SUSPENSIONS, REMISSIONS, AND COMMUTATIONS OF SENTENCES.

Power to suspend or remit sentences.

**401.** (*1*) When any person has been sentenced to punishment for an offence, the Governor-General in Council or the Local Government may at any time, without conditions, or upon any conditions which the person sentenced accepts, suspend the execution of his sentence, or remit the whole or any part of the punishment to which he has been sentenced.

(*2*) Whenever an application is made to the Governor-General in Council or the Local Government for the suspension or remission of a sentence, the Governor-General in Council or the Local Government, as the case may be, may require the presiding Judge of the Court, before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion.

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* S. 399 is only in force in Coorg and the Punjab.—See ss. 1 (*3*) and 3 of the Reformatory Schools Act (VIII. of 1897), and *supra*, s. 3 (*1*). It will cease to be in force in those provinces also on the extension to them of that Act.—See s. 3 of that Act.

† Act VIII. of 1897.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the Governor-General in Council or of the Local Government, as the case may be, not fulfilled, the Governor-General in Council or the Local Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police-officer without warrant, and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(5) Nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons, reprieves, respites, or remission of punishment.

(6) *The Governor-General in Council and the Local Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with.*

Power to commute punishment.

**402.** The Governor-General in Council or the Local Government may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it:—

death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.

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## CHAPTER XXX.—OF PREVIOUS ACQUITTALS OR CONVICTIONS.

Person once convicted or acquitted not to be tried for same offence

**403.** (1) A person who has once been tried by a Court of competent jurisdiction for an offence, and convicted or acquitted of such offence, shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237.

(2) A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, *sub-section (1)*.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) *Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897,* or of section 188 of this Code.*

*Explanation.*—The dismissal of a complaint, the stopping of proceedings under section 249, the discharge of the accused, or any entry made upon a charge under section 273, is not an acquittal for the purposes of this section.

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* Act X. of 1897.

*Illustrations.*

(*a.*) A is tried upon a charge of theft as a servant, and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

(*b.*) A is tried upon a charge of murder, and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(*c.*) A is tried for causing grievous hurt, and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(*d.*) A is charged before the Court of Session, and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(*e.*) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within paragraph 3 of the section.

(*f.*) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for, robbery on the same facts.

(*g.*) A, B, and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B, and C may afterwards be charged with, and tried for, dacoity on the same facts.

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## PART VII.—OF APPEAL, REFERENCE, AND REVISION.

### CHAPTER XXXI.—OF APPEALS.*

Unless otherwise provided, no appeal to lie.

**404.** No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code, or by any other law for the time being in force.

Appeal from order rejecting application for restoration of attached property.

**405.** Any person whose application under section 89 for the delivery of property or the proceeds of the sale thereof has been rejected by any Court may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court.

Appeal from order requiring security for good behaviour.

**406.** Any person *ordered* by a Magistrate, other than the District Magistrate or a Presidency Magistrate, to give security for good behaviour under section 118, may appeal to the District Magistrate.

Appeal from sentence of Magistrate of the second or third class.

**407.** (*1*) Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced under section 349 by a Sub-divisional Magistrate of the second class, may appeal to the District Magistrate.

Transfer of appeals to first-class Magistrate.

(*2*) The District Magistrate may direct that any appeal under this section, or any class of such appeals, shall be heard by any Magistrate of the first class subordinate to him and empowered by the Local Government to hear such appeals, and thereupon such appeal or class of appeals *may* be presented to such subordinate Magistrate, or, if already presented to the District Magistrate, *may* be transferred to such

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* For limitation of appeals, see the Indian Limitation Act (XV. of 1877), Sch. II., Arts. 150, 154, 155, and 157.

subordinate Magistrate. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred.

Appeal from sentence of Assistant Sessions Judge or Magistrate of the first class.

**408.*** Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate, or other Magistrate of the first class, or any person sentenced under section 349 by a Magistrate of the first class, may appeal to the Court of Session:

Provided as follows:—

(*a*) any European British subject so convicted may, at his option, appeal either to the High Court or the Court of Session;

(*b*) when, in any case, an Assistant Sessions Judge or a Magistrate *specially empowered under section 30* passes any sentence *of imprisonment for a term exceeding four years, or any sentence of transportation, the appeal shall lie to the High Court;*

(*c*) *when any person is convicted by a Magistrate of an offence under section 124A of the Indian Penal Code,*† *the appeal shall lie to the High Court.*

Appeals to Court of Session how heard.

**409.** An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge.

Appeal from sentence of Court of Session.

**410.** Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge may appeal to the High Court.

Appeal from sentence of Presidency Magistrate.

**411.** Any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court, if the Magistrate has sentenced him to imprisonment for a term exceeding six months, or to fine exceeding two hundred rupees.

No appeal in certain cases when accused pleads guilty.

**412.** Notwithstanding anything hereinbefore contained, where an accused person has pleaded guilty, and has been convicted by a Court of Session or *any Presidency* Magistrate *or Magistrate of the first class* on such plea, there shall be no appeal except as to the extent or legality of the sentence.

No appeal in petty cases.

**413.** Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only, or of whipping only.

*Explanation.*—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has *also* been passed.

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* As to appeals from sentences of District Magistrates in Upper Burma in cases other than those affecting European British subjects, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., ss. X. and XVII.

Notwithstanding the provisions of s. 408 in places where the Punjab Frontier Crimes Regulation (IV. of 1887) is in force, appeals lie to the Chief Court, and not to a Court of Session.—See s. 7 (*a*) of that Regulation.

† Act XLV. of 1860.

**114.*** Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in *any case* tried summarily in which a Magistrate empowered to act under section 260 passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding two hundred rupees only, or of whipping only.

No appeal from certain summary convictions.

**415.** An appeal may be brought against any sentence referred to in section 413 or section 414 by which any two or more of the punishments therein mentioned are combined, but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.

Proviso to sections 413 and 414.

*Explanation.*—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

**416.** Nothing in sections 413 and 414 applies to appeals from sentences passed under Chapter XXXIII. on European British subjects.

Saving of sentences on European British subjects.

**417.** The Local Government may direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

Appeal on behalf of Government in case of acquittal.

**418.** An appeal may lie on a matter of fact as well as a matter of law, except where the trial was by jury, in which case the appeal shall lie on a matter of law only.

Appeal on what matters admissible.

*Explanation.*—The alleged severity of a sentence shall, for the purposes of this section, be deemed to be a matter of law.

**419** Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against, and, in cases tried by a jury, a copy of the heads of the charge recorded under section 367

Petition of appeal.

**420.** If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

Procedure when appellant in jail.

**421.** (*1*) On receiving the petition and copy under section 419 or section 420, the Appellate Court shall peruse the same, and, if it considers that there is no sufficient ground for interfering, it may *dismiss* the appeal summarily:

Summary *dismissal* of appeal.

Provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

(*2*) Before *dismissing* an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.

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* As to restrictions in appeals in Upper Burma, except those affecting European British subjects, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., ss. XI. and XVII.

Notice of appeal.

**422.** If the Appellate Court does not *dismiss* the appeal summarily, it shall cause notice to be given to the appellant or his pleader, and to such officer as the Local Government may appoint in this behalf, of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal;

and, in cases of appeals under section 417, the Appellate Court shall cause a like notice to be given to the accused.

Powers of Appellate Court in disposing of appeal.

**423.*** (*1*) The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and, in case of an appeal under section 417, the accused, if he appears, the Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may,—

(*a*) in an appeal from an order of acquittal, reverse such order, and direct that further inquiry be made, or that the accused be retried or committed for trial, as the case may be, or find him guilty, and pass sentence on him according to law;

(*b*) in an appeal from a conviction, (*1*) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court, or committed for trial, or (*2*) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce the sentence, or (*3*), with or without such reduction, and with or without altering the finding, alter the nature of the sentence, but, *subject to the provisions of section 106, sub-section (3)*, not so as to enhance the same;

(*c*) in an appeal from any other order, alter or reverse such order;

(*d*) *make any amendment or any consequential or incidental order that may be just or proper.*

(*2*) Nothing herein contained shall authorize the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him.

Judgments of subordinate Appellate Courts.

**424.** The rules contained in Chapter XXVI. as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than a High Court:

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

Order by High Court on appeal to be certified to lower Court.

**425.** (*1*) Whenever a case is decided on appeal by the High Court under this chapter, it shall certify its judgment or order to the Court by which the finding, sentence, or order appealed against was recorded or passed. If the

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* As to enhancement of punishment by Appellate Courts in Upper Burma, and the Sonthal Parganas, except in cases affecting European British subjects, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., ss. XIII. and XVII. and the Sonthal Parganas Justice Regulation (V. of 1893) as modified up to 1st October 1899.

finding, sentence, or order was recorded or passed by a Magistrate other than the District Magistrate, the certificate shall be sent through the District Magistrate.

(2) The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court; and, if necessary, the record shall be amended in accordance therewith.

Suspension of sentence pending appeal. Release of appellant on bail.

**426.** (1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended, and *also*, if he is in confinement, that he be released on bail, or on his own bond.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto.

(3) When the appellant is ultimately sentenced to imprisonment, penal servitude, or transportation, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

Arrest of accused in appeal from acquittal.

**427.** When an appeal is presented under section 417, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail.

Appellate Court may take further evidence, or direct it to be taken.

**428.** (1) In dealing with any appeal under this chapter the Appellate Court, if it thinks additional evidence to be necessary, *shall record its reasons, and* may either take such evidence itself, or direct it to be taken by a Magistrate or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken; but such evidence shall not be taken in the presence of jurors or assessors.

(4) The taking of evidence under this section shall *be subject to the provisions of Chapter XXV. as if it were an inquiry.*

Procedure where Judges of Court of Appeal are equally divided.

**429.** When the Judges composing the Court of Appeal are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such hearing (if any) as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Finality of orders on appeal.

**430.** Judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in section 417 and Chapter XXXII.

Abatement of appeals.

**431.** Every appeal under section 417 shall finally abate on the death of the accused, and every other appeal under this chapter (*except an appeal from a sentence of fine*) shall finally abate on the death of the appellant.

## CHAPTER XXXII.—OF REFERENCE AND REVISION.

Reference by Presidency Magistrate to High Court.

**432.** A Presidency Magistrate may, if he thinks fit, refer, for the opinion of the High Court, any question of law which arises in the hearing of any case pending before him, or may give judgment in any such case subject to the decision of the High Court on such reference, and, pending such decision, may either commit the accused to jail, or release him on bail to appear for judgment when called upon.

Disposal of case according to decision of High Court.

**433.** (*1*) When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Magistrate by whom the reference was made, who shall dispose of the case conformably to the said order.

Direction as to costs.

(*2*) The High Court may direct by whom the costs of such reference shall be paid.

Power to reserve questions arising in original jurisdiction of High Court.

**434.*** (*1*) When any person has, in a trial before a Judge of a High Court consisting of more Judges than one, and acting in the exercise of its original criminal jurisdiction, been convicted of an offence, the Judge, if he thinks fit, may reserve and refer, for the decision of a Court consisting of two or more Judges of such Court, any question of law which has arisen in the course of the trial of such person, and the determination of which would affect the event of the trial.

Procedure when question reserved.

(*2*) If the Judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to jail, or, if the Judge thinks fit, be admitted to bail; and the High Court shall have power to review the case, or such part of it as may be necessary, and finally determine such question, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment or order as the High Court thinks fit.

Power to call for records of inferior Courts.

**435.**† (*1*) The High Court, or any Sessions Judge or District Magistrate, or any Sub-divisional Magistrate empowered by the Local Government in this behalf, may call for and examine the record of any proceeding before any *inferior* Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality, or propriety of any finding, sentence, or order recorded or passed, and as to the regularity of any proceedings of such *inferior* Court.

(*2*) If any Sub-divisional Magistrate acting under *sub-section (1)* considers that any such finding, sentence, or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

(*3*) Orders made under sections 143 and 144, and proceedings under *Chapter XII.* and section 176, are not proceedings within the meaning of this section.

(*4*) *If an application under this section has been made either to the Sessions Judge or District Magistrate, no further application shall be entertained by the other of them.*

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* As to review in certain criminal cases by the Chief Court of Lower Burma, when no reference has been made under s. 434, see the Lower Burma Courts Act (VI of 1900), s. 12.

† In the Sonthal Parganas, the Court of Session shall not exercise any of the powers exercised by ss. 435 to 438, see s. 4 of the Sonthal Parganas Justice Regulation (V. of 1893) as modified up to 1st October 1899.

**436.*** When, on examining the record of any case under section 435 or otherwise, the *Sessions Judge* or District Magistrate considers that such case is triable exclusively by the *Court of Session*, and that an accused person has been improperly discharged by the *inferior* Court, the *Sessions Judge* or District Magistrate may cause him to be arrested, and may thereupon, instead of directing a fresh inquiry, order him to be committed for trial upon the matter of which he has been, in the opinion of the *Sessions Judge* or District Magistrate, improperly discharged:

Power to order commitment.

Provided as follows:—

(*a*) that the accused has had an opportunity of showing cause to such *Judge* or Magistrate why the commitment should not be made;

(*b*) that, if such *Judge* or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such *Judge* or Magistrate may direct the *inferior* Court to inquire into such offence.

**437.*** On examining any record under section 435 or otherwise, the High Court or the *Sessions Judge* may direct the District Magistrate by himself or by any of the Magistrates subordinate to him to make, and the District Magistrate may himself make, or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 *or sub-section (3) of section 204*, or into the case of any accused person who has been discharged.

Power to order inquiry.

**438.*** (*1*) The *Sessions Judge* or District Magistrate may, if he thinks fit, on examining, under section 435 or otherwise, the record of any proceeding, report for the orders of the High Court the result of such examination, and, when such report contains a recommendation that a sentence be reversed *or altered*, may order that the execution of such sentence be suspended, and, if the accused is in confinement, that he be released on bail, or on his own bond.

Report to High Court.

(*2*) *An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this chapter in respect of any case which may be transferred to him by the Sessions Judge.*

**439.** (*1*) In the case of any proceeding the record of which has been called for by itself, or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 195, 423, 426, 427, and 428, or on a Court by section 338, and may enhance the sentence; and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

High Court's powers of revision.

(*2*) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(*3*) Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under section 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed, than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class.

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* **In the Sonthal Parganas, the Court of Session shall *not* exercise any of the powers exercised by ss. 435 to 438, see s. 4 of the Sonthal Parganas Justice Regulation (V. of 1893) as modified up to 1st October 1899.**

(4) Nothing in this section applies to an entry made under section 273, or shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

(5) *Where, under this Code, an appeal lies, and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.*

**440.** No party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision:

Optional with Court to hear parties.

Provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect section 439, *sub-section (2)*.

**441.** When the record of any proceedings of any Presidency Magistrate is called for by the High Court under section 435, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue; and the Court shall consider such statement before overruling or setting aside the said decision or order.

Statement by Presidency Magistrate of grounds of his decision to be considered by High Court.

**442.** When a case is revised under this chapter by the High Court, it shall, *in manner hereinbefore provided by section 425*, certify its decision or order to the Court by which the finding, sentence, or order revised was recorded or passed, and the Court or Magistrate to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified; and, if necessary, the record shall be amended in accordance therewith.

High Court's order to be certified to lower Court or Magistrate.

## PART VIII.—SPECIAL PROCEEDINGS.

### CHAPTER XXXIII.—CRIMINAL PROCEEDINGS AGAINST EUROPEANS AND AMERICANS.*

**443.** No Magistrate, unless he is a Justice of the Peace, and (except in the case of a District Magistrate or Presidency Magistrate) unless he is a Magistrate of the first class and an European British subject, shall inquire into or try any charge against an European British subject.

Magistrates who may inquire into and try charges against European British subjects.

**444.** No Judge presiding in a Court of Session except the Sessions Judge, shall exercise jurisdiction over an European British subject unless he himself is an European British subject; and if he is an Assistant Sessions Judge, unless he has held the office of Assistant Sessions Judge for at least three years, and has been specially empowered in this behalf by the Local Government.

Sessions Judge to be an European British subject.

Assistant Sessions Judge to have held office for three years, and to be specially empowered.

**445.** Nothing in section 443 or section 444 shall prevent any Magistrate from taking cognizance of an offence committed by any European British subject in any case in which he could take cognizance of a like offence if committed by another person:

Cognizance of offence committed by European British subject.

* As to withdrawal from vagrants of their privileges as European British subjects, see s. 30 of the European Vagrancy Act (IX. of 1874) and s. 3 (*t*) of this Act, *supra*.

Provided that, if he issues any process for the purpose of compelling the appearance of an European British subject accused of an offence, such process shall be made returnable before a Magistrate having jurisdiction to inquire into or try the case.

Sentences which may be passed by Provincial Magistrates.

**446.** Notwithstanding anything contained in section 32 or section 34, no Magistrate other than a District Magistrate or Presidency Magistrate shall pass any sentence on an European British subject other than imprisonment for a term which may extend to three months, or fine which may extend to one thousand rupees, or both, and a District Magistrate shall not pass any such sentence other than imprisonment for a term which may extend to six months, or fine which may extend to two thousand rupees, or both.

When commitment is to be to Court of Session, and when to High Court.

**447.** (*1*) When an European British subject is accused of an offence before a Magistrate, and such offence cannot, in the opinion of such Magistrate, be adequately punished by him, and is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused ought to be committed, commit him to the Court of Session, or, in the case of a Presidency Magistrate, to the High Court.*

(*2*) When the offence which appears to have been committed is punishable with death or with transportation for life, the commitment shall be to the High Court.

Trial of offences of which one is, and the others are not, punishable with death or transportation for life.

**448.** Where any person committed to the High Court under section 447 is charged with several offences of which one is punishable with death or transportation for life, and the others with a less punishment, and the High Court considers that he should not be tried for the offence punishable with death or transportation, the High Court may nevertheless try him for the other offences.

Sentences which may be passed by Court of Session.

**449.** (*1*) Notwithstanding anything contained in section 31, no Court of Session shall pass on any European British subject any sentence other than a sentence of imprisonment for a term which may extend to one year, or fine, or both.

Procedure when Sessions Judge finds his powers inadequate.

(*2*) If, at any time after the commitment and before signing judgment, the presiding Judge thinks that the offence which appears to be proved cannot be adequately punished by such a sentence, he shall record his opinion to that effect, and transfer the case to the High Court. Such Judge may either himself bind over, or direct the committing Magistrate to bind over, the complainant and witnesses to appear before the High Court.

Jury or assessors before High Court or Court of Session.

**450.** (*1*) In trials of European British subjects before a High Court or Court of Session, if, before the first juror is called and accepted or the first assessor is appointed, as the case may be, any such subject requires to be tried by a mixed jury, the trial shall be by a jury of which not less than half the number shall be Europeans or Americans, or both Europeans and Americans. S. 451, Act X., 1882.

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*The Chief Court of Lower Burma is the High Court for the whole of Burma (inclusive of the Shan States) in reference to proceedings against European British subjects and persons jointly charged with European British subjects see s. 8 (*1*) (*a*) of the Lower Burma Courts Act (VI of 1900).

(*2*) When any such trial before a Court of Session would, in the ordinary course, be with the aid of assessors, the European British subject accused, or, where there are several European British subjects accused, all of them jointly, may, instead of claiming to be tried by a mixed jury under sub-section (*1*), require that not less than half the number of the assessors shall be Europeans or Americans, or both Europeans and Americans.

S. 451A, Act X., 1882.

Right of European British subject to claim jury before District Magistrate.

**451.** (*1*) In trials of European British subjects before a District Magistrate *for any offence*, any such subject may, in a summons case before he is heard in his defence under section 244, or in a warrant-case before he enters on his defence under section 256, claim that the trial shall be by a jury composed in manner prescribed by section 450.

(*2*) If a claim is made under sub-section (*1*) in a summons-case at the time when the Magistrate proceeds under section 244 to hear the accused, or in a warrant-case at the time when the Magistrate calls upon the accused under section 256 to enter upon the defence, the Magistrate shall forthwith issue the necessary orders for the trial by a jury as aforesaid.

(*3*) If such a claim is made at an earlier stage of the proceedings, the Magistrate shall issue such orders whenever it appears to him from the evidence recorded that there will be a sufficient case to go before a jury.

(*4*) In every such case the Magistrate shall, notwithstanding anything contained in section 242, before issuing any orders as aforesaid, frame a formal charge.

(*5*) The provisions of sections 211, 216, 217, 219, and 220 shall, so far as may be, apply for the purpose of securing the attendance of the complainant, the accused, and the witnesses at every trial to be held under this section.

(*6*) The provisions of this Code relating to the procedure in a trial by jury before a Court of Session shall, as nearly as may be, apply to every trial under this section as if the District Magistrate were a Sessions Judge, and the accused had been committed to his Court for trial.

(*7*) All Courts may construe any of the provisions referred to in sub-section (*5*) or sub-section (*6*), in so far as they are made applicable by *those* sub-sections, with such verbal alterations not affecting the substance as may be necessary or proper to adapt the same to the matter before them.

(*8*) Nothing in this section shall affect the power of the Magistrate to commit an accused person for trial under section 347 or section 447.

S. 451B, Act X. 1882.

Transfer to another Court in certain cases.

(*9*) If an accused person claims to be tried by jury under this section, and, in the opinion of the District Magistrate, there is reason to believe that a jury composed in manner prescribed by section 450 cannot be constituted for the trial before himself, or cannot be so constituted without an amount of delay, expense, or inconvenience which, under the circumstances of the case, would be unreasonable, he may, instead of issuing orders for the trial before himself under this section, transfer the case for trial to such other District Magistrate, or to such Sessions Judge, as the High Court may, from time to time, by rules made by it in this behalf, and approved by the Local Government, or by special order, direct.

(*10*) When a case is transferred under this section to a Sessions Judge or District Magistrate, he shall, with all convenient speed, try it with the same powers (including the power of commitment), and according to the same procedure, as if he were a District Magistrate acting under this section.

**452.** In any case in which an European British subject is accused jointly with a person not being an European British subject, and such European British subject is committed for trial before a High Court or Court of Session, such subject and person may be tried together, and the procedure on the trial shall be the same as it would have been had the European British subject been tried separately:

Trial of European British subject and Native jointly accused.

Provided that, if the European British subject requires under section 450 to be tried by a mixed jury, or by a mixed set of assessors, and the person not being an European British subject requires that he shall be tried separately, the latter person shall be tried separately in accordance with the provisions of Chapter XXIII.

When Native may claim separate trial.

**453.** (*1*) When any person claims to be dealt with as an European British subject, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purposes of the inquiry or trial; and such Magistrate shall inquire into the truth of such statement, and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not an European British subject, and shall deal with him accordingly. If any such person is convicted by such Magistrate, and appeals from such conviction, the burden of proving that the Magistrate's said decision was wrong shall lie upon him.

Procedure on claim of person to be dealt with as European British subject.

(*2*) When any such person is committed by the Magistrate for trial before the Court of Session, and such person, before such Court, claims to be dealt with as an European British subject, such Court shall, after such further enquiry, if any, as it thinks fit, decide whether he is or is not an European British subject, and shall deal with him accordingly. If he is convicted by such Court, and appeals from such conviction, the burden of proving that the Court's said decision was wrong shall lie upon him.

(*3*) When the Court before which any person is tried decides that he is not an European British subject, such decision shall form a ground of appeal from the sentence or order passed in such trial.

**454.** (*1*) If an European British subject does not claim to be dealt with as such by the Magistrate before whom he is tried, or by whom he is committed, or if, when such claim has been made before, and disallowed by, the committing Magistrate, it is not again made before the Court to which such subject is committed, he shall be held to have relinquished his right to be dealt with as such European British subject, and shall not assert it in any subsequent stage of the same case.

Failure to plead status a waiver.

(*2*) Unless the Magistrate has reason to believe that any person brought before him is not an European British subject, the Magistrate shall ask such person whether he is such a subject or not.

**455.** Where a person, who is not an European British subject, is dealt with as such under this chapter, and does not object, the inquiry, commitment, trial, or sentence (as the case may be), shall not, by reason of such dealing, be invalid.

Trial under this chapter of person not an European British subject.

**456.** When any European British subject is unlawfully detained in custody by any person, such European British subject or any person on his behalf may apply to the High Court* which would have jurisdiction over such European British subject in respect of any offence committed by him at the place where he is detained, or to which he would be entitled to appeal from any conviction for any such offence, for an order directing the person detaining him to bring him before the High Court to abide such further order as it may pass.

Right of European British subject unlawfully detained to apply for order to be brought before High Court.

**457.** The High Court, if it thinks fit, may, before issuing such order, inquire, on affidavit or otherwise, into the grounds on which it is applied for, and grant or refuse such application; or it may issue the order in the first instance, and, when the person applying for it is brought before it, it may make such further order in the case as it thinks fit, after such inquiry (if any) as it thinks necessary.

Procedure on such application.

**458.** The High Court may issue such orders throughout the territories within the local limits of its appellate criminal jurisdiction, and such other territories as the Governor-General in Council may direct.

Territories throughout which High Court may issue such orders.

**459.** (*1*) Unless there is something repugnant in the context, all enactments heretofore or hereafter made by the Governor-General in Council, which confer on Magistrates, or on the Court of Session, jurisdiction over offences, shall be deemed to apply to European British subjects, although such persons *are* not expressly referred to therein.

Application of Acts conferring jurisdiction on Magistrates or Courts of Session.

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* Original and appellate criminal jurisdiction is exercised by the High Courts at Madras and Bombay, and in the North-Western Provinces and Oudh over European British subjects in outlying provinces and places in British India as follows —

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| By High Courts at Madras in | Coorg<br>The Upper Godavari District of the Central Provinces. |
| By High Courts at Bombay in | The Nagpur, Narbada, and Chhatisgarh Divisions of the Central Provinces.<br>The Pargana of Manpur in Central India |
| By High Courts, N.-W. P., in | Oudh.<br>The Jabalpur Division of the Central Provinces.<br>The line of railway from Allahabad to Jabalpur, and the lands and buildings appurtenant thereto, other than the station at Satna<br>The Cantonment of Morar (since ceded to the Gwalior State).—See Notification No. 2557-I., dated the 29th July, 1886, Gazette of India, 1886, Pt. I., p. 453).<br>Ajmere and British Merwara. |

[See Notification, No. 1203, dated the 23rd September 1874, Gazette of India, 1874, Pt. I., p. 484.]

The High Court at Fort William exercises original and appellate jurisdiction, and has all the functions of a High Court under the Code, in all criminal proceedings against European British subjects and persons charged with European British subjects in the Andaman and Nicobar Islands —See Notification No 77, dated 15th March 1878, Gazette of India, 1878, Pt. I., p. 132.

Original and appellate jurisdiction is also exercised by the High Courts at Fort William, Madras, and Bombay, and in the North-Western Provinces, over European British subjects, being Christians, resident in certain Native States, territories, and Chief ships, —See Notification No. 178-J., dated 23rd September 1874, Gazette of India, 1874, Pt. I., p. 485; No. 215-J. dated 18th December, 1874, Gazette of India, 1874, Pt. I., p. 612; No. 119-J. and No. 120-J., dated 9th August 1875, Gazette of India, 1875, Pt. I., p. 404.

(2) Nothing in this section shall be deemed to authorise any Court to exceed the limits prescribed by this chapter as to the amount of punishment which it may inflict on an European British subject, or to confer jurisdiction on any Magistrate or any Judge presiding in a Court of Session, not being a Justice of the Peace.

Jury for trial of Europeans or Americans.

**460.** In every case triable by jury or with the aid of assessors, in which an European (not being an European British subject) or an American, is the accused person, or one of the accused persons, not less than half the number of jurors or assessors shall, if practicable, and if such European or American so claims, be Europeans or Americans.

Jury when European or American charged jointly with one of another race.

**461.** Whenever an European or American is charged before the Court of Session jointly with a person not an European or American, and, in compliance with a claim made under section 460, is tried by a jury, or with the aid of a set of assessors, of which at least one-half consists of Europeans and Americans, the latter person shall, if he so claims, be tried separately.

Summoning and empanelling jurors under section *450*, *451*, or 460.

**462.** (*1*) When a trial is to be held before the Court of Session, in which the accused person, or one of the accused persons, is entitled to be tried by a jury constituted under the provisions of section *450* or section 460, or before the Court of a District Magistrate or Sessions Judge proceeding under section *451*, the Court shall, three days at least before the day fixed for holding such trial, cause to be summoned, in the manner hereinbefore prescribed, as many European and American jurors as are required for the trial.

(*2*) The Court shall also, at the same time, in like manner, cause to be summoned the same number of other persons named in the revised list, unless such number of such other persons has been already summoned for trials by jury at that Session.

(*3*) From the whole number of persons returned, the jurors who are to constitute the jury shall be chosen by lot in the manner prescribed in section 276, until a jury containing the proper number of Europeans or Americans, or a number approaching thereto as nearly as practicable, has been obtained:

Provided that, in any case in which the proper number of Europeans and Americans cannot otherwise be obtained, the Court may, in its discretion, for the purpose of consituting the jury, summon any person excluded from the list on the ground of his being exempted under section 320.

Conduct of criminal proceedings against European British subjects, &c.

**463.** Criminal proceedings against European British subjects, Europeans not being European British subjects, and Americans, before the Court of Session and High Court, shall, except as otherwise expressly provided, be conducted according to the provisions of this Code.

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## CHAPTER XXXIV.—LUNATICS.

Procedure in case of accused being lunatic.

**464.** (*1*) When a Magistrate holding an inquiry or a trial has reason to believe that the accused is of unsound mind, and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the district or such other medical officer as the Local Government directs, and thereupon shall examine such

Surgeon or other officer as a witness, and shall reduce the examination to writing.

(2) If such Magistrate is of opinion that the accused is of unsound mind, and consequently incapable of making his defence, he shall postpone further proceedings in the case.

**465.** (1) If any person committed for trial before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind, and consequently incapable of making his defence, the jury, or the Court with the aid of assessors, shall, in the first instance, try the fact of such unsoundness and incapacity, and, if satisfied of the fact, shall pass judgment accordingly, and thereupon the trial shall be postponed.

Procedure in case of person committed before Court of Session or High Court being lunatic.

(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

**466.** (1) Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, if the case is one in which bail may be taken, may release him on sufficient security being given that he shall be properly taken care of, and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court, or such officer as the Magistrate or Court appoints in this behalf.

Release of lunatic pending investigation or trial.

(2) If the case is one in which bail may not be taken, or if sufficient security is not given, the Magistrate or Court shall report the case to the Local Government, *remanding the accused to custody pending orders*, and the Local Government may order the accused to be confined in a lunatic asylum, *jail*, or other suitable place of safe custody, and the Magistrate or Court shall give effect to such order.

Custody of lunatic.

**467.** (1) Whenever an inquiry or a trial is postponed under section 464 or section 465, the Magistrate or Court, as the case may be, may at any time resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

Resumption of inquiry or trial.

(2) When the accused has been released under section 466, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

**468.** (1) If, when the accused appears or is again brought before the Magistrate or the Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

Procedure on accused appearing before Magistrate or Court.

(2) If the Magistrate or Court considers the accused person to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465, as the case may be.

**469.** When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which if he had been of sound mind, would have been an offence, and that he was, at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the

When accused appears to have been insane.

act, or that it was wrong or contrary to law, the Magistrate shall proceed with the case, and, if the accused ought to be committed to the Court of Session or High Court, send him for trial before the Court of Session or High Court, as the case may be.

Judgment of acquittal on ground of lunacy.

**470.*** Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

Person acquitted on such ground to be kept in safe custody.

**471.** (*1*) Whenever such judgment states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be kept in safe custody in such place and manner as the Magistrate or Court thinks fit, and shall report the case for the orders of the Local Government.

(*2*) The Local Government may order such person to be confined in a lunatic asylum, jail, or other suitable place of safe custody.

Power of Governor-General in Council to order criminal lunatics confined by order of Local Government to be removed from one province to another.

(*3*) The Governor-General in Council may, *by general or special order*, direct that any person whom the Local Government has ordered under this chapter to be confined in a lunatic asylum, jail, or other place of safe custody, shall be removed, from the place where he is confined, to any lunatic asylum, jail, or other place of safe custody in British India.

Power of Local Government to relieve Inspector-General of certain functions.

(*4*) The Local Government may empower the officer in charge of the jail in which a person is confined, under the provisions of section 466 or this section, to discharge all or any of the functions of the Inspector-General of Prisons under section 472, section 473, or section 474.

Lunatic prisoners to be visited by Inspector-General.

**472.** When any person is confined under the provisions of section 466 or section 471, the Inspector-General of Prisons if such person is confined in a jail, or the visitors of the lunatic asylum or any two of them if he is confined in a lunatic asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector-General, or by two of such visitors as aforesaid; and such Inspector-General or visitors shall make a special report to the Local Government as to the state of mind of such person.

Procedure where lunatic prisoner is reported capable of making his defence.

**473.** If such person is confined under the provisions of section 466, and such Inspector-General or visitors shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 468; and the certificate of such Inspector-General or visitors as aforesaid shall be receivable as evidence.

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* *Cf.* the Criminal Lunatics Act, 1800 (39 & 40 Geo. III., c. 94).

Procedure where lunatic confined under section 466 or 471 is declared fit to be discharged.

**474.** (*1*) If such person is confined under the provisions of section 466 or section 471, and such Inspector-General or visitors shall certify that, in his or their judgment, he may be discharged without danger of his doing injury to himself, or to any other person, the Local Government may thereupon order him to be discharged, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a commission, consisting of a judicial and two medical officers.

(*2*) Such commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government, which may order his discharge or detention as it thinks fit.

Delivery of lunatic to care of relative.

**475.** (*1*) Whenever any relative or friend of any person confined under the provisions of section 466 or section 471 desires that he shall be delivered over to his care and custody, the Local Government, upon the application of such relative or friend, and on his giving security to the satisfaction of such Government that the person delivered shall be properly taken care of, and shall be prevented from doing injury to himself or to any other person, may order such person to be delivered to such relative or friend.

(*2*) Whenever such person is so delivered, it shall be upon condition that he shall be produced for the inspection of such officer, and at such times as the Local Government directs.

(*3*) The provisions of sections 472 and 474 shall, *mutatis mutandis*, apply to persons delivered under the provisions of this section: and the certificate of the inspecting officer appointed under this section shall be receivable as evidence.

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## CHAPTER XXXV.—PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

Procedure in cases mentioned in section 195

**476.** (*1*) When any Civil, Criminal, or Revenue Court is of opinion that there is ground for inquiring into any offence referred to in section 195, and committed before it or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary inquiry that may be necessary, may send the case for inquiry or trial to the nearest Magistrate of the first class, and may send the accused in custody, or take sufficient security for his appearance, before such Magistrate, and may bind over any person to appear and give evidence on such inquiry or trial.

(*2*) Such Magistrate shall thereupon proceed according to law, *and as if upon complaint made and recorded under section 200*, and may, if he is authorized under section 192 to transfer cases, transfer the inquiry or trial to some other competent Magistrate.

Power of Court of Session as to such offences committed before itself.

**477.** (*1*) Subject to the provisions of section 444, a Court of Session may charge a person for any offence referred to in section 195, and committed before it, or brought under its notice in the course of a judicial proceeding, and may commit, or admit to bail and try, such person upon its own charge.

(*2*) Such Court may direct the Magistrate to cause the attendance of any witnesses for the purposes of the trial.

Power of Civil and Revenue Courts to complete inquiry, and commit to High Court or Court of Session.

**478.** (*1*) When any such offence is committed before any Civil or Revenue Court, or brought under the notice of any Civil or Revenue Court in the course of a judicial proceeding, and the case is triable exclusively by the High Court or Court of Session, or such Civil or Revenue Court thinks that it ought to be tried by the High Court or Court of Session, such Civil or Revenue Court may, instead of sending the case under section 476 to a Magistrate for inquiry, itself complete the inquiry, and commit or hold to bail the accused person to take his trial before the High Court or Court of Session, as the case may be.

(*2*) For the purposes of an inquiry under this section, the Civil or Revenue Court may, subject to the provisions of section 443, exercise all the powers of a Magistrate; and its proceedings in such inquiry shall be conducted as nearly as may be in accordance with the provisions of Chapter XVIII., and shall be deemed to have been held by a Magistrate.

Procedure of Civil or Revenue Court in such cases.

**479.** When any such commitment is made by a Civil or Revenue Court, the Court shall send the charge with the order of commitment and the record of the case to the Presidency Magistrate, District Magistrate, or other Magistrate authorized to commit for trial, and such Magistrate shall bring the case before the High Court or Court of Session, as the case may be, together with the witnesses for the prosecution and defence.

Procedure in certain cases of contempt.

**480.** (*1*) When any such offence as is described in section 175, section 178, section 179, section 180, or section 228 of the Indian Penal Code,* is committed in the view or presence of any Civil, Criminal, or Revenue Court, the Court may cause the offender, whether he is an European British subject or not, to be detained in custody; † and, at any time before the rising of the Court on the same day, may, if it thinks fit, take cognizance of the offence, and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

(*2*) Nothing in section 443 or section 444 shall be deemed to apply to proceedings under this section.

Record in such cases.

**481.** (*1*) In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

(*2*) If the offence is under section 228 of the Indian Penal Code,* the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

Procedure where Court considers that case should not be dealt with under section 480.

**482.** (*1*) If the Court in any case considers that a person accused of any of the offences referred to in section 480, and committed in its view or presence, should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is, for any other reason, of opinion that the case should not be disposed of under section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward

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* Act XLV. of 1860.

† See Sch. V., Form XXXVIII., *infra*.

the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, shall forward such person in custody to such Magistrate.

(*2*) The Magistrate to whom any case is forwarded under this section shall proceed to hear the complaint against the accused person in manner hereinbefore provided.

When Registrar or Sub-Registrar to be deemed a Civil Court within sections 480 and 482.

**483.** When the Local Government so directs, any Registrar or any Sub-Registrar appointed under the Indian Registration Act, 1877,* shall be deemed to be a Civil Court within the meaning of sections 480 and 482.

Discharge of offender on submission or apology.

**484.** When any Court has, under section 480, adjudged an offender to punishment for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender, or remit the punishment on his submission to the order or requisition of such Court, or an apology being made to its satisfaction.

Imprisonment or committal of person refusing to answer or produce document.

**485.** If *any witness or person called to produce a document or thing* before a Criminal Court refuses to answer such questions as are put to him, or to produce any document *or thing* in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or, by warrant † under the hand of the presiding Magistrate or Judge, commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer, or to produce the document *or thing*. In the event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or section 482, and in the case of a Court established by Royal Charter, shall be deemed guilty of a contempt.

Appeals from convictions in contempt-cases.

**486.** (*1*) Any person sentenced by any Court under section 480 or section 485 may, notwithstanding anything hereinbefore contained, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

(*2*) The provisions of Chapter XXXI. shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

(*3*) An appeal from such conviction by a Court of Small Causes in a presidency-town shall lie to the High Court, and

an appeal from such conviction by any other Court of Small Causes shall lie to the Court of Session for the sessions division within which such Court is situate.

(*4*) An appeal from such conviction by any officer as Registrar or Sub-Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a decree by such officer in his capacity as such Judge; and in other cases may be made to the District Judge, or, in the presidency-towns, to the High Court.

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* Act III. of 1877.

† See Sch. V., Form XXXIX., *infra*.

**487.** (*1*) Except as provided in sections 477, 480, and 485, no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court* shall try any person for any offence referred to in section 195, when such offence is committed before himself, or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.

Certain Judges and Magistrates not to try offences referred to in section 195 when committed before themselves.

(*2*) Nothing in section 476 or section 482 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from himself committing any case to such Court.

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CHAPTER XXXVI.—OF THE MAINTENANCE OF WIVES AND CHILDREN.

**488.** (*1*) If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate, or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding fifty rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

Order for maintenance of wives and children.

(*2*) Such allowance shall be payable from the date of the order, *or, if so ordered, from the date of the application for maintenance.*

(*3*) If any person so ordered wilfully neglects to comply with the order, any such Magistrate may for every breach of the order, issue a warrant† for levying the amount due in manner hereinbefore provided for levying fines,‡ and may sentence§ such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month, *or until payment, if sooner made:*

Enforcement of order.

Provided that, if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied *that there is just ground for so doing.*

(*4*) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(*5*) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that, without sufficient reason, she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

(*6*) All evidence under this chapter shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed *in the case of summons-cases:*

*Provided that, if the Magistrate is satisfied that he is wilfully avoiding service or wilfully neglects to attend the Court, the Magistrate may proceed to hear and*

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* The words "and the Recorder of Rangoon," were repealed by the Lower Burma Courts Act (VI. of 1900), s. 48 and Sch II.

† See Sch. V., Form XLI., *infra.*

‡ See ss. 386 to 389, *supra.*

§ See Sch. V., Form XL., *infra.*

*determine the case ex parte. Any order so made may be set aside for good cause shown, on application made within three months from the date thereof.*

(7) *The accused may tender himself as a witness, and in such case shall be examined as such.*

(8) *The Court, in dealing with application under this section, shall have power to make such order as to costs as may be just.*

(9) *The accused may be proceeded against in any district where he resides or is, or where he last resided with his wife or, as the case may be, the mother of the illegitimate child.*

Alteration in allowance.

**489.** On proof of a change in the circumstances of any person receiving under section 488 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit: Provided *that, if he increases the allowance*, the monthly rate of fifty rupees *in the whole* be not exceeded.

Enforcement of order of maintenance.

**490.** A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid; and such order *may be enforced* by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due.

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## CHAPTER XXXVII.—DIRECTIONS OF THE NATURE OF A HABEAS CORPUS.

Power to issue directions of the nature of a *habeas corpus*.

**491.** (1) Any of the High Courts of Judicature at Fort William, Madras, and Bombay may, whenever it thinks fit, direct—

(*a*) that a person within the limits of its ordinary original civil jurisdiction be brought up before the Court to be dealt with according to law;

(*b*) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;

(*c*) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court;

(*d*) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners acting under the authority of any commission from the Governor-General in Council for trial, or to be examined touching any matter pending before such Court-martial or Commissioners respectively;

(*e*) that a prisoner within such limits be removed from one custody to another for the purpose of trial; and

(*f*) that the body of a defendant within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.

(2) Each of the said High Courts may, from time to time, frame rules to regulate the procedure in cases under this section.

(3) Nothing in this section applies to persons detained under *the Bengal State Prisoners Regulation, 1818*,* Madras Regulation II. of 1819, or Bombay Regulation XXV. of 1827, or *the State Prisoners Act, 1850*,† or *the State Prisoners Act*, 1858.‡

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* Ben. Reg. III. of 1818. † Act XXXIV. of 1850. ‡ Act III. of 1858.

## PART IX.—SUPPLEMENTARY PROVISIONS.

### CHAPTER XXXVIII.—OF THE PUBLIC PROSECUTOR.

**Power to appoint Public Prosecutors.**

**492.** (*1*) The Governor-General in Council or the Local Government may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors.

(*2*) In any case committed for trial to the Court of Session, the District Magistrate, or, subject to the control of the District Magistrate, the Sub-divisional Magistrate may, in the absence of the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of police below the rank of Assistant District Superintendent, to be Public Prosecutor for the purpose of such case.

**Public Prosecutor may plead in all Courts in cases under his charge. Pleaders privately instructed to be under his direction.**

**493.** The Public Prosecutor may appear and plead, without any written authority, before any Court in which any case of which he has charge is under inquiry, trial, or appeal; and, if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein under his directions.

**Effect of withdrawal from prosecution.**

**494.** Any Public Prosecutor appointed by the Governor-General in Council or the Local Government may, with the consent of the Court, in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person; and, upon such withdrawal,—

(*a*) if it is made before a charge has been framed, the accused shall be discharged;

(*b*) if it is made after a charge has been framed, or when, under this Code, no charge is required, he shall be acquitted.

**Permission to conduct prosecution.**

**495.** (*1*) Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of police* below a rank to be prescribed by the Local Government in this behalf with the previous sanction of the Governor-General in Council, but no person, other than the Advocate-General, Standing Counsel, Government Solicitor, Public Prosecutor, or other officer generally or specially empowered by the Local Government in this behalf shall be entitled to do so without such permission.

(*2*) *Any such officer shall have the like power of withdrawing from the prosecution as is provided by section 494, and the provisions of that section shall apply to any withdrawal by such officer.*

(*3*) Any person conducting the prosecution may do so personally or by a pleader.

(*4*) An officer of police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted.

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* As to conduct of prosecutions by police-officers in Upper Burma notwithstanding anything in s. 495, see the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., s XIV.

## CHAPTER XXXIX.—OF BAIL.

**In what cases bail to be taken.**

**496.** When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, and is prepared, at any time while in the custody of such officer, or at any stage of the proceedings before such Court, to give bail, such person shall be released on bail:

Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond* without sureties for his appearance as hereinafter provided.

**When bail may be taken in case of non bailable offence.**

**497.** (*1*) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.

(*2*) If it appears to such officer or Court at any stage of the investigation, inquiry, or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed such offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(*3*) Any Court may, at any subsequent stage of any proceeding under this Code, cause any person who has been released under this section to be arrested, and may commit him to custody.

**Power to direct admission to bail, or reduction of bail.**

**498.** The amount of every bond executed under this chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a police-officer or Magistrate be reduced.

**Bond of accused and sureties.**

**499.** (*1*) Before any person is released on bail, or released on his own bond, a bond* for such sum of money as the police-officer or Court, as the case may be, thinks sufficient, shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties, conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police-officer or Court, as the case may be.

(*2*) If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session, or other Court to answer the charge.

**Discharge from custody.**

**500.** (*1*) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and, when he is in jail, the Court admitting him to bail shall issue an order of release* to the officer in charge of the jail, and such officer, on receipt of the order, shall release him.

* See Sch. V, Form XLII., *infra*.

(*2*) Nothing in this section, section 496, or section 497, shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

Power to order sufficient bail when that first taken is insufficient.

**501.** If, through mistake, fraud, or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it, and may order him to find sufficient sureties, and, on his failing so to do, may commit him to jail.

Discharge of sureties.

**502.** (*1*) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

(*2*) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(*3*) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged, either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties; and, if he fails to do so, may commit him to custody.

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## CHAPTER XL.—OF COMMISSIONS FOR THE EXAMINATION OF WITNESSES.

When attendance of witness may be dispensed with.

**503.** (*1*) Whenever, in the course of an inquiry, a trial, or any other proceeding under this Code, it appears to a Presidency Magistrate, a District Magistrate, a Court of Session, or the High Court, that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense, or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance, and may issue a commission to any District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

Issue of commission, and procedure thereunder.

(*2*) When the witness resides in the *territories* of any Prince or *Chief in India* in which there is an officer representing the British Indian Government, the commission may be issued to such officer.

(*3*) The Magistrate or officer to whom the commission is issued, or, if he is the District Magistrate, he or such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is, or shall summon the witness before him, and shall take down his evidence in the same manner, and may, for this purpose, exercise the same powers, as in trials of warrant-cases under this Code.

(*4*) *Where the commission is issued to such officer as is mentioned in sub-section (2), he may delegate his powers and duties under the commission to any officer subordinate to him whose powers are not less than those of a Magistrate of the first class in British India.*

Commission in case of witness being within presidency-town.

**504.** (*1*) If the witness is within the local limits of the jurisdiction of any Presidency Magistrate, the Magistrate or Court issuing the commission may direct the same to the said Presidency Magistrate, who thereupon may compel the attendance of, and examine, such witness as if he were a witness in a case pending before himself.

(*a*) Nothing in this section shall be deemed to affect the power of the High Court to issue commissions under the *Slave Trade Act, 1876*, section 3.*

**505.** (*1*) The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the Magistrate or Court directing the commission may think relevant to the issue, and the Magistrate or officer to whom the commission is directed shall examine the witness upon such interrogatories.

Parties may examine witnesses.

(*2*) Any such party may appear before such Magistrate or officer by pleader, or, if not in custody, in person, and may examine, cross-examine, and re-examine (as the case may be) the said witness.

**506.** Whenever, in the course of an inquiry or a trial or any other proceeding under this Code before any Magistrate other than a Presidency Magistrate or District Magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense, or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate shall apply to the District Magistrate, stating the reasons for the application; and the District Magistrate may either issue a commission in the manner hereinbefore provided, or reject the application.

Power of Provincial Subordinate Magistrate to apply for issue of commission.

**507.** (*1*) After any commission issued under section 503 or section 506 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto, and the deposition, shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

Return of commission.

(*2*) *Any deposition so taken, if it satisfies the conditions prescribed by section 33 of the Indian Evidence Act, 1872,† may also be received in evidence at any subsequent stage of the case before another Court.*

**508.** In every case in which a commission is issued under section 503 or section 506, the inquiry, trial, or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission

Adjournment of inquiry or trial.

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## CHAPTER XLI.—SPECIAL RULES OF EVIDENCE.

**509.** (*1*) The deposition of a Civil Surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused, *or taken on commission under Chapter XL.*, may be given in evidence in any inquiry, trial, or other proceeding under this Code, although the deponent is not called as a witness.

Deposition of medical witness.

(*2*) The Court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition.

Power to summon medical witness.

**510.** Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government, upon any matter or thing duly sub-

Report of Chemical Examiner.

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* Stat. 39 and 40 Vict., c. 46.

† Act I. of 1872.

t ' 'ed to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial, or other proceeding under this Code.

**511.** In any inquiry, trial, or other proceeding under this Code, a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force,—

Previous conviction or acquittal how proved.

(*a*) by an extract certified, under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had, to be a copy of the sentence or order; or,

(*b*) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered;

together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

**512.** (*1*) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions. Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence, or his attendance cannot be procured without an amount of delay, expense, or inconvenience which under the circumstances of the case, would be unreasonable.

Record of evidence in absence of accused.

(*2*) *If it appears that an offence punishable with death or transportation has been committed by some person or persons unknown, the High Court may direct that any Magistrate of the first class shall hold an inquiry, and examine any witnesses who can give evidence concerning the offence. Any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence, or beyond the limits of British India.*

*Record of evidence when offender unknown.*

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CHAPTER XLII.—PROVISIONS AS TO BONDS.

**513.** When any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix, in lieu of executing such bond.

Deposit instead of recognizance.

**514.*** (*1*) Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Presidency Magistrate or Magistrate of the first class,

Procedure on forfeiture of bond.

or, when the bond is for appearance before a Court, to the satisfaction of such Court,

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* See notes to ss. 110 to 118, *supra*.

that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.*

(2) If sufficient cause is not shown, and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant* for the attachment and sale of the moveable property belonging to such person *or his estate if he be dead*.

(3) Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorize the distress and sale of any moveable property belonging to such person without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

(4) If such penalty *is* not paid, and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

(5) The Court may, at its discretion, remit any portion of the penalty mentioned, and enforce payment in part only.

(6) *Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond, but the party who gave the bond may be required to find a new surety.*

Appeal from, and revision of, orders under section 514.

**515**. All orders passed under section 514 by any Magistrate other than a Presidency Magistrate or District Magistrate shall be appealable to the District Magistrate, or, if not so appealed, may be revised by him.

Power to direct levy of amount due on certain recognizances.

**516**. The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session.

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## CHAPTER XLIII.—OF THE DISPOSAL OF PROPERTY.

Order for disposal of property regarding which offence committed.

**517**. (1) When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order, as it thinks fit for the disposal of *any property or document* produced before it, *or in its custody*, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) When a High Court or a Court of Session makes such order, and cannot, through its own officers, conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate.

(3) When an order is made under this section in a case in which an appeal lies, such order shall not (except when the property is live-stock, or is subject to speedy and natural decay) be carried out until the period allowed for presenting such appeal has passed, or when such appeal is presented within such period, until such appeal has been disposed of

*Explanation.*†—In this section the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only

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* See Sch. V., Forms XLIV to LIII, *infra*.

† *Cf.* the Larceny Act (Stat. 24 & 25 Vict., c. 96), s. 1.

ch property as has been originally in the possession, or under the control, of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise.

**518.** In lieu of itself passing an order under section 517, the Court may direct the property to be delivered to the District Magistrate, or to a Sub-divisional Magistrate, who shall, in such cases, deal with it as if it had been seized by the police, and the seizure had been reported to him in the manner hereinafter mentioned.

Order may take form of reference to District or Sub-divisional Magistrate.

**519.*** When any person is convicted of any offence which includes or amounts to theft or receiving stolen property, and it is proved that any other person has bought the stolen property from him without knowing or having reason to believe that the same was stolen, and that any money has, on his arrest, been taken out of the possession of the convicted person, the Court may, on the application of such purchaser, and on the restitution of the stolen property to the person entitled to the possession thereof, order that, out of such money, a sum not exceeding the price paid by such purchaser be delivered to him.

Payment to innocent purchaser of money found on accused.

**520.** Any Court of appeal, confirmation, reference, or revision, may direct any order under section 517, section 518, or section 519, passed by a Court subordinate thereto, to be stayed pending consideration by the former Court, and may modify, alter, or annul such order, *and make any further orders that may be just.*

Stay of order under section 517, 518, or 519.

**521.** (*1*) On a conviction under the Indian Penal Code,† section 292, section 293, section 501, or section 502, the Court may order the destruction of all the copies of the thing in respect of which the conviction was had, and which are in the custody of the Court, or remain in the possession or power of the person convicted.

Destruction of libellous and other matter.

(*2*) The Court may, in like manner, on a conviction under the Indian Penal Code † section 272, section 273, section 274, or section 275, order the food, drink, drug, or medical preparation in respect of which the conviction was had, to be destroyed.

**522.** (*1*) Whenever a person is convicted of an offence attended by criminal force, and it appears to the Court that, by such force, any person has been dispossessed of any immoveable property, the Court may, if it thinks fit, order such person to be restored to the possession of the same.

Power to restore possession of immoveable property.

(*2*) No such order shall prejudice any right or interest to or in such immoveable property which any person may be able to establish in a civil suit.

**523.** (*1*) The seizure by any police-officer of property taken under section 51, or alleged or suspected to have been stolen or found under circumstances which create suspicion, of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the *disposal of such property or the* delivery of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property.

Procedure by police upon seizure of property taken under section 51, or stolen.

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* Cf. the Criminal Law Amendment Act, 1867 (Stat. 30 & 31 Vict., cap. 35), s. 9.

† Act XLV. of 1860.

(*c*) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it, and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person, who may have a claim thereto, to appear before him, and establish his claim within six months from the date of such proclamation.

Procedure where owner of property seized unknown.

**524.** (*1*) If no person within such period establishes his claim to such property and if the person in whose possession such property was found is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the Presidency Magistrate, District Magistrate, or Sub-divisional Magistrate, or of a Magistrate of the first class empowered by the Local Government in this behalf.

Procedure where no claimant appears within six months.

(*2*) In the case of every order passed under this section, an appeal shall lie to the Court to which appeals against sentences of the Court passing such order would lie.

**525.** If the person entitled to the possession of such property is unknown or absent, and the property is subject to speedy and natural decay, or the Magistrate to whom its seizure is reported, is of opinion that its sale would be for the benefit of the owner, the Magistrate may at any time direct it to be sold; and the provisions of sections 523 and 524 shall, as nearly as may be practicable, apply to the nett proceeds of such sale.

Power to sell perishable property.

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## CHAPTER XLIV.—OF THE TRANSFER OF CRIMINAL CASES.

High Court may transfer case, or itself try it.

**526.** (*1*) Whenever it is made to appear to the High Court—

(*a*) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(*b*) that some question of law of unusual difficulty is likely to arise, or

(*c*) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or

(*d*) that an order under this section will tend to the general convenience of the parties or witnesses, or

(*e*) that such an order is expedient for the ends of justice, *or is required by any provision of this Code*;

it may order—

(i) that any offence be inquired into or tried by any Court not empowered under sections 177 to 184 (both inclusive), but, in other respects, competent to inquire into or try such offence;

(ii) that any particular criminal case or appeal, or class of such cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular criminal case or appeal be transferred to, and tried before, itself; or

(iv) that an accused person be committed for trial to itself, or to a Court of Session.

(2) When the High Court withdraws for trial before itself any case from any Court other than the Court of a Presidency Magistrate, it shall, except as provided in section 267, observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn.

(3) *The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative.*

(4) Every application for the exercise of the power conferred by this section shall be made by motion, which shall, except when the applicant is the Advocate-General, be supported by affidavit or affirmation.

(5) When an accused person makes an application under this section, the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if convicted, pay the costs of the prosecutor.

(6) Every accused person making any such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

Notice to Public Prosecutor of application under this section.

(7) Nothing in this section shall be deemed to affect any order made under section 197.

(8) If, in any criminal case or appeal, before the commencement of the hearing, the Public Prosecutor, the complainant, or the accused, notifies, to the Court before which the case or appeal is pending, his intention to make an application under *this* section in respect of the case, the Court shall exercise the powers of postponement or adjournment given by section 344 in such a manner as will afford a reasonable time for the application being made and an order being obtained thereon, before the accused is called on for his defence, or, in the case of an appeal, before the hearing of the appeal.

Adjournment on application under *this* section.

**527.** (1) The Governor-General in Council may, by notification in the *Gazette of India*, direct the transfer of any particular criminal case or appeal from one High Court* to another High Court, or from any Criminal Court subordinate to one High Court to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court, whenever it appears to him that such transfer will promote the ends of justice, or tend to the general convenience of parties or witnesses.

Power of Governor General in Council to transfer criminal cases and appeals.

(2) The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to, such Court.

**528** (1) Any *Chief Presidency Magistrate*, District Magistrate, or Sub-divisional Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

*Chief Presidency*, District, or Sub-divisional Magistrate may withdraw or refer cases.

* For the purposes of this section, the Court of the Recorder of Rangoon is to be deemed to be a High Court —See the Lower Burma Courts Act (XI. of 1889), s 48.

(2) The Local Government may authorize the District Magistrate to withdraw from *any* Magistrate subordinate to him either such classes of cases as he thinks proper, or particular classes of cases.

Power to authorize District Magistrate to withdraw classes of cases.

(3) A Magistrate making an order under this section shall record in writing his reasons for making the same.

(4) *The head of a village under Madras Regulation IV. of 1821 is a Magistrate for the purposes of this section.*

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CHAPTER XLV.—OF IRREGULAR PROCEEDINGS.

Irregularities which do not vitiate proceedings.

**529.** If any Magistrate not empowered by law to do any of the following things, namely,—

(*a*) to issue a search-warrant under section 98;

(*b*) to order, under section 155, the police to investigate an offence;

(*c*) to hold an inquest under section 176;

(*d*) to issue process, under section 186, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits;

(*e*) to take cognizance of an offence under section 190, *sub-section (1)* clause (*a*) or clause (*b*);

(*f*) to transfer a case under section 192;

(*g*) to tender a pardon under section 337 or section 338;

(*h*) to sell property under section 524 or section 525; or

(*i*) to withdraw a case, and try it himself, under section 528,

erroneously in good faith* does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

Irregularities which vitiate proceedings.

**530.** If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely,—

(*a*) attaches and sells property under section 88;

(*b*) issues a search-warrant for a letter, *parcel, or other thing* in the Post-office, or a telegram in the Telegraph Department;

(*c*) demands security to keep the peace;

(*d*) demands security for good behaviour;

(*e*) discharges a person lawfully bound to be of good behaviour.

(*f*) cancels a bond to keep the peace;

(*g*) makes an order under section 133 as to a local nuisance;

(*h*) prohibits, under section 143, the repetition or continuance of a public nuisance;

(*i*) issues an order under section 144;

(*j*) makes an order under Chapter XII.;

(*k*) takes cognizance, under section 190, *sub-section* (*1*), clause (*c*), of an offence;

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* For definition of "good faith," *see* the Indian Penal Code (Act XLV. of 1860) ss. 52 and 76, and the General Clauses Act (X. of 1897), s. 3 (*20*).

(*l*) passes a sentence under section 349 on proceedings recorded by another Magistrate;

(*m*) calls, under section 435, for proceedings;

(*n*) makes an order for maintenance;

(*o*) revises, under section 515, an order passed under section 514;

(*p*) tries an offender;

(*q*) tries an offender summarily; or

(*r*) decides an appeal,

his proceedings shall be void.

**Proceedings in wrong place.**

**531.** No finding, sentence, or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial, or other proceeding, in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division, or other local area, unless it appears that such error has, *in fact*, occasioned a failure of justice.

**When irregular commitments may be validated.**

**532.** (*1*) If any Magistrate or other authority purporting to exercise powers duly conferred, which were not so conferred, commits an accused person for trial before a Court of Session or High Court, the Court to which the commitment is made may, after perusal of the proceedings, accept the commitment if it considers that the accused has not been injured thereby, unless, during the inquiry and before the order of commitment, objection was made on behalf either of the accused or of the prosecution to the jurisdiction of such Magistrate or other authority.

(*2*) If such Court considers that the accused was injured, or if such objection was so made, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate.

**Non-compliance with provisions of section 164 or 364.**

**533.** (*1*) If any Court before which a confession or other statement of an accused person, recorded *or purporting to be recorded* under section 164 or section 364, is tendered *or has been received* in evidence, finds that *any of* the provisions *of either* of such sections have not been complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded; and, notwithstanding anything contained in the Indian Evidence Act, 1872,* section 91, such statement shall be admitted, if the error has not injured the accused as to his defence on the merits.

(*2*) *The provisions of this section apply to Courts of appeal, reference, and revision.*

**Omission to ask question prescribed by section 454 (2).**

**534.** An omission to ask any person whether he is an European British subject, in a case to which *sub-section (2) of* section 454, applies, shall not affect the validity of any proceeding.

**Effect of omission to prepare charge.**

**535.** (*1*) No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed, unless, in the opinion of the Court of appeal or revision, a failure of justice has, *in fact*, been occasioned thereby.

(*2*) If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge be

* Act I. of 1872.

framed, and that the trial be re-commenced from the point immediately after the framing of the charge.

Trial by jury of offence triable with assessors.

**536.** (*1*) If an offence triable with the aid of assessors is tried by a jury, the trial shall not, on that ground only, be invalid.

Trial with assessors of offence triable by jury.

(*2*) If an offence triable by a jury is tried with the aid of assessors, the trial shall not, on that ground only, be invalid, unless the objection is taken before the Court records its finding.

Finding or sentence when reversible by reason of error or omission in charge or other proceedings.

**537.***† Subject to the provisions hereinbefore contained no finding, sentence, or order passed by a Court of competent jurisdiction, shall be reversed or altered under Chapter XXVII., or on appeal or revision, on account—

(*a*) of any error, omission, or irregularity in the complaint, summons, warrant, charge, *proclamation, order*, judgment, or other proceedings before or during trial, or in any inquiry or other proceedings under this Code, or

(*b*) of the want of, *or any irregularity in*, any sanction required by section 195, *or any irregularity in proceedings taken under section 476*, or

(*c*) of the omission to revise any list of jurors or assessors in accordance with section 324, or

(*d*) of any misdirection in any charge to a jury unless such error, omission, irregularity, want, or misdirection has, *in fact*, occasioned a failure of justice.

*Explanation.—In determining whether any error, omission, or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.*

*Illustration.*

*A Magistrate, being required by law to sign a document, signs it by initials only. This is purely an irregularity, and does not affect the validity of the proceeding.*

Distress not illegal nor distrainer a trespasser for defect or want of form in proceedings.

**538** No distress made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of distress, or other proceedings relating thereto.

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* *Cf.* the Summary Jurisdiction Act, 1847-1848 (Stat. 11 & 12 Vict., c. 43), s. 9.

† In Upper Burma, orders are not reversible on appeal or revision on technical grounds alone.—See the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., s. XV. As to European British subjects, however, see s. XVII, *ibid.*

CHAPTER XLVI.—MISCELLANEOUS.

**539.** Affidavits and affirmation to be used before any High Court or any officer of such Court may be sworn and affirmed before such Court or the Clerk of the Crown, or any Commissioner or other person appointed by such Court for that purpose, or any Judge, or any Commissioner for taking affidavits in any Court of Record in British India, or any Commissioner to administer oaths in England or Ireland, or any Magistrate authorized to take affidavits or affirmations in Scotland.

Courts and persons before whom affidavits may be sworn.

**540.** Any Court may, at any stage of any inquiry, trial, or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine, or recall and re-examine, any such person if his evidence appears to it essential to the just decision of the case.

Power to summon material witness, or examine person present.

**541.** (*1*) Unless when otherwise provided by any law for the time being in force, the Local Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

Power to appoint place of imprisonment.

(*2*) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or commital may direct that the person be removed to a criminal jail.

Removal to criminal jail of accused or convicted persons who are in confinement in civil jail, and their return to the civil jail.

(*3*) When a person is removed to a criminal jail under sub-section (*1*), he shall, on being released therefrom, be sent back to the civil jail, unless either—

(*a*) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under section 342 of the Code of Civil Procedure;* or

(*b*) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under section 341 of the Code of Civil Procedure.*

**542.** (*1*) Notwithstanding anything contained in the Prisoners' Testimony Act, 1869,† any Presidency Magistrate desirous of examining, as a witness or an accused person, in any case pending before him, any person confined in any jail within the local limits of his jurisdiction, may issue an order to the officer in charge of the said jail, requiring him to bring such prisoner in proper custody, at a time to be therein named, to the Magistrate for examination. S. 541A, Act X., 1882.

Power of Presidency Magistrate to order prisoner in jail to be brought up for examination.

(*2*) The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid.

**543.** When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

Interpreter to be bound to interpret truthfully.

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* Act XIV. of 1882. † Act XV. of 1869.

Expenses of complainants and witnesses.

**544.** Subject to any rules made by the Local Government with the previous sanction of the Governor-General in Council, any Criminal Court may, *if it thinks fit*, order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial, or other proceeding before such Court under this Code.*

Power of Court to pay expenses or compensation out of fine.

**545.**† (*1*) Whenever, under any law in force for the time being, a Criminal Court imposes a fine, or confirms, in appeal, revision, or otherwise, a sentence of fine, or a sentence of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

(*a*) in defraying expenses properly incurred in the prosecution;

(*b*) in compensation for the injury caused by the offence committed, where substantial compensation is, in the opinion of the Court, recoverable by civil suit.

(*2*) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

Payments to be taken into account in subsequent suit.

**546.** At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under section 545.

Moneys ordered to be paid recoverable as fines.

**547.** Any money (other than a fine), payable by virtue of any order made under this Code, shall be recoverable as if it were a fine.

Copies of proceedings.

**548.** If any person affected by a judgment or order passed by a Criminal Court desires to have a copy of the Judge's charge to the jury, or of any order or deposition or other part of the record, he shall, on applying for such copy, be furnished therewith:

Provided that he pays for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.

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* For rules made in exercise of these powers, for—

(*1*) Assam, see the Assam Manual of Local Rules and Orders, Ed. 1893, p. 188;

(*2*) Bombay, see Bombay List of Local Rules and Orders, Ed. 1897, Vol. I., pp. 393 and 394;

(*3*) Burma, see Burma Rules Manual, Ed. 1897, p. 107;

(*4*) Central Provinces, see Central Provinces List, of Local Rules and Orders, Ed. 1896, p. 43;

(*5*) Madras, see Madras List of Local Rules and Orders, Ed. 1898, Vol. I., p. 190;

(*6*) North-Western Provinces and Oudh, see North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 108.

† In Upper Burma, the Court imposing a fine or confirming a sentence of an officer under s. 9 (*4*) of the Upper Burma Ruby Regulation (XII. of 1887) may presume, for the purposes of s. 545, that injury has been caused by the offence, and that substantial compensation is recoverable by civil suit in respect to the injury.—See s. 9 (*5*) of that Regulation

**549.*** (*1*) The Governor-General in Council may make rules, consistent with this Code and the Army Act† or any similar law for the time being in force, as to the cases in which persons subject to military law shall be tried by a Court to which this Code applies, or by Court-martial; and, when any person is brought before a Magistrate, and charged with an offence for which he is liable, under the Army Act,† section 41, to be tried by a Court-martial, such Magistrate shall have regard to such rules, and shall, in proper cases, deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the regiment, corps, or detachment to which he belongs, or to the commanding officer of the nearest military station, for the purpose of being tried by Court-martial.

Delivery to military authorities of persons liable to be tried by Court-martial.

(*2*) Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any body of troops stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

Apprehension of such persons.

**550.** *Any police-officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. Such police-officer, if subordinate to the officer in charge of a police-station, shall forthwith report the seizure to that officer.*

*Powers to police to seize property suspected to be stolen.*

**551.** Police-officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

*Powers of superior officers of police*

**552.** Upon complaint made to a Presidency Magistrate or District Magistrate on oath of the abduction or unlawful detention of a woman or, of a female child under the age of fourteen years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty or of such female child to her husband, parent, guardian, or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

Power to compel restoration of abducted females.

**553.** (*1*) Whenever any person causes a police-officer to arrest another person in a presidency-town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding fifty rupees, to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit.

Compensation to persons groundlessly given in charge in presidency-town.

(*2*) In such cases, if more persons than one are arrested, the Magistrate may, in like manner, award to each of them such compensation, not exceeding fifty rupees, as such Magistrate thinks fit.

(*3*) All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is pay-

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* For rules made under this section for delivery to the military authorities of persons charged with offences under s. 41 of the Army Act (Stat. 44 & 45 Vict., c. 58) for which they are liable to be tried by Court-martial under that Act, see *Gazette of India*, 1887, Pt. I., p. 387. These rules were originally made under s. 549 of Act X. of 1882, and are kept in force by s. 2 (*2*) of this Act.

† Stat. 44 & 45 Vict., c. 58.

able shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

**554.** (*1*) With the previous sanction of the Governor-General in Council, the High Court at Fort William, and, with the previous sanction of the Local Government, any other High Court established by Royal Charter, may, from time to time, make rules for the inspection of the records of subordinate Courts.

Power of chartered High Courts to make rules for inspection of records of subordinate Courts.

(*2*) Every High Court not established by Royal Charter may, from time to time, and with the previous sanction of the Local Government,—

Power of other High Courts to make rules for other purposes.

(*a*) make rules for keeping all books, entries, and accounts to be kept in all Criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be prepared and submitted by such Courts:

(*b*) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided;

(*c*)* make rules for regulating its own practice and proceedings, and the practice and proceedings of all Criminal Courts subordinate to it; and

(*d*) make rules for regulating the execution of warrants issued under this Code for the levy of fines

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being.

(*3*) All rules made under this section shall be published in the local official Gazette.

**555.** Subject to the power conferred by section 553† and by section 15 *of the Indian High Courts Act, 1861*,‡ the forms set forth in the fifth schedule, with such variation as the circumstances of each case require, *may* be used for the respective purposes therein mentioned, *and, if used, shall be sufficient.*

Forms.

**556.** No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested; and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

Case in which Judge or Magistrate is personally interested.

*Explanation.*—A Judge or Magistrate shall not be deemed to be a party, or personally interested, within the meaning of this section, to or in any case *by reason only that* he is a Municipal Commissioner§ *or otherwise concerned therein in a public capacity, or by reason only that he has viewed the place in which an offence is alleged to have been committed, or any other place in which any other*

* In Upper Burma, and the Santhal Parganas rules under s. 554 (*2*) (*c*) may regulate (*a*) fees for processes and (*b*) the fees to be paid for copies and inspection of records.—See the Upper Burma Criminal Justice Regulation (V. of 1892), Sch., s. XVI

† *Sic*, read "554."

‡ Stat. 24 & 25 Vict., c. 104.

§ Or a member of District Board in the Punjab.—See s 58 of the Punjab District Boards Act (XX. of 1883).

Or a member of a Municipal Committee in the Punjab, see s. 188 of the Punjab Municipal Act (XX. of 1891); in Burma, see the Burma Municipal Act (III. of 1898); and in the Central Provinces, see the Central Provinces Municipal Act (XVIII. of 1899) s. 144

*transaction material to the case is alleged to have occurred, and made an inquiry in connection with the case.*

*Illustration.*

*A, as Collector, upon consideration of information furnished to him, directs the prosecution of B for a breach of the Excise Laws. A is disqualified from trying this case as a Magistrate.*

*Practising pleader not to sit as Magistrate in certain Courts.*

**557.** *No pleader who practises in the Court of any Magistrate in a presidency-town or district shall sit as a Magistrate in such Court or in any Court within the jurisdiction of such Court.*

Power to decide language of Courts.

**558.** The Local Government may determine what, for the purposes of this Code, shall be deemed to be the language of each Court within the territories administered by such Government other than the High Courts established by Royal Charter.

Powers of Governor-General in Council and Local Government exerciseable from time to time.

**559.** All powers conferred by this Code on the Governor-General in Council or on the Local Government, may be exercised from time to time as occasion requires.

Officers concerned in sales not to purchase or bid for property.

**560.** A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property.

Special provisions with respect to offence of rape by a husband.

**561.** (*a*) Notwithstanding anything in this Code, no Magistrate except a Chief Presidency Magistrate or District Magistrate shall—

(*a*) take cognizance of the offence of rape where the sexual intercourse was by a man with his wife, or

(*b*) commit the man for trial for the offence.

(*b*) And, notwithstanding anything in this Code, if a Chief Presidency Magistrate or District Magistrate deems it necessary to direct an investigation by a police-officer with respect to such an offence as is referred to in sub-section (*a*), no police-officer of a rank below that of police-inspector shall be employed either to make, or to take part in, the investigation.

*First Offenders.*

*Power to Court to release upon probation of good conduct instead of sentencing to punishment.*

**562.** *In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating, or any other offence under the Indian Penal Code,* punishable with not more than two years' imprisonment before any Court, and no previous conviction is proved against him, if it appears to the Court before whom he is so convicted that, regard being had to the youth, character, and antecedents of the offender, to the trivial nature of the offence, and to any extenuating circumstances under which the offence was committed, it is expedient that the offender be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, and during such period (not exceeding one year) as the Court may direct, to appear and receive sentence when called upon, and in the meantime to keep the peace and be of good behaviour:*

* Act XLV. of 1860.

*Provided that, where any first offender is convicted by a Magistrate of the third class, or a Magistrate of the second class not specially empowered by the Local Government in this behalf, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class or Sub-divisional Magistrate, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in manner provided by section 380.*

*Provision in case of offender failing to observe conditions of his recognisances.*

**563.** (1) *If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognisance, it may issue a warrant for his apprehension.*

(2) *An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard, or admit him to bail with a sufficient surety conditioned on his appearing for sentence. Such Court may, after hearing the case, pass sentence.*

*Conditions as to abode of offender.*

**564.** (1) *The Court, before directing the release of an offender under section 562, shall be satisfied that the offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts, or in which the offender is likely to live during the period named for the observance of the conditions.*

(2) *Nothing in this section or in sections 562 and 563 shall affect the provisions of section 31 of the Reformatory Schools Act, 1897.**

*Previously-convicted Offenders.*

*Order for notifying address of previously-convicted offender.*

**565.** (1) *When any person, having been convicted of any offence punishable under Chapter XII. or Chapter XVII. of the Indian Penal Code† with imprisonment for a term of three years or upwards, is again convicted of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards by a High Court, Court of Session, Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or any Magistrate of the first class, specially empowered by the Local Government in this behalf, such Court or Magistrate may, if it or he thinks fit, at the time of passing sentence of transportation or imprisonment on such person, also order that his residence and any change of residence after release be notified, as hereinafter provided, for a term not exceeding five years from the date of the expiration of such sentence.*

(2) *If such conviction is set aside on appeal or otherwise, such order shall become void.*

(3) *The Local Government, with the previous sanction of the Governor-General in Council, may make rules to carry out the provisions of this section relating to the notification of residence by released convicts.*

(4) *Any person refusing or neglecting to comply with any rule so made, shall be punishable as if he had committed an offence under section 176 of the Indian Penal Code.†*

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* Act VIII. of 1897. † Act XLV. of 1860.

## SCHEDULE I.

### ENACTMENTS REPEALED.

(*See section 2.*)

| Year. | No. | Short title or subject. | Extent of repeal. |
|---|---|---|---|
| 1875 ... | X. | *High Courts' Criminal Procedure* ... | *The whole.* |
| 1882 ... | X. | *The Code of Criminal Procedure, 1882.* | *The whole.* |
| 1884 ... | III. | *The Criminal Procedure Code Amendment Act, 1884.* | *The whole.* |
| 1886 ... | X. | *Amending the Code of Criminal Procedure, 1882, and certain other Acts.* | *Sections 1 to 19 (both inclusive).* |
| 1887 ... | V. | *Amending the Code of Criminal Procedure, 1882.* | *The whole.* |
| ,, ... | XIV. | *The Indian Marine Act, 1887* ... | *Section 78.* |
| 1889 ... | I | *The Metal Tokens Act, 1889* ... | *Section 7.* |
| ,, ... | V. | *Abolishing the Office of Coroner at Madras.* | *Section 4, sub-section (1).** |
| ,, ... | XI. | *The Lower Burma Courts Act 1889* | *So much of the second schedule as relates to the Code of Criminal Procedure, 1882.* |
| ,, ... | XIII. | *The Cantonments Act, 1889* | *So much of the schedule as relates to the Code of Criminal Procedure, 1882.* |
| 1891 ... | III. | *Amending the Indian Evidence Act, 1872, and the Code of Criminal Procedure, 1882.* | *Section 9.* |
| ,, ... | IV. | *Amending the Code of Criminal Procedure, 1882.* | *The whole.* |
| ,, ... | X. | *Amending the Indian Penal Code and the Code of Criminal Procedure, 1882.* | *Sections 2 and 3.* |
| ,, ... | XII. | *The Repealing and Amending Act, 1891.* | *So much as relates to the Code of Criminal Procedure, 1882.* |
| 1894 ... | III. | *Amending the Code of Criminal Procedure, 1882, and the Indian Penal Code.* | *Sections 1 to 4 (both inclusive).* |
| ,, ... | X. | *Amending the Code of Criminal Procedure, 1882.* | *The whole.* |

* See also the Repealing and Amending Act, (XII. of 1891).

† The whole Act has since been repealed by the Lower Burma Courts Act, (VI. of 1900).

## SCHEDULE I.—(*concluded*).

ENACTMENTS REPEALED—*(concluded)*.

| Year | No. | Short title or subject. | Extent of repeal. |
|---|---|---|---|
| *1895* ... | *IV.* | *Amending sections 366 and 371 of the Code of Criminal Procedure, 1882.* | *The whole.* |
| *1896* ... | *XIII.* | *Amending the Code of Criminal Procedure, 1882.* | *The whole.* |

# SCHEDULE II.

## TABULAR STATEMENT OF OFFENCES.

*Explanatory Note.*—The entries in the second and seventh columns of this schedule, headed respectively "Offence" and "Punishment under the Indian Penal Code," are not intended as definitions of the offences and punishments described in the several corresponding sections of the Indian Penal Code, *or even as abstracts of those sections*, but merely as references to the subject of the section, the number of which is given in the first column.

The third column of this schedule applies also to the police in the towns of Calcutta and Bombay.

### CHAPTER V.—ABETMENT.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 109 | Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment. | May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise. | According as a warrant or summons may issue for the offence abetted. | According as the offence abetted is bailable or not. | According as the offence abetted is compoundable or not. | The same punishment as for the offence abetted. | The Court by which the offence abetted is triable. |
| 110 | Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... | Ditto. |

CHAPTER V.—ABETMENT—(*continued*).

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 111 | Abetment of any offence, when one act is abetted, and a different act is done: subject to the proviso. | May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise. | According as a warrant or summons may issue for the offence abetted. | According as the offence abetted is bailable or not. | According as the offence abetted is compoundable or not. | The same punishment as for the offence intended to be abetted. | The Court by which the offence abetted is triable. |
| 113 | Abetment of any offence, when an effect is caused by the act abetted different from that intended by the abettor. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | The same punishment as for the offence committed. | Ditto. |
| 114 | Abetment of any offence, if abettor is present when offence is committed. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto. |
| 115 | Abetment of an offence, punishable with death or transportation for life, if the offence be not committed in consequence of the abetment. | Ditto ... | Ditto ... | Not bailable. | Ditto ... | Imprisonment of either description for 7 years and fine. | Ditto. |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | If an act which causes harm be done in consequence of the abetment. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 14 years and fine. | Ditto. |
| 116 | Abetment of an offence, punishable with imprisonment, if the offence be not committed in consequence of the abetment. | Ditto | ... | Ditto | ... | According as the offence abetted is bailable or not. | | Ditto | ... | Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both. | Ditto. |
| | If the abettor or the person abetted be a public servant whose duty it is to prevent the offence. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both. | Ditto. |
| 117 | Abetting the commission of an offence by the public, or by more than ten persons. | Ditto | .. | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 3 years, or fine, or both. | Ditto. |
| 118 | Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed. | Ditto | ... | Ditto | ... | Not bailable. | | Ditto | ... | Imprisonment of either description for 7 years and fine. | Ditto. |
| | If the offence be not committed. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 3 years and fine. | Ditto. |
| 119 | A public servant concealing a design to commit an offence which it is his duty to prevent, if the offence be committed. | Ditto | ... | Ditto | ... | According as the offence abetted is bailable or not. | | Ditto | ... | Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both. | Ditto. |

CHAPTER V.—ABETMENT—(*concluded.*)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 119-*ctd.* | If the offence be punishable with death or transportation for life. | May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise. | According as a warrant or summons may issue for the offence abetted. | Not bailable. | According as the offence abetted is compoundable or not | Imprisonment of either description for 10 years. | The Court by which the offence abetted is triable. |
| | If the offence be not committed ... | Ditto ... | Ditto ... | According as the offence abetted is bailable or not. | Ditto ... | Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both. | Ditto. |
| 120 | Concealing a design to commit an offence punishable with imprisonment, if the offence be committed. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... | Ditto. |
| | If the offence be not committed. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment extending to one-eighth part of the longest term, and of the description provided for the offence, or fine, or both. | Ditto. |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 121 | Waging or attempting to wage war, or abetting the waging of war, against the Queen ... ... ... | Shall not arrest without warrant. | Warrant ... | Not bailable. | Not compoundable. | Death or transportation for life, and forfeiture of property. | Court of Session. |
| 121A | Conspiring to commit certain offences against the State. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Transportation for life or any shorter term, or imprisonment of either description for 10 years. | Ditto. |
| 122 | Collecting arms, &c., with the intention of waging war against the Queen. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Transportation for life, or imprisonment of either description for 10 years, and forfeiture of property. | Ditto |
| 123 | Concealing, with intent to facilitate a design to wage war. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 10 years and fine. | Ditto. |
| 124 | Assaulting Governor-General Governor, &c., with intent to compel or restrain the exercise of any lawful power. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 7 years and fine. | Ditto. |
| 124A | Sedition ... ... ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Transportation for life, or for any term and fine, or imprisonment of either description for 3 years and fine, or fine. | Court of Session, *Chief Presidency Magistrate, or District Magistrate, or Magistrate of the first class specially empowered by the Local Government in that behalf.* |

## CHAPTER VI.—OFFENCES AGAINST THE STATE—(*continued.*)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 125 | Waging war against any Asiatic Power in alliance or at peace with the Queen, or abetting the waging of such war. | Shall not arrest without warrant. | Warrant ... | Not bailable. | Not compoundable. | Transportation for life and fine, or imprisonment of either description for 7 years and fine, or fine. | Court of Session. |
| 126 | Committing depredation on the territories of any Power in alliance or at peace with the Queen. | Ditto ... | Ditto ... | Ditto .. | Ditto ... | Imprisonment of either description for 7 years and fine, and forfeiture of certain property. | Ditto. |
| 127 | Receiving property taken by war or depredation mentioned in sections 125 and 126. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... | Ditto. |
| 128 | Public servant voluntarily allowing prisoner of State or war in his custody to escape. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Transportation for life, or imprisonment of either description for 10 years, and fine. | Ditto. |
| 129 | Public servant negligently suffering prisoner of State or war in his custody to escape. | Ditto ... | Ditto ... | Bailable ... | Ditto ... | Simple imprisonment for 3 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 130 | Aiding escape of, rescuing, or harbouring such prisoner, or offering any resistance to the re-capture of such prisoner. | Ditto ... | Ditto ... | Not bailable. | Ditto ... | Transportation for life, or imprisonment of either description for 10 years, and fine. | Court of Session. |

## CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 131 | Abetting mutiny, or attempting to seduce an officer, soldier, or sailor from his allegiance or duty. | May arrest without warrant. | Warrant ... | Not bailable. | Not compoundable. | Transportation for life, or imprisonment of either description for 10 years, and fine. | Court of Session. |
| 132 | Abetment of mutiny if mutiny is committed in consequence thereof. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Death, or transportation for life, or imprisonment of either description for 10 years and fine. | Ditto. |
| 133 | Abetment of an assault by an officer, soldier, or sailor on his superior officer when in the execution of his office. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 134 | Abetment of such assault, if the assault is committed. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 7 years and fine. | Court of Session. |
| 135 | Abetment of the desertion of an officer, soldier, or sailor. | Ditto ... | Ditto ... | Bailable ... | Ditto ... | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate, or Magistrate of the first or second class. |
| 136 | Harbouring such an officer, soldier, or sailor who has deserted. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... | Ditto. |
| 137 | Deserter concealed on board merchant-vessel through negligence of master or person in charge thereof. | Shall not arrest without warrant. | Summons... | Ditto ... | Ditto ... | Fine of 500 rupees ... | Ditto. |

## CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY—(*concluded.*)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance | Whether bailable or not | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 138 | Abetment of act of insubordination by an officer, soldier, or sailor, if the offence be committed in consequence. | May arrest without warrant. | Warrant ... | Not bailable | Not compoundable. | Imprisonment of either description for 6 months, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 140 | Wearing the dress, or carrying any token used by a soldier, with intent that it may be believed that he is such a soldier. | Ditto ... | Summons... | Ditto ... | Ditto ... | Imprisonment of either description for 3 months, or fine of 500 rupees, or both. | Any Magistrate. |

## CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 143 | Being member of an unlawful assembly | May arrest without warrant. | Summons... | Bailable ... | Non compoundable. | Imprisonment of either description for 6 months, or fine, or both. | Any Magistrate. |
| 144 | Joining an unlawful assembly armed with any deadly weapon. | Ditto ... | Warrant ... | Ditto ... | Ditto ... | Imprisonment of either description for 2 years, or fine, or both. | Ditto. |
| 145 | Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... | Ditto. |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 147 | Rioting ... ... ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... | Ditto. |
| 148 | Rioting, armed with a deadly weapon. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 149 | If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence. | According as arrest may be made without warrant for the offence or not. | According as a warrant or summons may issue for the offence | According as the offence is bailable or not. | Ditto ... | The same as for the offence. | The Court by which the offence is triable. |
| 150 | Hiring, engaging, or employing persons to take part in an unlawful assembly. | May arrest without warrant. | According to the offence committed by the person hired, engaged, or employed. | Ditto ... | Ditto ... | The same as for a member of such assembly, and for any offence committed by any member of such assembly. | Ditto. |
| 151 | Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse. | Ditto ... | Summons. . | Bailable ... | Ditto .. | Imprisonment of either description for 6 months, or fine, or both. | Any Magistrate. |
| 152 | Assaulting or obstructing public servant when suppressing riot, &c. | Ditto ... | Warrant ... | Ditto ... | Ditto ... | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 153 | Wantonly giving provocation with intent to cause riot, if rioting be committed. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 1 year, or fine, or both. | Any Magistrate. |
| | If not committed ... ... ... | Ditto ... | Summons | Ditto ... | Ditto ... | Imprisonment of either description for 6 months, or fine, or both. | Ditto. |

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| *153A* | *Promoting enmity between classes.* | *Shall not arrest without warrant.* | *Warrant* ... | *Not bailable.* | *Not compoundable.* | *Imprisonment of either description for 3 years, or fine, or both.* | *Presidency Magistrate, or Magistrate of the first class.* |
| 154 | Owner or occupier of land not giving information of riot, &c. | Ditto | Summons | Bailable | Ditto | Fine of 1,000 rupees ... | Presidency Magistrate or Magistrate of the first or second class. |
| 155 | Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it. | Ditto ... | Ditto ... | Ditto .. | Ditto ... | Fine ... ... | Ditto. |
| 156 | Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... | Ditto. |
| 157 | Harbouring persons hired for an unlawful assembly. | May arrest without warrant. | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 6 months, or fine, or both. | Ditto. |
| 158 | Being hired to take part in an unlawful assembly or riot. | Ditto ... | Ditto .. | Ditto ... | Ditto ... | Ditto ... ... | Ditto. |
| | Or to go armed... ... ... | Ditto ... | Warrant ... | Ditto ... | Ditto ... | Imprisonment of either description for 2 years, or fine, or both. | Ditto. |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 160 | Committing affray ... .. | Shall not arrest without warrant | Summons... | Ditto ... | Ditto .. | Imprisonment of either description for 1 month, or fine of 100 rupees, or both. | Any Magistrate. |

CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 161 | Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act. | Shall not arrest without warrant. | Summons .. | Bailable | Not compoundable | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 162 | Taking a gratification in order by corrupt or illegal means to influence a public servant. | Ditto | Ditto | Ditto | Ditto | Ditto ... ... | Ditto. |
| 163 | Taking a gratification for the exercise of personal influence with a public servant. | Ditto | Ditto | Ditto | Ditto | Simple imprisonment for 1 year, or fine, or both | Presidency Magistrate or Magistrate of the first class. |
| 164 | Abetment by public servant of the offences defined in the last two preceding clauses with reference to himself. | Ditto .. | Ditto .. | Ditto .. | Ditto | Imprisonment of either description for 3 years, or fine or both | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 165 | Public servant obtaining any valuable thing, without consideration, from a person concerned, in any proceeding or business transacted by such public servant. | Ditto ... | Ditto .. | Ditto | Ditto .. | Simple imprisonment for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 166 | Public servant disobeying a direction of the law with intent to cause injury to any person. | Ditto .. | Ditto ... | Ditto ... | Ditto .. | Simple imprisonment for 1 year, or fine, or both. | Ditto. |

CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS—(*continued.*)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance | Whether bailable or not | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 167 | Public servant framing an incorrect document with intent to cause injury. | Shall not arrest without warrant. | Summons... | Bailable .. | Not compoundable. | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 168 | Public servant unlawfully engaging in trade. | Ditto .. | Ditto . | Ditto . | Ditto . | Simple imprisonment for 1 year, or fine or both. | Presidency Magistrate or Magistrate of the first class. |
| 169 | Public servant unlawfully buying or bidding for property. | Ditto . | Ditto .. | Ditto ... | Ditto . | Simple imprisonment for 2 years, or fine, or both, and confiscation of property, if purchased. | Ditto. |
| 170 | Personating a public servant ... | May arrest without warrant. | Warrant ... | Ditto | Ditto ... | Imprisonment of either description for 2 years, or fine, or both. | Any Magistrate. |
| 171 | Wearing garb or carrying token used by public servant with fraudulent intent. | Ditto .. | Summons... | Ditto ... | Ditto ... | Imprisonment of either description for 3 months, or fine of 200 rupees, or both. | Ditto. |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 172 | Absconding to avoid service of summons or other proceedings from a public servant. | Shall not arrest without warrant. | Summons... | Bailable .. | Not compoundable. | Simple imprisonment for 1 month, or fine of 500 rupees, or both. | Any Magistrate. |
| | If summons or notice require attendance in person, &c, in a Court of Justice. | Ditto ... | Ditto .. | Ditto .. | Ditto .. | Simple imprisonment for 6 months, or fine of 1,000 rupees, or both. | Ditto. |
| 173 | Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation. | Ditto . | Ditto ... | Ditto .. | Ditto ... | Simple imprisonment for 1 month, or fine of 500 rupees, or both | Presidency Magistrate or Magistrate of the first or second class. |
| | If summons, &c., require attendance in person, &c., in a Court of Justice. | Ditto . | Ditto | Ditto . | Ditto . | Simple imprisonment for 6 months, or fine of 1,000 rupees, or both. | Ditto |
| 174 | Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority. | Ditto . | Ditto ... | Ditto ... | Ditto .. | Simple imprisonment for 1 month, or fine of 500 rupees, or both. | Any Magistrate. |
| | If the order require personal attendance. &c . in a Court of Justice. | Ditto ... | Ditto . | Ditto ... | Ditto ... | Simple imprisonment for 6 months, or fine of 1,000 rupees, or both. | Ditto. |
| 175 | Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document | Ditto . | Ditto ... | Ditto ... | Ditto .. | Simple imprisonment for 1 month, or fine of 500 rupees, or both. | The Court in which the offence is committed, subject to the provisions of Chapter XXXV.; or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class. |

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—(*continued.*)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not | Whether a warrant or a summons shall ordinarily issue in the first instance | Whether bailable or not. | Whether compoundable or not | Punishment under the Indian Penal Code. | By what Court triable. |
| 175—*cfd* | If the document is required to be produced in or delivered to a Court of Justice. | Shall not arrest without warrant | Summons | Bailable | Not compoundable. | Simple imprisonment for 6 months or fine of 1 000 rupees, or both. | The Court in which the offence is committed, subject to the provisions of Chapter XXXV., or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class. |
| 176 | Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information | Ditto | Ditto | Ditto | Ditto | Simple imprisonment for 1 month, or fine of 500 rupees, or both | Presidency Magistrate or Magistrate of the first or second class. |
| | If the notice or information required respects the commission of an offence &c. | Ditto | Ditto | Ditto | Ditto | Simple imprisonment for 6 months, or fine of 1 000 rupees, or both. | Ditto. |
| 177 | Knowingly furnishing false information to a public servant | Ditto | Ditto | Ditto | Ditto | Ditto | Ditto. |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | If the information required respects the commission of an offence &c. | Ditto | ... | Di to | .. | Ditto | .. | Ditto | .. | Imprisonment of either description for 2 years, or fine, or both. | Ditto. |
| 178 | *Refusing oath when duly required to take oath by a public servant* | Ditto | . | Ditto | | Ditto | | Ditto | ... | Simple imprisonment for 6 months, or fine of 1,000 rupees or both. | The Court in which the offence is committed, subject to the provisions of Chapter XXXV.; or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class. |
| 179 | Being legally bound to state truth and refusing to answer questions | Ditto | ... | Ditto | . | Ditto | .. | Ditto | | Ditto ... .. .. | Ditto. |
| 180 | Refusing to sign a statement made to a public servant when legally required to do so. | Ditto | .. | Ditto | ... | Ditto | . | Ditto | ... | Simple imprisonment for 3 months, or fine of 500 rupees, or both. | Ditto. |
| 181 | *Knowingly stating to a public servant* on oath as true that which is false. | *Ditto* | .. | Warrant | ... | Ditto | . | Ditto | | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 182 | Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person | Ditto | ... | Summons... | | Ditto | ... | Ditto | .. | Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both. | Presidency Magistrate or Magistrate of the first or second class. |

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—(*concluded.*)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 183 | Resistance to the taking of property by the lawful authority of a public servant. | Shall not arrest without warrant. | Summons... | Bailable ... | Not compoundable. | Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both. | Presidency Magistrate or Magistrate of the first or second class |
| 184 | Obstructing sale of property offered for sale by authority of a public servant. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 1 month, or fine of 500 rupees, or both. | Ditto. |
| 185 | Bidding, by a person under a legal incapacity to purchase it, for property at a lawfully authorized sale, or bidding without intending to perform the obligations incurred thereby. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 1 month, or fine of 200 rupees, or both. | Ditto. |
| 186 | Obstructing public servant in discharge of his public functions. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 3 months, or fine of 500 rupees, or both. | Ditto. |
| 187 | Omission to assist public servant when bound by law to give such assistance. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Simple imprisonment for 1 month. or fine of 200 rupees, or both. | Ditto. |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, &c. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Simple Imprisonment for 6 months, or fine of 500 rupees, or both. | Ditto. |
| 188 | Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction, annoyance, or injury to persons lawfully employed. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Simple imprisonment for 1 month, or fine of 200 rupees, or both. | Ditto. |
| | If such disobedience causes danger to human life, health, or safety, &c. | Ditto ... | Ditto ... | Ditto ... | Ditto .. | Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both. | Ditto. |
| 189 | Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act. | Ditto ... | Ditto .. | Ditto ... | Ditto ... | Imprisonment of either description for 2 years, or fine, or both. | Ditto. |
| 190 | Threatening any person to induce him to refrain from making a legal application for protection from injury. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 1 year, or fine, or both. | Ditto. |

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 193 | Giving or fabricating false evidence in a judicial proceeding. | Shall not arrest without warrant. | Warrant ... | Bailable ... | Not compoundable. | Imprisonment of either description for 7 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| | *Giving or fabricating* false evidence in any other case. | Shall not arrest without warrant | Warrant ... | Bailable .. | Not compoundable. | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 194 | Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence. | Ditto ... | Ditto .. | Not bailable. | Ditto ... | Transportation for life, or rigorous imprisonment for 10 years and fine. | Court of Session. |
| | If innocent person be thereby convicted and executed. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Death or as above ... | Ditto. |
| 195 | Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation for life or with imprisonment for seven years or upwards. | Ditto . | Ditto ... | Bailable ... | Ditto ... | The same as for the offence. | Ditto. |
| 196 | Using in a judicial proceeding evidence known to be false or fabricated. | Ditto ... | Ditto ... | According as the offence of giving such evidence is bailable or not. | Ditto ... | The same as for giving or fabricating false evidence. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 197 | Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence. | Ditto ... | Ditto ... | Bailable ... | Ditto ... | The same as for giving false evidence. | Ditto. |
| 198 | Using as a true certificate one known to be false in a material point. | Ditto .. | Ditto .. | Ditto ... | Ditto ... | Ditto ... ... | Ditto. |
| 199 | False statement made in any declaration which is by law receivable as evidence. | Ditto | Ditto .. | Ditto ... | Ditto ... | Ditto ... ... | Ditto. |
| | Using as true any such declaration known to be false. | Ditto .. | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... | Ditto. |
| 200 | Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offence. | Ditto ... | Ditto .. | Ditto ... | Ditto ... | Imprisonment of either description for 7 years and fine. | Court of Session. |
| 201 | If punishable with transportation for life or imprisonment for 10 years. | Ditto . | Ditto . | Ditto ... | Ditto ... | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| | If punishable with less than 10 years' imprisonment. | Ditto ... | Ditto .. | Ditto ... | Ditto ... | Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both. | Presidency Magistrate, or Magistrate of the first class, or Court by which the offence is triable. |
| 202 | Intentional omission to give information of an offence by a person legally bound to inform. | Ditto ... | Summons... | Ditto ... | Ditto ... | Imprisonment of either description for 6 months, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 203 | Giving false information respecting an offence committed. | Shall not arrest without warrant. | Warrant ... | Bailable ... | Not compoundable | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 204 | Secreting or destroying any document to prevent its production as evidence. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... | Presidency Magistrate or Magistrate of the first class. |
| 205 | False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security. | Ditto ... | Ditto ... | Ditto .. | Ditto ... | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 206 | Fraudulent removal or concealment, &c. of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 207 | Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto ... ... | Ditto. |
| 208 | Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied. | Ditto | ... | Ditto | .. | Ditto | ... | Ditto | ... | Ditto ... ... | Presidency Magistrate or Magistrate of the first class. |
| 209 | False claim in a Court of Justice. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 2 years and fine. | Ditto. |
| 210 | Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied. | Ditto | . | Ditto | .. | Ditto | ... | Ditto | ... | Imprisonment of either description for 2 years, or fine, or both. | Ditto. |
| 211 | False charge of offence made with intent to injure | Ditto | ... | Ditto | .. | Ditto | ... | Ditto | ... | Ditto ... ... | Ditto. |
| | If offences charged be punishable with imprisonment for seven years or upwards | Ditto | ... | Ditto | .. | Ditto | ... | Ditto | ... | Imprisonment of either description for 7 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| | If offence charged be capital, or punishable with transportation for life. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto ... ... | Court of Session. |
| 212 | Harbouring an offender, if the offence be capital. | May arrest without warrant. | | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 5 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(*continued.*)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 212—*cld.* | If punishable with transportation for life, or with imprisonment for 10 years. | May arrest without warrant | Warrant ... | Bailable | Not compoundable. | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| | If punishable with imprisonment for 1 year, and not for 10 years. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both. | Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable. |
| 213 | Taking gift, &c., to screen an offender from punishment, if the offence be capital. | Shall not arrest without warrant. | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 7 years and fine. | Court of Session. |
| | If punishable with transportation for life or with imprisonment for 10 years. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | If with imprisonment for less than 10 years. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both. | Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable. |
| 214 | Offering gift or restoration of property in consideration of screening offender, if the offence be capital | Ditto | ... | Ditto | ... | Ditto | .. | Ditto | . | Imprisonment of either description for 7 years and fine. | Court of Session. |
| | If punishable with transportation for life or with imprisonment for 10 years. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| | If with imprisonment for less than 10 years. | Ditto | ... | Ditto | ... | Ditto | .. | Ditto | ... | Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both. | Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable. |
| 215 | Taking gift to help to recover moveable property of which a person has been deprived by an offence, without causing apprehension of offender. | Ditto | ... | Ditto | .. | Ditto | .. | Ditto | ... | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first class. |
| 216 | Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital. | May arrest without warrant. | | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 7 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| | If punishable with transportation for life, or with imprisonment for 10 years. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 3 years, with or without fine. | Ditto. |

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—*(continued.)*

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 216—*cld.* | If with imprisonment for 1 year, and not for 10 years. | May arrest without warrant. | Warrant ... | Bailable ... | Not compoundable. | Imprisonment for a quarter of the longest term and of the description, provided for the offence, or fine, or both. | Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable. |
| 216A | Harbouring robbers or dacoits. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Rigorous imprisonment for 7 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 217 | Public servant disobeying a direction of law with intent to save person from punishment, or property from forfeiture. | Shall not arrest without warrant. | Summons ... | Ditto ... | Ditto ... | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 218 | Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture. | Ditto ... | Warrant ... | Ditto ... | Ditto ... | Imprisonment of either description for 3 years, or fine, or both. | Court of Session. |

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|---|---|---|---|---|---|---|---|---|---|---|---|
| 219 | Public servant in a judicial proceeding corruptly making and pronouncing an order, report, verdict, or decision which he knows to be contrary to law. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 7 years, or fine, or both. | Ditto. |
| 220 | Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto ... ... | Ditto. |
| 221 | Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 7 years, with or without fine. | Ditto. |
| | If punishable with transportation for life or imprisonment for 10 years. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 3 years, with or without fine. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| | If with imprisonment for less than 10 years. | Ditto | ... | Ditto | ... | Ditto | .. | Ditto | ... | Imprisonment of either description for 2 years, with or without fine. | Presidency Magistrate or Magistrate of the first or second class. |
| 222 | Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of Justice if under sentence of death. | Ditto | ... | Ditto | ... | Not bailable. | | Ditto | ... | Transportation for life, or imprisonment of either description for 14 years, with or without fine. | Court of Session. |
| | If under sentence of transportation or penal servitude for life, or transportation, imprisonment, or penal servitude for 10 years or upwards. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 7 years, with or without fine. | Ditto. |

## CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—*(continued.)*

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 222—*cld.* | If under sentence of imprisonment for less than 10 years or lawfully committed to custody. | Shall not arrest without warrant | Warrant .. | Bailable ... | Not compoundable. | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 223 | Escape from confinement negligently suffered by a public servant. | Ditto ... | Summons ... | Ditto ... | Ditto ... | Simple imprisonment for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 224 | Resistance or obstruction by a person to his lawful apprehension. | May arrest without warrant. | Warrant ... | Ditto ... | Ditto ... | Imprisonment of either description for 2 years, or fine, or both. | Ditto. |
| 225 | Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody. | Ditto | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... ... | Ditto. |
| | If charged with an offence punishable with transportation for life, or imprisonment for 10 years. | Ditto .. | Ditto ... | Not bailable. | Ditto ... | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |

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| | If charged with a capital offence ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 7 years and fine. | Court of Session. |
| | If the person is sentenced to transportation for life, or to transportation, penal servitude, or imprisonment for 10 years or upwards. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... ... | Ditto. |
| | If under sentence of death | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Transportation for life, or imprisonment of either description for 10 years and fine. | Ditto. |
| 225A | Omission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise provided for— | | | | | | |
| | (*a*) in case of intentional omission or sufferance; | Shall not arrest without warrant. | Ditto ... | Bailable ... | Ditto ... | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| | (*b*) in case of negligent omission or sufferance. | Ditto ... | Summons... | Ditto ... | Ditto ... | Simple imprisonment for 2 years, or fine, or both | Presidency Magistrate or Magistrate of the first or second class. |
| 225B | Resistance or obstruction to lawful apprehension, or escape, or rescue, in cases not otherwise provided for. | May arrest without warrant. | Warrant ... | Ditto ... | Ditto ... | Imprisonment of either description for 6 months, or fine, or both. | Ditto. |
| 226 | Unlawful return from transportation. | Ditto ... | Ditto ... | Not bailable. | Ditto ... | Transportation for life and fine, and rigorous imprisonment for 3 years before transportation. | Court of Session. |

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(*concluded*).

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 227 | Violation of condition of remission of punishment. | Shall not arrest without warrant. | Summons... | Not bailable. | Not compoundable. | Punishment of original sentence, or, if part of the punishment has been undergone, the residue. | The Court by which the original offence was triable. |
| 228 | Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding. | Ditto ... | Ditto ... | Bailable .. | Ditto .. | Simple imprisonment for 6 months, or fine of 1,000 rupees, or both. | The Court in which the offence is committed, subject to the provisions of Chapter XXXV. |
| 229 | Personation of a juror or assessor ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first class. |

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 231 | Counterfeiting, or performing any part of the process of counterfeiting, coin. | May arrest without warrant. | Warrant ... | Not bailable | Not compoundable. | Imprisonment of either description for 7 years and fine. | Court of Session. |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 232 | Counterfeiting, or performing any part of the process of counterfeiting, the Queen's coin. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Transportation for life, or imprisonment of either description for 10 years, and fine. | Ditto. |
| 233 | Making, buying, or selling instrument for the purpose of counterfeiting coin. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 234 | Making, buying, or selling instrument for the purpose of counterfeiting the Queen's coin. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 7 years and fine. | Court of Session. |
| 235 | Possession of instrument or material for the purpose of using the same for counterfeiting coin. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| | If Queen's coin ... ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 10 years and fine. | Court of Session. |
| 236 | Abetting in British India the counterfeiting out of British India of coin. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | The punishment provided for abetting the counterfeiting of such coin within British India. | Ditto. |
| 237 | Import or export of counterfeit coin, knowing the same to be counterfeit. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 238 | Import or export of counterfeits of the Queen's coin, knowing the same to be counterfeit. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Transportation for life or imprisonment of either description for 10 years, and fine. | Court of Session. |

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—(*continued*).

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 239 | Having any counterfeit coin known to be such when it came into possession, and delivering, &c., the same to any person | May arrest without warrant. | Warrant ... | Not bailable | Not compoundable. | *Imprisonment* of either description for 5 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 240 | The same with respect to the Queen's coin. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 10 years and fine. | Ditto. |
| 241 | Knowingly delivering to another any counterfeit coin as genuine which, when first possessed, the deliverer did not know to be counterfeit. | Ditto .. | Ditto ... | Ditto ... | Ditto .. | Imprisonment of either description for 2 years, or fine of ten times the value of the coin counterfeited, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 242 | Possession of counterfeit coin by a person who knew it to be counterfeit when he became *possessed thereof*. | Ditto .. | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 243 | Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 7 years and fine. | Ditto. |

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|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 244 | Person employed in a Mint causing coin to be of a different weight or composition from that fixed by law. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Court of Session. |
| 245 | Unlawfully taking from a Mint any coining instrument. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto. |
| 246 | Fraudulently diminishing the weight or altering the composition of any coin. | Ditto | .. | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 3 years and fine. | | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 247 | Fraudulently diminishing the weight or altering the composition of the Queen's coin. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 7 years and fine. | | Ditto. |
| 248 | Altering appearance of any coin with intent that it shall pass as a coin of a different description. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 3 years and fine. | | Ditto. |
| 249 | Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 7 years and fine. | | Ditto. |
| 250 | Delivery to another of coin possessed with the knowledge that it is altered. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 5 years and fine. | | Ditto. |
| 251 | Delivery of Queen's coin possessed with the knowledge that it is altered. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 10 years and fine. | | Ditto. |
| 252 | *Possession of altered coin by a person who knew it to be altered when he became possessed thereof.* | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 3 years and fine. | | Ditto. |

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—(*concluded*).

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 253 | Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof. | May arrest without warrant. | Warrant ... | Not bailable | Not compoundable. | Imprisonment of either description for 5 years, and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 254 | Delivery to another of coin as genuine which, when first possessed, the deliverer did not know to be altered. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 2 years, or fine of ten times the value of the coin. | Presidency Magistrate or Magistrate of the first or second class. |
| 255 | Counterfeiting a Government stamp... | Ditto ... | Ditto ... | Bailable ... | Ditto ... | Transportation for life or imprisonment of either description for 10 years, and fine. | Court of Session. |
| 256 | Having possession of an instrument or material for the purpose of counterfeiting a Government stamp. | Ditto .. | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 7 years and fine. | Ditto. |
| 257 | Making, buying, or selling instrument for the purpose of counterfeiting a Government stamp. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... | Ditto. |
| 258 | Sale of counterfeit Government stamp. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto .. ... | Ditto. |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 259 | Having possession of a counterfeit Government stamp. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 260 | Using as genuine a Government stamp known to be counterfeit. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 7 years, or fine, or both. | Ditto. |
| 261 | Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it with intent to cause loss to Government. | Ditto .. | Ditto . | Ditto .. | Ditto ... | Imprisonment of either description for 3 years, or fine, or both. | Ditto. |
| 262 | Using a Government stamp known to have been before used. | Ditto ... | Ditto ... | Ditto .. | Ditto ... | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 263 | Erasure of mark denoting that stamp has been used. | Ditto ... | Ditto .. | Ditto . | Ditto ... | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 263a | *Fictitious stamps ... ... ...* | *Ditto ...* | *Ditto ...* | *Ditto ...* | *Ditto ...* | *Fine of 200 rupees ...* | *Presidency Magistrate or Magistrate of the first class.* |

## CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 264 | Fraudulent use of false instrument for weighing. | Shall not arrest without warrant. | Summons | Bailable ... | Not compoundable. | Imprisonment of either description for 1 year, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |

CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES—(*continued*).

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 265 | Fraudulent use of false weight or measure. | Shall not arrest without warrant. | Summons | Bailable | Not compoundable. | Imprisonment of either description for 1 year, or *fine*, or *both*. | Presidency Magistrate or Magistrate of the first or second class. |
| 266 | *Being* in possession of false weights or measures for fraudulent use. | Ditto ... | Ditto | Ditto ... | Ditto ... | Ditto ... ... | Ditto. |
| 267 | Making or selling false weights or measures for *fraudulent use*. | Ditto | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... | Ditto. |

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 269 | Negligently doing any act known to be likely to spread infection of any disease dangerous to life. | May arrest without warrant. | Summons .. | Bailable ... | Not compoundable | Imprisonment of either description for 6 months, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 270 | Malignantly doing any act known to be likely to spread infection of any disease dangerous to life. | Ditto | Ditto . | Ditto .. | Ditto ... | Imprisonment of either description for 2 years, or fine, or both. | Ditto. |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 271 | Knowingly disobeying any quarantine rules. | Shall not arrest without warrant. | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 6 months, or fine, or both. | Ditto. |
| 272 | Adulterating food or drink intended for sale so as to make the same noxious. | Ditto | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both. | Ditto. |
| 273 | Selling any food or drink as food and drink knowing the same to be noxious | Ditto ... | Ditto | .. | Ditto | ... | Ditto | .. | Ditto ... ... | Ditto. |
| 274 | Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious. | Ditto | Ditto | .. | Ditto | ... | Ditto | ... | Ditto ... ... | Ditto. |
| 275 | Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated. | Ditto ... | Ditto | . | Ditto | .. | Ditto | ... | Ditto ... ... | Ditto |
| 276 | Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation. | Ditto ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto ... ... | Ditto. |
| 277 | Defiling the water of a public spring or reservoir. | May arrest without warrant. | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 3 months, or fine of 500 rupees, or both. | Any Magistrate. |
| 278 | Making atmosphere noxious to health | Shall not arrest without warrant. | Ditto | ... | Ditto | ... | Ditto | ... | Fine of 500 rupees | Ditto. |

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS—*(continued)*.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 279 | Driving or riding on a public way so rashly or negligently as to endanger human life, &c. | May arrest without warrant | Summons | Bailable | Not compoundable | Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both. | Any Magistrate. |
| 280 | Navigating any vessel so rashly or negligently as to endanger human life, &c. | Ditto | Ditto ... | Ditto .. | Ditto ... | Ditto ... ... | Presidency Magistrate or Magistrate of the first or second class. |
| 281 | Exhibition of a false light, mark or buoy. | Ditto | Warrant . | Ditto .. | Ditto ... | Imprisonment of either description for 7 years, or fine, or both. | Court of Session. |
| 282 | Conveying for hire any person by water in a vessel in such a state or so loaded, as to endanger his life | Ditto | Summons... | Ditto .. | Ditto .. | Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 283 | Causing danger obstruction, or injury in any public way or line of navigation. | Ditto | Ditto .. | Ditto .. | Ditto ... | Fine of 200 rupees ... | Ditto. |
| 284 | Dealing with any poisonous substance so as to endanger human life, &c | Shall not arrest without warrant. | Ditto .. | Ditto ... | Ditto ... | Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both. | Ditto. |

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|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 285 | Dealing with fire or any combustible matter so as to endanger human life, &c. | May arrest without warrant. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | ... | Any Magistrate. |
| 286 | So dealing with any explosive substance. | Ditto ... | Ditto | .. | Ditto | ... | Ditto | ... | Ditto | ... | ... | Ditto. |
| 287 | So dealing with any machinery. | Shall not arrest without warrant | Ditto | . | Ditto | .. | Ditto | ... | Ditto | ... | ... | Presidency Magistrate or Magistrate of the first or second class. |
| 288 | A person omitting to guard against probable danger to human life by the fall of any building over which he has a right entitling him to pull it down or repair it. | Ditto | Ditto | . | Ditto | | Ditto | ... | Ditto | ... | . | Ditto. |
| 289 | A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt, from such animal. | May arrest without warrant | Ditto | .. | Ditto | ... | Ditto | ... | Ditto | ... | ... | Any Magistrate. |
| 290 | Committing a public nuisance .. | Shall not arrest without warrant. | Ditto | .. | Ditto | .. | Ditto | ... | Fine of 200 rupees | | ... | Ditto. |
| 291 | Continuance of nuisance after injunction to discontinue. | May arrest without warrant | Ditto | ... | Ditto | ... | Ditto | . | Simple imprisonment for 6 months, or fine, or both. | | | Presidency Magistrate or Magistrate of the first or second class. |
| 292 | Sale, &c., of obscene books, &c. | Ditto ... | Warrant | .. | Ditto | ... | Ditto | ... | Imprisonment of either description for 3 months, or fine, or both. | | | Ditto. |

## CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS—(*concluded*).

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 293 | Having in possession obscene books, &c., for sale or exhibition. | May arrest without warrant | Warrant ... | Bailable ... | Not compoundable. | Imprisonment of either description for 3 months, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 294 | Obscene songs .. .. ... | Ditto ... | Ditto .. | Ditto .. | Ditto ... | Ditto .. ... | Ditto. |
| 294A | Keeping a lottery office .. ... | Shall not arrest without warrant | Summons | Ditto ... | Ditto ... | Imprisonment of either description for 6 months, or fine, or both. | Any Magistrate. |
| | Publishing proposals relating to lotteries. | Ditto ... | Ditto ... | Ditto .. | Ditto ... | Fine of 1,000 rupees ... | Ditto. |

## CHAPTER XV.—OFFENCES RELATING TO RELIGION.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 295 | Destroying, damaging, or defiling a place of worship or sacred object with intent to insult the religion of any class of persons. | May arrest without warrant. | Summons .. | Bailable ... | Not compoundable. | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| 296 | Causing a disturbance to an assembly engaged in religious worship. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 1 year, or fine, or both. | Ditto. |
| 297 | Trespassing in place of worship or sepulture, disturbing funeral, with intention to wound the feelings, or to insult the religion, of any person, or offering indignity to a human corpse | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto ... ... | Ditto. |
| 298 | Uttering any word or making any sound in the hearing, or making any gesture, or placing any object in the sight, of any person, with intention to wound his religious feeling. | Shall not arrest without warrant. | | Ditto | ... | Ditto | ... | Compoundable. | | Ditto ... ... | Ditto. |

## CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.

*Of Offences affecting Life.*

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| 302 | Murder ... ... ... | May arrest without warrant. | | Warrant | | Not bailable. | | Not compoundable | | Death or transportation for life, and fine. | Court of Session. |
| 303 | Murder by a person under sentence of transportation for life. | Ditto | ... | Ditto | .. | Ditto | .. | Ditto | .. | Death ... ... | Ditto. |
| 304 | Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, &c. | Ditto | ... | Ditto | .. | Ditto | ... | Ditto | . | Transportation for life or imprisonment of either description for 10 years, and fine. | Ditto. |
| | If act is done with knowledge that it is likely to cause death, but without any intention to cause death, &c. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 10 years, or fine, or both. | Ditto. |

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*continued*).

*Of Offences affecting Life*—(concluded).

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance | Whether bailable or not | Whether compoundable or not. | Punishment under the Indian Penal Code | By what Court triable. |
| 304A | Causing death by rash or negligent act | May arrest without warrant. | Warrant | Bailable ... | Not compoundable. | Imprisonment of either description for 2 years, or fine, or both. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 305 | Abetment of suicide committed by a child or insane or delirious person, or an idiot, or a person intoxicated | Ditto ... | Ditto ... | Not bailable. | Ditto ... | Death or transportation for life, or imprisonment for 10 years, and fine. | Court of Session. |
| 306 | Abetting the commission of suicide .. | Ditto ... | Ditto ... | Ditto .. | Ditto ... | Imprisonment of either description for 10 years, and fine. | Ditto. |
| 307 | Attempt to murder ... .. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... | Ditto. |
| | If such act cause hurt to any person... | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Transportation for life or as above. | Ditto. |
| | Attempt by life-convict to murder, if hurt is caused. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Death or as above. | Ditto. |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 308 | Attempt to commit culpable homicide | Ditto | ... | Ditto | ... | Bailable | ... | Ditto | ... | Imprisonment of either description for 3 years, or fine, or both. | Ditto. |
| | If such act cause hurt to any person .. | Ditto | ... | Ditto | ... | Ditto | .. | Ditto | ... | Imprisonment of either description for 7 years, or fine, or both. | Ditto. |
| 309 | Attempt to commit suicide | Ditto | .. | Ditto | . | Ditto | ... | Ditto | ... | Simple imprisonment for 1 year, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 311 | Being a thug ... ... .. | Ditto | . | Ditto | ... | Not bailable | | Ditto | ... | Transportation for life and fine. | Court of Session. |

*Of the Causing of Miscarriage; of Injuries to Unborn Children, of the Exposure of Infants; and of the Concealment of Births.*

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 312 | Causing miscarriage . .. | Shall not arrest without warrant. | | Warrant | . | Bailable | . | Not compoundable | Imprisonment of either description for 3 years, or fine, or both | Court of Session. |
| | If the woman be quick with child .. | Ditto | ... | Ditto | | Ditto | ... | Ditto | Imprisonment of either description for 7 years and fine. | Ditto. |
| 313 | Causing miscarriage without woman's consent. | Ditto | .. | Ditto | ... | Not bailable. | | Ditto | Transportation for life, or imprisonment of either description for 10 years and fine | Ditto. |
| 314 | Death caused by an act done with intent to cause miscarriage. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... Imprisonment of either description for 10 years and fine. | Ditto. |
| | If act done without woman's consent | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... Transportation for life or as above. | Ditto. |

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*continued*).

*Of the Causing of Miscarriage, of Injuries to Unborn Children; of the Exposure of Infants; and of the Concealment of Births* (continued).

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not | Whether a warrant or a summons shall ordinarily issue in the first instance | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 315 | Act done with intent to prevent a child being born alive, or to cause it to die after its birth. | Shall not arrest without warrant. | Warrant .. | Not bailable. | Not compoundable | Imprisonment of either description for 10 years, or fine, or both. | Court of Session. |
| 316 | Causing death of a quick unborn child by an act amounting to culpable homicide. | Ditto .. | Ditto | Ditto | Ditto ... | Imprisonment of either description for 10 years and fine. | Ditto. |
| 317 | Exposure of a child under 12 years of age by parent or person having care of it with intention of wholly abandoning it. | May arrest without warrant | Ditto ... | Bailable ... | Ditto ... | Imprisonment of either description for 7 years, or fine, or both. | Ditto. |
| 318 | Concealment of birth by secret disposal of dead body. | Ditto . | Ditto . | Ditto .. | Ditto ... | Imprisonment of either description for 2 years, or fine, or both. | Court of Session, Presidency Magistrate, or Magistrate of the first or second class. |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 323 | Voluntarily causing hurt | Shall not arrest without warrant. | Summons | Bailable | Compoundable | Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both. | Any Magistrate. |
| 324 | Voluntarily causing hurt by dangerous weapons or means | May arrest without warrant | Ditto | Ditto | Compoundable when permission is given by the Court before which a prosecution is pending. | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate, or Magistrate of the first or second class. |
| 325 | Voluntarily causing grievous hurt | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 7 years, and fine. | Ditto. |
| 326 | Voluntarily causing grievous hurt by dangerous weapons or means | Ditto | Ditto | Not bailable | Not compoundable | Transportation for life, or imprisonment of either description for 10 years, and fine. | Court of Session. Presidency Magistrate, or Magistrate of the first class. |
| 327 | Voluntarily causing hurt to extort property or a valuable security, or to constrain to do anything which is illegal, or which may facilitate the commission of an offence. | Ditto | Warrant | Ditto | Ditto | Imprisonment of either description for 10 years and fine. | Court of Session. |
| 328 | Administering stupefying drug with intent to cause hurt, &c. | Ditto | Ditto | Ditto | Ditto | Ditto | Ditto. |

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*continued*).

*Of Hurt*—(concluded).

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 329 | Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do anything which is illegal, or which may facilitate the commission of an offence. | May arrest without warrant | Warrant .. | Not bailable | Not compoundable. | Transportation for life, or imprisonment of either description for 10 years and fine. | Court of Session. |
| 330 | Voluntarily causing hurt to extort confession or information, or to compel restoration of property &c | Ditto .. | Ditto . | Bailable ... | Ditto ... | Imprisonment of either description for 7 years and fine. | Ditto |
| 331 | Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, &c. | Ditto | Ditto ... | Not bailable. | Ditto | Imprisonment of either description for 10 years and fine | Ditto. |
| 332 | Voluntarily causing hurt to deter public servant from his duty. | Ditto . . . | Ditto | Bailable . | Ditto ... | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 333 | Voluntarily causing grievous hurt to deter public servant from his duty | Ditto | Ditto . | Not bailable. | Ditto . . | Imprisonment of either description for 10 years, and fine. | Court of Session. |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 334 | Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation. | Shall not arrest without warrant. | Summons... | Bailable ... | Compoundable. | Imprisonment of either description for 1 month or fine of 500 rupees, or both. | Any Magistrate. |
| 335 | Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation | May arrest without warrant. | Ditto ... | Ditto ... | Compoundable when permission is given by the Court before which a prosecution is pending. | Imprisonment of either description for 4 years, or fine of 2,000 rupees, or both. | Court of Session, Presidency Magistrate, or Magistrate of the first or second class. |
| 336 | Doing any act which endangers human life or the personal safety of others | Ditto ... | Ditto ... | Ditto ... | Not compoundable | Imprisonment of either description for 3 months, or fine of 250 rupees, or both. | Any Magistrate. |
| 337 | Causing hurt by an act which endangers human life, &c. | Ditto ... | Ditto ... | Ditto ... | Compoundable when permission is given by the Court before which a prosecution is pending. | Imprisonment of either description for 6 months, or fine of 500 rupees, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 338 | Causing grievous hurt by an act which endangers human life, &c. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 2 years or fine of 1,000 rupees, or both. | Ditto. |

## CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*continued*).

### *Of Wrongful Restraint and Wrongful Confinement.*

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 341 | Wrongfully restraining any person | May arrest without warrant | Summons ... | Bailable | Compoundable | Simple imprisonment for 1 month, or fine of 500 rupees, or both. | Any Magistrate. |
| 342 | Wrongfully confining any person ... | Ditto .. | Ditto ... | Ditto .. | Ditto .. | Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both | Presidency Magistrate or Magistrate of the first or second class. |
| 343 | Wrongfully confining for three or more days. | Ditto . | Ditto ... | Ditto .. | Not compoundable | Imprisonment of either description for 2 years or fine, or both | Ditto. |
| 344 | Wrongfully confining for ten or more days. | Ditto ... | Ditto .. | Ditto ... | Ditto ... | Imprisonment of either description for 3 years, and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first or second class. |
| 345 | Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation | Shall not arrest without warrant. | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 2 years in addition to imprisonment under any other section. | Ditto. |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 346 | Wrongful confinement in secret | May arrest without warrant. | Ditto ... | Ditto . | Ditto ... | Ditto ... ... | Ditto. |
| 347 | Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, &c. | Ditto . | Ditto ... | Ditto . | Ditto ... | Imprisonment of either description for 3 years and fine. | Ditto. |
| 348 | Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, &c. | Ditto | Ditto . | Ditto | Ditto . | Ditto ... | Court of Session, Presidency Magistrate, or Magistrate of the first class. |

*Of Criminal Force and Assault.*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 352 | Assault or use of criminal force otherwise than on grave provocation. | Shall not arrest without warrant | Summons .. | Bailable | Compoundable. | Imprisonment of either description for three months, or fine of 500 rupees, or both. | Any Magistrate |
| 353 | Assault or use of criminal force to deter a public servant from discharge of his duty. | May arrest without warrant. | Warrant | Ditto . | Not compoundable | Imprisonment of either description for 2 years, or fine or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 354 | Assault or use of criminal force to a woman with intent to outrage her modesty | Ditto ... | Ditto .. | Ditto .. | Ditto . | Ditto ... ... | Ditto. |
| 355 | Assault or criminal force with intent to dishonour a person otherwise than on grave and sudden provocation. | Shall not arrest without warrant. | Summons. | Ditto .. | Compoundable. | Ditto ... ... | Ditto. |

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—(*continued*).

*Of Criminal Force and Assault*—(concluded).

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 356 | Assault or criminal force in attempt to commit theft of property worn or carried by a person. | May arrest without warrant. | Warrant ... | Not bailable. | Not compoundable. | Imprisonment of either description for 2 years, or fine, or both. | Any Magistrate. |
| 357 | Assault or use of criminal force in attempt wrongfully to confine a person | Ditto ... | Ditto | Bailable ... | Ditto ... | Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both. | Ditto. |
| 358 | Assault or use of criminal force on grave and sudden provocation. | Shall not arrest without warrant. | Summons . | Ditto ... | Compoundable | Simple imprisonment for 1 month, or fine of 200 rupees, or both. | Ditto. |
| | *Of Kidnapping, Abduction, Slavery, and Forced Labour.* | | | | | | |
| 363 | Kidnapping .. ... .. | May arrest without warrant | Warrant ... | Not bailable. | Not compoundable. | Imprisonment of either description for 7 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 364 | Kidnapping or abducting in order to murder. | Ditto .. | Ditto ... | Ditto ... | Ditto ... | Transportation for life, or rigorous imprisonment for 10 years and fine. | Court of Session. |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 365 | Kidnapping or abducting with intent secretly and wrongfully to confine a person. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 7 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 366 | Kidnapping or abducting a woman to compel her marriage, or to cause her defilement, &c | Ditto .. | Ditto . | Ditto ... | Ditto ... | Imprisonment of either description for 10 years and fine | Court of Session. |
| 367 | Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c | Ditto .. | Ditto . . | Ditto ... | Ditto .. | Ditto ... ... | Ditto. |
| 368 | Concealing or keeping in confinement a kidnapped person. | Ditto | Ditto ... | Ditto ... | Ditto ... | Punishment for kidnapping or abduction. | Ditto. |
| 369 | Kidnapping or abducting a child with intent to take property from the person of such child. | Ditto . | Ditto ... | Ditto .. | Ditto ... | Imprisonment of either description for 7 years and fine | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 370 | Buying or disposing of any person as a slave. | Shall not arrest without warrant. | Ditto ... | Bailable .. | Ditto ... | Ditto ... | Court of Session. |
| 371 | Habitual dealing in slaves | May arrest without warrant. | Ditto ... | Not bailable. | Ditto ... | Transportation for life, or imprisonment of either description for 10 years and fine. | Ditto. |
| 372 | Selling or letting to hire a minor for purposes of prostitution, &c | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 10 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |

## CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*(concluded)*.

### *Of Kidnapping, Abduction, Slavery, and Forced Labour*—(concluded).

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 373 | Buying or obtaining possession of a minor for the same purposes. | May arrest without warrant. | Warrant ... | Not bailable | Not compoundable. | Imprisonment of either description for 10 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 374 | Unlawful compulsory labour ... | Ditto ... | Ditto ... | Bailable ... | Compoundable. | Imprisonment of either description for 1 year or fine, or both. | Any Magistrate. |

### *Of Rape.*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 376 | Rape—<br>If the sexual intercourse was by a man with his own wife. | Shall not arrest without warrant. | Summons ... | Bailable ... | Not compoundable. | Transportation for life, or imprisonment of either description for 10 years and fine. | Court of Session. |
| | In any other case ... ... | May arrest without warrant. | Warrant ... | Not bailable. | Ditto ... | Ditto ... ... | Ditto. |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 377 | Unnatural offences ... ... | May arrest without warrant. | Warrant ... | Not bailable | Not compoundable. | Transportation for life, or imprisonment of either description for 10 years and fine. | Court of Session, *Presidency Magistrate, or Magistrate of the first class.* |

## CHAPTER XVII.—OFFENCES AGAINST PROPERTY.

### *Of Theft.*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 379 | Theft ... ... ... | May arrest without warrant. | Warrant ... | Not bailable. | Not compoundable. | Imprisonment of either description for 3 years, or fine, or both. | Any Magistrate. |
| 380 | Theft in a building, tent, or vessel ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 7 years and fine. | Ditto. |
| 381 | Theft by clerk or servant of property in possession of master or employer. | Ditto ... | Ditto ... | Ditto ... | Ditto .. | Ditto ... ... ... | Court of Session, Presidency Magistrate, or Magistrate of the first or second class. |
| 382 | Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, in order to the committing of such theft, or to retiring after committing it, or to retaining property taken by it. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Rigorous imprisonment for 10 years and fine. | Court of Session, *Presidency Magistrate, or Magistrate of the first class.* |

## CHAPTER XVII.—OFFENCES AGAINST PROPERTY.

### *Of Extortion.*

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 384 | Extortion ... ... ... ... | Shall not arrest without warrant. | Warrant .. | Bailable ... | Not compoundable. | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate, or Magistrate of the first or second class. |
| 385 | Putting or attempting to put in fear of injury in order to commit extortion. | Ditto .. | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 2 years, or fine, or both. | Ditto. |
| 386 | Extortion by putting a person in fear of death or grievous hurt. | Ditto ... | Ditto ... | Not bailable | Ditto ... | Imprisonment of either description for 10 years and fine. | Court of Session. |
| 387 | Putting or attempting to put a person in fear of death or grievous hurt in order to commit extortion. | Ditto ... | Ditto .. | Ditto ... | Ditto ... | Imprisonment of either description for 7 years and fine. | Ditto. |
| 388 | Extortion by threat of accusation of an offence punishable with death, transportation for life, or imprisonment for 10 years. | Ditto ... | Ditto ... | *Bailable.* . . | Ditto ... | Imprisonment of either description for 10 years and fine. | Ditto. |
| | If the offence threatened be an unnatural offence. | Ditto ... | Ditto .. | *Ditto* ... | Ditto ... | Transportation for life ... | Ditto. |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 389 | Putting a person in fear of accusation of offence punishable with death, transportation for life, or with imprisonment for 10 years, in order to commit extortion. | Ditto ... | Ditto ... | *Ditto* ... | Ditto ... | Imprisonment of either description for 10 years and fine. | Ditto. |
| | If the offence be an unnatural offence. | Ditto ... | Ditto ... | *Ditto* ... | Ditto ... | Transportation for life ... | Ditto. |

*Of Robbery and Dacoity.*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 392 | Robbery ... ... ... | May arrest without warrant. | Warrant. | Not bailable | Not compoundable. | Rigorous imprisonment for 10 years and fine. | Court of Session, *Presidency* Magistrate, or Magistrate of the first class. |
| | If committed on the highway between sunset and sunrise. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Rigorous imprisonment for 14 years and fine. | Ditto. |
| 393 | Attempt to commit robbery ... | Ditto .. | Ditto ... | Ditto ... | Ditto ... | Rigorous imprisonment for 7 years and fine. | Ditto. |
| 394 | Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person jointly concerned in such robbery. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Transportation for life, or rigorous imprisonment for 10 years and fine. | Ditto. |
| 395 | Dacoity ... ... ... | Ditto ... | *Ditto* ... | Ditto ... | *Ditto* ... | Ditto ... ... | Court of Session. |
| 396 | Murder in dacoity ... ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Death, transportation for life, or rigorous imprisonment for 10 years and fine. | Ditto. |
| 397 | Robbery or dacoity with attempt to cause death or grievous hurt. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Rigorous imprisonment for not less than 7 years. | Ditto. |

## CHAPTER XVII.—OFFENCES AGAINST PROPERTY—(*continued*).

### *Of Robbery and Dacoity*—(concluded).

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 398 | Attempt to commit robbery or dacoity when armed with deadly weapon. | May arrest without warrant | Warrant ... | Not bailable. | Not compoundable. | Rigorous imprisonment for not less than 7 years. | Court of Session. |
| 399 | Making preparation to commit dacoity | Ditto | Ditto ... | Ditto .. | Ditto ... | Rigorous imprisonment for 10 years and fine. | Ditto. |
| 400 | Belonging to a gang of persons associated for the purpose of habitually committing dacoity. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Transportation for life, or rigorous imprisonment for 10 years and fine. | Ditto. |
| 401 | Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Rigorous imprisonment for 7 years and fine. | Court of Session, *Presidency Magistrate, or Magistrate of the fist class.* |
| 402 | Being one of five or more persons assembled for the purpose of committing dacoity. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... ... | Court of Session. |

### *Of Criminal Misappropriation of Property.*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 403 | Dishonest misappropriation of moveable property, or converting it to one's own use. | Shall not arrest without warrant. | Warrant ... | Bailable ... | Not compoundable. | Imprisonment of either description for 2 years or fine, or both. | Any Magistrate. |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 404 | Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first or second class. |
| | If by clerk or person employed by deceased. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 7 years and fine. | Ditto. |

*Of Criminal Breach of Trust.*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 406 | Criminal breach of trust ... | May arrest without warrant | Warrant ... | Not bailable | Not compoundable. | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate, or Magistrate of the first or second class. |
| 407 | Criminal breach of trust by a carrier, wharfinger, &c. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 7 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 408 | Criminal breach of trust by a clerk or servant. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... | Court of Session, Presidency Magistrate, or Magistrate of the first or second class. |
| 409 | Criminal breach of trust by public servant, or by banker, merchant, or agent, &c. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Transportation for life or imprisonment of either description for 10 years, and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |

## CHAPTER XVII.—OFFENCES AGAINST PROPERTY—(*continued*).

### *Of the Receiving of Stolen Property.*

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 411 | Dishonestly receiving stolen property, knowing it to be stolen. | May arrest without warrant. | Warrant ... | Not bailable. | Not compoundable. | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate, or Magistrate of the first or second class. |
| 412 | Dishonestly receiving stolen property, knowing that it was obtained by dacoity. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Transportation for life, or rigorous imprisonment for 10 years and fine. | Court of Session. |
| 413 | Habitually dealing in stolen property | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Transportation for life, or imprisonment of either description for 10 years and fine. | Ditto. |
| 414 | Assisting in concealment or disposal of stolen property, knowing it to be stolen. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate, or Magistrate of the first or second class. |

*Of Cheating.*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 417 | Cheating ... ... ... | Shall not arrest without warrant. | Warrant ... | Bailable ... | Not compoundable. | Imprisonment of either description for 1 year, or fine, or both. | Presidency Magistrate, or Magistrate of the first or second class. |
| 418 | Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate, or Magistrate of the first or second class. |
| 419 | Cheating by personation... ... | *May arrest without warrant.* | Ditto ... | Ditto ... | Ditto ... | Ditto .. ... | Ditto. |
| 420 | Cheating and thereby dishonestly inducing delivery of property, or the making, alteration, or destruction of a valuable security. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 7 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |

*Of Fraudulent Deeds and Disposition of Property.*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 421 | Fraudulent removal or concealment of property, &c., to prevent distribution among creditors. | Shall not arrest without warrant. | Warrant ... | Bailable ... | Not compoundable. | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate, or Magistrate of the first or second class. |
| 422 | Fraudulently preventing from being made available for his creditors a debt or demand due to the offender. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... | Ditto. |

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—(*continued*).

*Of Fraudulent Deeds and Disposition of Property*—(concluded).

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 423 | Fraudulent execution of deed of transfer containing a false statement of consideration. | Shall not arrest without warrant. | Warrant ... | Bailable ... | Not compoundable | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate, or Magistrate of the first or second class. |
| 424 | Fraudulent removal or concealment of property of himself or any other person, or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto. |
| | *Of Mischief.* | | | | | | |
| 426 | Mischief ... ... ... | Shall not arrest without warrant. | Summons... | Bailable ... | Compoundable when the only loss or damage caused is loss or damage to a private person. | Imprisonment of either description for 3 months, or fine, or both. | Any Magistrate. |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 427 | Mischief, and thereby causing damage to the amount of 50 rupees or upwards. | Ditto ... | Warrant ... | Ditto ... | Ditto ... | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 428 | Mischief by killing, poisoning, maiming, or rendering useless any animal of the value of 10 rupees or upwards. | May arrest without warrant. | Ditto ... | Ditto ... | Not compoundable. | Ditto ... ... | Ditto. |
| 429 | Mischief by killing, poisoning, maiming, or rendering useless any elephant, camel, horse, &c., whatever may be its value, or any other animal of the value of 50 rupees or upwards. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 5 years, or fine, or both. | Court of Session, Presidency Magistrate, or Magistrate of the first or second class. |
| 430 | Mischief by causing diminution of supply of water for agricultural purposes, &c. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... | Ditto. |
| 431 | Mischief by injury to public road, bridge, navigable river, or navigable channel, and rendering it impassable or less safe for travelling or conveying property. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... | Ditto. |
| 432 | Mischief by causing inundation or obstruction to public drainage, attended with damage. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... | Ditto. |
| 433 | Mischief by destroying or moving, or rendering less useful, a light-house or seamark, or by exhibiting false lights. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 7 years, or fine, or both. | Court of Session. |
| 434 | Mischief by destroying or moving, &c., a land-mark fixed by public authority. | Shall not arrest without warrant. | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 1 year, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |

## CHAPTER XVII.—OFFENCES AGAINST PROPERTY—(*continued*).

### *Of Mischief*—(concluded).

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 435 | Mischief by fire or explosive substance with intent to cause damage to amount of 100 rupees or upwards, or, in case of agricultural produce, 10 rupees or upwards. | May arrest without warrant. | Warrant ... | Bailable ... | Not compoundable. | Imprisonment of either description for 7 years and fine. | Court of Session, *Presidency Magistrate, or Magistrate of the first class.* |
| 436 | Mischief by fire or explosive substance with intent to destroy a house, &c. | Ditto ... | Ditto ... | Not bailable. | Ditto ... | Transportation for life, or imprisonment of either description for 10 years and fine. | Court of Session. |
| 437 | Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 10 years and fine. | Ditto |
| 438 | The mischief described in the last section when committed by fire or any explosive substance. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Transportation for life or imprisonment of either description for 10 years and fine. | Ditto. |
| 439 | Running vessel ashore with intent to commit theft, &c. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 10 years and fine. | Ditto. |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 440 | Mischief committed after preparation made for causing death, or hurt, &c. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 5 years and fine. | Court of Session, *Presidency Magistrate, or Magistrate of the first class.* |
| | | | *Of Criminal Trespass.* | | | | |
| 447 | Criminal trespass ... ... | May arrest without warrant. | Summons... | Bailable .. | Compoundable. | Imprisonment of either description for 3 months, or fine of 500 rupees, or both. | Any Magistrate. |
| 448 | House-trespass ... ... | Ditto ... | Warrant ... | Ditto ... | Ditto ... | Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both. | Ditto. |
| 449 | House-trespass in order to the commission of an offence punishable with death. | Ditto ... | Ditto ... | Not bailable | Not compoundable. | Transportation for life, or rigorous imprisonment for 10 years and fine. | Court of Session. |
| 450 | House-trespass in order to the commission of an offence punishable with transportation for life. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 10 years and fine. | Ditto. |
| 451 | House-trespass in order to the commission of an offence punishable with imprisonment. | Ditto ... | Ditto ... | Bailable ... | Ditto ... | Imprisonment of either description for 2 years and fine. | Any Magistrate. |
| | If the offence is theft ... ... | Ditto ... | Ditto ... | Not bailable | Ditto ... | Imprisonment of either description for 7 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first or second class. |

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—(*continued*).

*Of Criminal Trespass*—(continued).

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 452 | House-trespass, having made preparation for causing hurt, assault, &c. | May arrest without warrant. | Warrant ... | Not bailable | Not compoundable. | Imprisonment of either description for 7 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first or second class. |
| 453 | Lurking house-trespass or house-breaking. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 2 years and fine. | Presidency Magistrate, or Magistrate of the first or second class. |
| 454 | Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first or second class. |
| | If the offence is theft ... ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 10 years and fine. | Ditto. |

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 455 | Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, &c. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto ... ... ... | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 456 | Lurking house-trespass or house-breaking by night. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first or second class. |
| 457 | Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 5 years and fine. | Ditto. |
| | If the offence is theft ... ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Imprisonment of either description for 14 years and fine. | Ditto. |
| 458 | Lurking house-trespass or house-breaking by night, after preparation made for causing hurt, &c. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto ... ... | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 459 | Grievous hurt caused whilst committing lurking house-trespass or house-breaking. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Transportation for life or imprisonment of either description for 10 years and fine. | Court of Session. |
| 460 | Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, &c. | Ditto | ... | Ditto | ... | Ditto | ... | Ditto | ... | Ditto ... ... | Ditto. |

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—(*concluded*).

*Of Criminal Trespass*—(concluded).

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 461 | Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property. | May arrest without warrant. | Warrant ... | Bailable ... | Not compoundable. | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate, or Magistrate of the first or second class. |
| 462 | Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate, or Magistrate of the first or second class. |
| | CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS. | | | | | | |
| 465 | Forgery ... ... ... | Shall not arrest without warrant. | Warrant ... | Bailable ... | Not compoundable. | Imprisonment of either description for 2 years, or fine, or both. | Court of Session, *Presidency Magistrate, or Magistrate of the first class.* |
| 466 | Forgery of a record of a Court of Justice or of a Register of Births, &c., kept by a public servant. | Ditto ... | Ditto ... | Not bailable. | Ditto ... | Imprisonment of either description for 7 years and fine. | Court of Session. |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 467 | Forgery of a valuable security, will, or authority to make or transfer any valuable security, or to receive any money, &c. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Transportation for life or imprisonment of either description for 10 years and fine. | Ditto. |
| | When the valuable security is a promissory note of the Government of India. | May arrest without warrant. | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... | Ditto. |
| 468 | Forgery for the purpose of cheating. | Shall not arrest without warrant. | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 7 years and fine. | Court of Session, *Presidency Magistrate, or Magistrate of the first class.* |
| 469 | Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose. | Ditto ... | Ditto ... | Bailable ... | Ditto ... | Imprisonment of either description for 3 years and fine. | *Ditto.* |
| 471 | Using as genuine a forged document which is known to be forged. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Punishment for forgery *of such document.* | *Same Court as that by which the forgery is triable.* |
| | When the forged document is a promissory note of the Government of India. | May arrest without warrant. | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... | Court of Session. |
| 472 | Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeit. | Shall not arrest without warrant. | Ditto ... | Ditto ... | Ditto ... | Transportation for life or imprisonment of either description for 7 years and fine. | Ditto. |

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS—(*continued*).

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 473 | Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeit. | Shall not arrest without warrant. | Warrant ... | *Bailable* ... | Not compoundable. | Imprisonment of either description for 7 years and fine. | Court of Session. |
| 474 | Having possession of a document knowing it to be forged, with intent to use it as genuine; if the document is one of the description mentioned in section 466 of the Indian Penal Code. | Ditto ... | Ditto ... | *Ditto* ... | Ditto ... | Ditto ... ... | Ditto. |
| | If the document is one of the description mentioned in section 467 of the Indian Penal Code. | Ditto ... | Ditto ... | *Ditto* ... | Ditto ... | Transportation for life or imprisonment of either description for 7 years and fine. | Ditto. |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 475 | Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code, or possessing counterfeit-marked material. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... | Ditto. |
| 476 | Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit-marked material. | Ditto ... | Ditto ... | Not bailable. | Ditto ... | Imprisonment of either description for 7 years and fine. | Ditto. |
| 477 | Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, &c. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Transportation for life or imprisonment of either description for 7 years, and fine. | Ditto. |
| 477A | Falsification of accounts ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... | Ditto. |

*Of Trade and Property Marks.*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 482 | Using a false trade or property-mark with intent to deceive or injure any person. | Shall not arrest without warrant. | Warrant ... | Bailable ... | Not compoundable. | Imprisonment of either description for one year, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 483 | Counterfeiting a trade or property-mark used by another, with intent to cause damage or injury. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 2 years, or fine, or both. | Ditto. |
| 484 | Counterfeiting a property mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property. | Ditto ... | Summons... | Ditto ... | Ditto ... | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS—(*concluded*).

*Of Trade and Property Marks*—(concluded).

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 485 | Fraudulently making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade mark. | Shall not arrest without warrant. | Summons... | Bailable ... | Not compoundable | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 486 | Knowingly selling goods marked with a counterfeit property or trade mark. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 1 year, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 487 | Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods which it does not contain, &c. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate, or Magistrate of the first or second class. |
| 488 | Making use of any such false mark ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... | Ditto. |
| 489 | Removing, destroying, or defacing any property-mark with intent to cause injury. | Ditto .. | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 1 year, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 489A | * Counterfeiting currency-notes or bank-notes. | May arrest without warrant. | Warrant ... | Not bailable | Not compoundable. | Transportation for life, or imprisonment of either description for 10 years and fine. | Court of Session. |
| 489B | Using as genuine forged or counterfeit currency-notes or bank-notes. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... | Ditto. |
| 489C | Possession of forged or counterfeit currency-notes or bank-notes. | Ditto ... | Ditto ... | Bailable. | Ditto ... | Imprisonment of either description for 7 years, or fine, or both. | Ditto. |
| 489D | Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes. | Ditto ... | Ditto ... | Not bailable | Ditto ... | Transportation for life, or imprisonment of either description for 10 years and fine. | Ditto. |

## CHAPTER XIX.—CRIMINAL BREACH OF CONTRACTS OF SERVICE.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 490 | Being bound by contract to render personal service during a voyage or journey, or to convey or guard any property or person, and voluntarily omitting to do so. | Shall not arrest without warrant. | Summons ... | Bailable. ... | Compoundable. | Imprisonment of either description for 1 month, or fine of 100 rupees, or both. | Presidency Magistrate, or Magistrate of the first or second class. |
| 491 | Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind, or disease, and voluntarily omitting to do so. | Ditto ... | Ditto .. | Ditto ... | Ditto ... | Imprisonment of either description for 3 months or fine of 200 rupees, or both. | Ditto. |
| 492 | Being bound by contract to render personal service for a certain period at a distant place to which the employé is conveyed at the expense of the employer, and voluntarily deserting the service or refusing to perform the duty. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 1 month, or fine of double the expense incurred, or both. | Ditto. |

* Items 489A to 489D have been added by the Currency Notes Forgery Act (XII. of 1899), s. 3.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 493 | A man by deceit causing a woman not lawfully married to him, to believe that she is lawfully married to him and to cohabit with him in that belief. | Shall not arrest without warrant. | Warrant ... | Not bailable | Not compoundable. | Imprisonment of either description for 10 years and fine. | Court of Session. |
| 494 | Marrying again during the lifetime of a husband or wife. | Ditto ... | Ditto ... | Bailable. | Ditto ... | Imprisonment of either description for 7 years and fine. | Ditto. |
| 495 | Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted. | Ditto ... | Ditto ... | Not bailable. | Ditto ... | Imprisonment of either description for 10 years and fine. | Ditto. |
| 496 | A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 7 years and fine. | Ditto. |
| 497 | Adultery ... ... ... | Ditto ... | Ditto ... | Bailable ... | Compoundable. | Imprisonment of either description for 5 years, or fine, or both. | *Court of Session*, Presidency Magistrate, or Magistrate of the first class. |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 498 | Enticing, or taking away, or detaining with a criminal intent, a married woman. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| | **CHAPTER XXI.—DEFAMATION.** | | | | | | |
| 500 | Defamation ... ... ... | Shall not arrest without warrant. | Warrant ... | Bailable ... | Compoundable. | Simple imprisonment for 2 years, or fine, or both. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 501 | Printing or engraving matter knowing it to be defamatory. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... | Ditto. |
| 502 | Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Ditto ... ... | Ditto. |
| | **CHAPTER XXII.—CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.** | | | | | | |
| 504 | Insult intended to provoke a breach of the peace. | Shall not arrest without warrant. | Warrant ... | Bailable ... | Compoundable. | Imprisonment of either description for 2 years, or fine, or both. | Any Magistrate. |
| 505 | False statement, rumour, &c., circulated with intent to cause mutiny or offence against the public peace. | Ditto ... | Ditto ... | Not bailable. | Not compoundable. | Ditto ... ... | Presidency Magistrate or Magistrate of the first class. |
| 506 | Criminal intimidation ... ... | Ditto ... | Ditto ... | Bailable ... | Compoundable. | Ditto ... ... | Ditto. |

CHAPTER XXII.—CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE—(*continued*).

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| SECTION. | OFFENCE. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 506—*ctd.* | If threat be to cause death or grievous hurt, &c. | Shall not arrest without warrant. | Warrant ... | Bailable ... | Not compoundable. | Imprisonment of either description for 7 years, or fine, or both. | Court of Session, Presidency Magistrate, or Magistrate of the first class. |
| 507 | Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 2 years in addition to the punishment under above section. | Ditto. |
| 508 | Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Imprisonment of either description for 1 year, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 509 | Uttering any word or making any gesture intended to insult the modesty of a woman, &c. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Simple imprisonment for 1 year, or fine, or both. | Presidency Magistrate or Magistrate of the first class. |
| 510 | Appearing in a public place, &c., in a state of intoxication, and causing annoyance to any person. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | Simple imprisonment for 24 hours, or fine of 10 rupees, or both. | Any Magistrate. |

## CHAPTER XXIII.—ATTEMPTS TO COMMIT OFFENCES.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 511 | Attempting to commit offences punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence. | According as the offence is one in respect of which the police may arrest without warrant or not. | According as the offence is one in respect of which a summons or warrant shall ordinarily issue. | According as the offence contemplated by the offender is bailable or not. | Compoundable when the offence attempted is compoundable. | Transportation or imprisonment not exceeding half of the longest term, and of any description, provided for the offence, or fine, or both. | The Court by which the offence attempted is triable. |

### OFFENCES AGAINST OTHER LAWS.

| | | | | | | |
|---|---|---|---|---|---|---|
| If punishable with death, transportation, or imprisonment for 7 years or upwards. | May arrest without warrant. | Warrant ... | Not bailable. | Not compoundable. | ..... | *Court of Session.* |
| If punishable with imprisonment for 3 years and upwards, but less than seven. | Ditto ... | Ditto ... | Ditto ... Except in cases under the Indian Arms Act, 1878, section 19, which shall be bailable. | Ditto ... | ..... | *Court of Session, Presidency Magistrate, or Magistrate of the first class.* |
| If punishable with imprisonment for one year and upwards, but less than 3 years. | Shall not arrest without warrant. | Summons... | Bailable ... | Ditto ... | ..... | *Court of Session, Presidency Magistrate, or Magistrate of the first or second class.* |
| If punishable with *imprisonment for less than one year*, or with fine only. | Ditto ... | Ditto ... | Ditto ... | Ditto ... | ..... | *Any Magistrate.* |

## SCHEDULE III.

*(See section 36.)*

### ORDINARY POWERS OF PROVINCIAL MAGISTRATES.

### *I.—Ordinary Powers of a Magistrate of the Third Class.*

(1) Power to arrest, or direct the arrest, and to commit to custody, a person committing an offence in his presence, section 64.

(2) Power to arrest, or direct the arrest in his presence of, an offender, section 65.

(3) Power to endorse a warrant, or to order the removal of an accused person arrested under a warrant, sections 83, 84, and 86.

(4) Power to issue proclamations in cases judicially before him, section 87.

(5) Power to attach and sell property in cases, judicially before him, section 88.

(6) Power to restore attached property, section 89.

(7) *Power to require search to be made for letters and telegrams, section 95.*

(8) Power to issue search-warrant, section 96.

(9) Power to endorse a search-warrant and order delivery of thing found, section 99.

(10) *Power to command unlawful assembly to disperse, section 127.*

(11) *Power to use civil force to disperse unlawful assembly, section 128.*

(12) *Power to require military force to be used to disperse unlawful assembly, section 130.*

(13) Power to record statements or confessions during a police-investigation, section 164.

(14) Power to authorize detention of a person during a police-investigation, section 167.

(15) Power to detain an offender found in Court, section 351.

(16) *Power to take cognizance of offence, although committed by European British subject, and to issue process returnable before a Magistrate having jurisdiction, section 445.*

(17) *Power to apply to District Magistrate to issue commission for examination of witness, section 506 (2).*

(18) *Power to recover forfeited bond for appearance before Magistrate's Court, section 514.*

(19) *Power to make order as to disposal of property, section 517.*

(20) Power to sell perishable property of a suspected character, section 525.

### *II.—Ordinary Powers of a Magistrate of the Second Class*

(1) The ordinary powers of a Magistrate of the third class.

(2) Power to order the police to investigate an offence in cases in which the Magistrate has jurisdiction to try or commit for trial, section 155.

(3) *Power to postpone issue of process, section 202.*

(4) *Power to order destruction of libellous and other matter, section 521.*

### *III.—Ordinary Powers of a Magistrate of the First Class.*

(1) The ordinary powers of a Magistrate of the second class

(2) Power to issue search-warrant otherwise than in course of an inquiry, section 98.

(3) Power to issue search-warrant for discovery of persons wrongfully confined, section 100.

(4) Power to require security to keep the peace, section 107.

(5) Power to require security for good behaviour, section 109.

## SCHEDULE III.—(*continued*).

### ORDINARY POWERS OF PROVINCIAL MAGISTRATES—(*contd.*).

### *III.—Ordinary Powers of a Magistrate of the First Class*—(concluded).

(6) *Power to discharge sureties, section 126.*
(7) Power to make orders, &c., in possession cases, sections 145, 146, and 147.
(8) Power to commit for trial, section 206.
(9) Power to stop proceedings when no complainant, section 249.
(10) Power to make orders of maintenance, sections 488 and 489.
(11) *Power to take evidence on commission, section 503.*
(12) *Power to recover penalty on forfeited bond, section 514.*
(13) *Power to make order as to first offenders, section 562.*

### *IV.—Ordinary Powers of a Sub-divisional Magistrate.*

(1) The ordinary powers of a Magistrate of the first class.
(2) Power to direct warrants to landholders, section 78.
(3) Power to require security for good behaviour, section 110.
(4) Power to make orders as to local nuisances, section 133.
(5) Power to make orders prohibiting repetitions of nuisances, section 143.
(6) Power to make orders under section 144.
(7) *Power to depute Subordinate Magistrate to make local inquiry, section 148.*
(8) *Power to order police-investigation into cognizable case, section 156.*
(9) *Power to receive report of police-officer and pass order, section 173.*
(10) Power to hold inquests, section 174.
(11) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186.
(12) Power to entertain complaints, section *190.*
(13) Power to receive police-reports, section *190.*
(14) Power to entertain cases without complaint, section *190.*
(15) Power to transfer cases to a Subordinate Magistrate, section 192.
(16) Power to pass sentence on proceedings recorded by a Subordinate Magistrate, section 349.
(17) *Power to forward record of inferior Court to District Magistrate, section 435 (2).*
(18) Power to sell property alleged or suspected to have been stolen, &c., section 524.
(19) Power to withdraw cases other than appeals, and to try or refer them for trial, section 528.
(20) *Power to order released convicts to notify residence, section 565.*

### *V.—Ordinary Powers of a District Magistrate.**

(1) The ordinary powers of a Sub-divisional Magistrate.
(2) *Power to require delivery of letters, telegrams, &c., section 95.*
(3) Power to issue search-warrants for documents in custody of postal or telegraph authorities, section 96.
(4) *Power to require security for good behaviour in case of sedition, section 108.*

* Under the Punjab Frontier Crimes Regulation (IV. of 1887), the Additional District Magistrate shall have the powers specified in Part V.—See s. 5 (2) of the Regulation.

## SCHEDULE III.—*(concluded).*

### ORDINARY POWERS OF PROVINCIAL MAGISTRATES—*(concld.)*.

### *V.—Ordinary Powers of a District Magistrate*—(concluded).

(5) Power to discharge persons bound to keep the peace or to be of good behaviour section 124.
(6) Power to cancel bond for keeping the peace, section 125.
(7) Power to try summarily, section 260.
(8) Power to quash convictions in certain cases, section 350.
(9) Power to hear appeals from orders requiring security for good behaviour, section 406.
(10) Power to hear or refer appeals from convictions by Magistrates of the second and third classes, section 407.
(11) Power to call for records, section 435.
(12) *Power to order commitment, section 436.*
(13) *Power to order inquiry into complaint dismissed or case of accused discharged, section 437.*
(14) *Power to report case to High Court, section 438.*
(15) *Power to try European British subjects, section 443.*
(16) *Power to sentence European British subject to more than three months' imprisonment or one thousand rupees fine, or both, section 446.*
(17) *Power to appoint person to be public prosecutor in particular case, section 492 (2).*
(18) *Power to issue commission for examination of witness, sections 503, 506.*
(19) Power to *hear appeals from or* revise orders passed under section 514, section 515.
(20) Power to compel restoration of abducted female, section 552.

## SCHEDULE IV.

*(See sections 37 and 38.)*

ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY BE INVESTED.

| | | |
|---|---|---|
| POWERS WITH WHICH A MAGISTRATE OF THE FIRST CLASS MAY BE INVESTED. | BY THE LOCAL GOVERNMENT. | (1) *Power to require security for good behaviour in case of sedition, section 108:*<br>(2) Power to require security for good behaviour, section 110:<br>(3) Power to make orders as to local nuisances, section 133:<br>(4) Power to make orders prohibiting repetitions of nuisances, section 143:<br>(5) Power to make orders under section 144:<br>(6) Power to hold inquests, section 174:<br>(7) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186:<br>(8) Power to take cognizance of offences upon complaint, section *190:*<br>(9) Power to take cognizance of offences upon police-reports, section *190:*<br>(10) Power to take cognizance of offences *without complaint*, section *190:* |

## SCHEDULE IV.—(*continued*).

### ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY BE INVESTED—(*continued*).

| | | |
|---|---|---|
| POWERS WITH WHICH A MAGISTRATE OF THE FIRST CLASS MAY BE INVESTED—*concld.* | BY THE LOCAL GOVERNMENT—*concld.* | (11) Power to try summarily, section 260:<br>(12) Power to hear appeals from convictions by Magistrates of the second and third classes, section 407:<br>(13) Power to sell property alleged or suspected to have been stolen, &c., section 524:<br>(14) *Power to order released convicts to notify residence, section 565:*<br>(15) *Power to try cases under section 124A of the Indian Penal Code.* |
| | BY THE DISTRICT MAGISTRATE. | (1) Power to make orders prohibiting repetitions of nuisances, section 143:<br>(2) Power to make orders under section 144:<br>(3) Power to hold inquests, section 174:<br>(4) Power to take cognizance of offences upon complaint, section *190:*<br>(5) Power to take cognizance of offences upon police-reports, section *190:*<br>(6) Power to transfer cases, section 192: |
| POWERS WITH WHICH A MAGISTRATE OF THE SECOND CLASS MAY BE INVESTED. | BY THE LOCAL GOVERNMENT. | (1) Power to pass sentences of whipping, section 32:<br>(2) Power to make orders prohibiting repetitions of nuisances, section 143:<br>(3) Power to make orders under section 144:<br>(4) Power to hold inquests, section 174:<br>(5) Power to take cognizance of offences upon complaint, section *190:*<br>(6) Power to take cognizance of offences upon police-reports, section *190:*<br>(7) Power to take cognizance of offences *without complaint*, section 190:<br>(8) Power to commit for trial, section 206:<br>(9) *Power to make order as to first offenders, section 562:* |

## SCHEDULE IV.—(*concluded*).

ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY BE INVESTED—(*concluded*).

| | | |
|---|---|---|
| POWERS WITH WHICH A MAGISTRATE OF THE SECOND CLASS MAY BE INVESTED.—*concld.* | BY THE DISTRICT MAGISTRATE. | (1) Power to make orders prohibiting repetitions of nuisances, section 143:<br>(2) Power to make orders under section 144:<br>(3) Power to hold inquests, section 174:<br>(4) Power to take cognizance of offences upon complaint, section *190*:<br>(5) Power to take cognizance of offences upon police-reports, section *190*: |
| POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BE INVESTED. | BY THE LOCAL GOVERNMENT. | (1) Power to make orders prohibiting repetitions of nuisances section 143:<br>(2) Power to make orders under section 144:<br>(3) Power to hold inquests, section 174:<br>(4) Power to take cognizance of offences upon complaint, section *190*:<br>(5) Power to take cognizance of offences upon police-reports, section *190*:<br>(6) Power to commit for trial, section 206. |
| | BY THE DISTRICT MAGISTRATE. | (1) Power to make orders prohibiting repetitions of nuisances, section 143:<br>(2) Power to make orders under section 144:<br>(3) Power to hold inquests, section 174:<br>(4) Power to take cognizance of offences upon complaint, section *190*:<br>(5) Power to take cognizance of offences upon police-reports, section *190*: |
| POWERS WITH WHICH A SUB-DIVISIONAL MAGISTRATE MAY BE INVESTED. | BY THE LOCAL GOVERNMENT. | Power to call for records, section 435. |

## SCHEDULE V.

(*See section 554.*)

## FORMS.

### I.—Summons to an Accused Person.

(*See section 68.*)

To of .

WHEREAS your attendance is necessary to answer to a charge of (*state shortly the offence charged*), you are hereby required to appear in person (*or* by pleader, *as the case may be*) before the (*Magistrate*) of , on the day of , Herein fail not.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

---

### II.—Warrant of Arrest.

(*See section 75.*)

To (*name and designation of the person or persons who is or are to execute the warrant*).

WHEREAS of stands charged with the offence of (*state the offence*), you are hereby directed to arrest the said , and to produce him before me. Herein fail not.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

(*See section 76.*)

*This warrant may be endorsed as follows :—*

If the said shall give bail himself in the sum of , with one surety in the sum of (*or* two sureties, each in the sum of ), to attend before me on the day of , and to continue so to attend until otherwise directed by me, he may be released.

Dated this day of , 18 .

(*Signature.*)

---

### III.—Bond and Bail-bond after Arrest under a Warrant.

(*See section 86.*)

I (*name*), of , being brought before the District Magistrate of (*or as the case may be*) under a warrant issued to compel my appearance to answer to the charge of , do hereby bind myself to attend in the Court of on the day of next, to answer to the said charge, and to continue so to attend until otherwise directed by the Court; and, in case of my making default herein, I bind myself to forfeit, to Her Majesty the Queen-Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

## SCHEDULE V.—(*continued*).

### FORMS—(*continued*).

I do hereby declare myself surety for the abovenamed of , that he shall attend before in the Court of on the day of next, to answer to the charge on which he has been arrested, and shall continue so to attend until otherwise directed by the Court; and, in case of his making default therein, I bind myself to forfeit, to Her Majesty the Queen-Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

---

IV.—PROCLAMATION REQUIRING THE APPEARANCE OF A PERSON ACCUSED.

(*See section 87.*)

WHEREAS complaint has been made before me that (*name, description, and address*) has committed (*or* is suspected to have committed) the offence of , punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or* is concealing himself to avoid the service of the said warrant):

Proclamation is hereby made that the said , of , is required to appear at (*place*) before this Court (*or* before me) to answer the said complaint within days from this date.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

---

V.—PROCLAMATION REQUIRING THE ATTENDANCE OF A WITNESS.

(*See section 87.*)

WHEREAS complaint has been made before me that (*name, description, and address*) has committed (*or* is suspected to have committed) the offence of (*mention the offence concisely*), and a warrant has been issued to compel the attendance of (*name, description, and address of the witness*) before this Court to be examined touching the matter of the said complaint; and whereas it has been returned to the said warrant that the said (*name of witness*) cannot be served, and it has been shown to my satisfaction that he has absconded (*or* is concealing himself to avoid the service of the said warrant):

Proclamation is hereby made that the said (*name*) is required to appear at (*place*) before the Court of on the day of next, at o'clock, to be examined touching , the offence complained of.

Dated this day of 18 .

(*Seal.*) (*Signature.*)

---

VI.—ORDER OF ATTACHMENT TO COMPEL THE ATTENDANCE OF A WITNESS.

(*See section 88.*)

To the Police-officer in charge of the Police-station at .

WHEREAS a warrant has been duly issued to compel the attendance of (*name, description, and address*) to testify concerning a complaint pending before this Court, and it has been returned to the said warrant that it cannot be served; and whereas it has been

SCHEDULE V.—(*continued*).

FORMS—(*continued*).

shown to my satisfaction that he has absconded (*or* is concealing himself to avoid the service of the said warrant); and thereupon a Proclamation was duly issued and published requiring the said to appear and give evidence at the time and place mentioned therein, and he has failed to appear:

This is to authorize and require you to attach by seizure the moveable property belonging to the said , to the value of rupees , which you may find within the District of , and to hold the said property under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

---

ORDER OF ATTACHMENT TO COMPEL THE APPEARANCE OF A PERSON ACCUSED.

(*See section 88.*)

To (*name and designation of the person or persons who is or are to execute the warrant*).

WHEREAS complaint has been made before me that (*name, description, and address*) has committed (*or* is suspected to have committed) the offence of , punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or* is concealing himself to avoid the service of the said warrant), and thereupon a proclamation was duly issued and published requiring the said to appear to answer the said charge within days; and whereas the said is possessed of the following property other than land paying revenue to Government in the village (*or* town) of , in the District of , *viz.*, , and an order has been made for the attachment thereof:

You are hereby required to attach the said property by seizure, and to hold the same under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

---

ORDER AUTHORIZING AN ATTACHMENT BY THE DEPUTY COMMISSIONER AS COLLECTOR.

(*See section 88*).

To the Deputy Commissioner of the District of .

WHEREAS complaint has been made before me that (*name, description, and address*) has committed (*or* is suspected to have committed) the offence of , punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereasit has been shown to my satisfaction that the said (*name*) has absconded (*or* is concealing himself to avoid the service of the said warrant), and thereupon a Proclamation was duly issued and published, requiring the said to appear to answer the said charge within days, but he has not appeared; and whereas the said is possessed of certain land paying revenue to Government in the village (*or* town) of in the District of ;

## SCHEDULE V.—(*continued*).

### FORMS—(*continued*).

You are hereby authorized and requested to cause the said land to be attached, and to be held under attachment pending the further order of this Court, and to certify without delay what you may have done in pursuance of this order.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

---

### VII.—Warrant in the first instance to bring up a Witness.

(*See section 90.*)

To (*name and designation of the Police-officer or other person or persons who is or are to execute the warrant*).

Whereas complaint has been made before me that , of , has (*or* is suspected to have) committed the offence of (*mention the offence concisely*), and it appears likely that (*name and description of witness*) can give evidence concerning the said complaint; and whereas I have good and sufficient reason to believe that he will not attend as a witness on the hearing of the said complaint unless compelled to do so:

This is to authorize and require you to arrest the said (*name*), and on the day of to bring him before this Court, to be examined touching the offence complained of.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

---

### VIII.—Warrant to search after Information of a particular Offence.

(*See section 96.*)

To (*name and designation of the Police-officer or other person or persons who is or are to execute the warrant*).

Whereas information has been laid (*or* complaint has been made) before me of the commission (*or* suspected commission) of the offence of (*mention the offence concisely*), and it has been made to appear to me that the production of (*specify the thing clearly*) is essential to the inquiry now being made (*or* about to be made) into the said offence (*or* suspected offence):

This is to authorize and require you to search for the said (*the thing specified*) in the (*describe the house or place, or part thereof, to which the search is to be confined*), and, if found, to produce the same forthwith before this Court, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

---

### IX.—Warrant to search suspected Place of Deposit.

(*See section 98.*)

To (*name and designation of a Police-officer above the rank of a Constable*).

Whereas information has been laid before me, and on due inquiry thereupon had have been led to believe that the (*describe the house or other place*) is used as a place for

SCHEDULE V.—(*continued*).

FORMS—(*continued*).

the deposit (*or* sale) of stolen property (*or, if for either of the other purposes expressed in the section, state the purpose in the words of the section*) :

This is to authorize and require you to enter the said house (*or other place*) with such assistance as shall be required, and to use, if necessary, reasonable force for that purpose, and to search every part of the said house (*or other place, or if the search is to be confined to a part, specify the part clearly*), and to seize and take possession of any property (*or* documents, *or* stamps, *or* seals, *or* coins, *as the case may be*)—[Add (*when the case requires it*), and also of any instruments and materials which you may reasonably believe to be kept for the manufacture of forged documents, *or* counterfeit stamps, *or* false seals, *or* counterfeit coin (*as the case may be*)], and forthwith to bring before this Court such of the said things as may be taken possession of, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

---

X.—Bond to keep the Peace.

(*See section 107.*)

Whereas I (*name*), inhabitant of (*place*), have been called upon to enter into a bond to keep the peace for the term of , I hereby bind myself not to commit a breach of the peace, or do any act that may probably occasion a breach of the peace, during the said term; and, in case of my making default therein, I hereby bind myself to forfeit, to Her Majesty the Queen-Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

---

XI.—Bond for Good Behaviour.

(*See sections 108, 109, and 110.*)

Whereas I (*name*), inhabitant of (*place*), have been called upon to enter into a bond to be of good behaviour to Her Majesty the Queen-Empress of India, and to all her subjects, for the term of (*state the period*), I hereby bind myself to be of good behaviour to Her Majesty, and to all her subjects, during the said term; and, in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

(*Where a bond with sureties is to be executed, add*)—We do hereby declare ourselves sureties for the abovenamed that he will be of good behaviour to Her Majesty the Queen-Empress of India, and to all her subjects, during the said term; and, in case of his making default therein, we bind ourselves, jointly and severally, to forfeit to Her Majesty the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

## SCHEDULE V.—(*continued*).

### FORMS—(*continued*).

comfort by reason (*state briefly in what manner the injurious effects are caused*), and should be suppressed or removed to a different place;

*or*

WHEREAS it has been made to appear to me that you are the owner (*or* are in possession of, *or* have the control over) a certain tank (*or* well, *or* excavation) adjacent to the public way (*describe the thoroughfare*), and that the safety of the public is endangered by reason of the said tank (*or* well, *or* excavation) being without a fence (*or* insecurely fenced);

*or*

WHEREAS, &c., &c. (*as the case may be*):

I do hereby direct and require you within (*state the time allowed*) to (*state what is required to be done to abate the nuisance*) or to appear at in the Court of on the day of next, and to show cause why this order should not be enforced;

*or*

I do hereby direct and require you within (*state the time allowed*) to cease carrying on the said trade or occupation at the said place, and not again to carry on the same, or to remove the said trade from the place where it is now carried on, or to appear, &c;

*or*

I do hereby direct and require you within (*state the time allowed*) to put up a sufficient fence (*state the kind of fence and the part to be fenced*); or to appear, &c.;

*or*

I do hereby direct and require you, &c., &c. (*as the case may be*).

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

---

### XVII.—MAGISTRATE'S ORDER CONSTITUTING A JURY.

(*See section 138.*)

WHEREAS, on the day of , 18 , an order was issued to (*name*), requiring him (*state the effect of the order*), and whereas the said (*name*) has applied to me, by a petition bearing date the day of , for an order appointing a jury to try whether the said recited order is reasonable and proper: I do hereby appoint (*the names, &c., of the five or more jurors*) to be the jury to try and decide the said question, and do require the said jury to report their decision within days from the date of this order at my office at .

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

---

### XVIII.—MAGISTRATE'S NOTICE AND PEREMPTORY ORDER AFTER THE FINDING BY A JURY.

(*See section 140.*)

To (*name, description, and address*).

I HEREBY give you notice that the jury duly appointed on the petition presented by you on the day of have found that the order issued on the day of , requiring you (*state substantially the requisition in the order*), is reasonable and proper. Such order has been made absolute, and I hereby direct and require you to obey the said

SCHEDULE V.—(*continued*).

FORMS—(*continued*).

order within (*state the time allowed*), on peril of the penalty provided by the Indian Penal Code for disobedience thereto.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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XIX.—INJUNCTION TO PROVIDE AGAINST IMMINENT DANGER PENDING INQUIRY BY JURY.

(*See section 142.*)

To (*name, description, and address*).

WHEREAS the inquiry by a jury appointed to try whether my order issued on the day of , 18 , is reasonable and proper, is still pending, and it has been made to appear to me that the nuisance mentioned in the said order is attended with so imminent serious danger to the public, as to render necessary immediate measures to prevent such danger, I do hereby, under the provisions of section 142 of the Code of Criminal Procedure, direct and enjoin you forthwith to (*state plainly what is required to be done as a temporary safeguard*), pending the result of the local inquiry by the jury.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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XX.—MAGISTRATE'S ORDER PROHIBITING THE REPETITION, &c., OF A NUISANCE.

(*See section 143.*)

To (*name, description, and address*).

WHEREAS it has been made to appear to me that, &c. (*state the proper recital, guided by* Form No. XVI. or Form No. XXI., *as the case may be*).

I do hereby strictly order and enjoin you not to repeat the said nuisance by again placing, or causing or permitting to be placed, &c. (*as the case may be*).

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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XXI.—MAGISTRATE'S ORDER TO PREVENT OBSTRUCTION, RIOT, &c.

(*See section 144.*)

To (*name, description, and address*).

WHEREAS it has been made to appear to me that you are in possession (*or* have the management) of (*describe clearly the property*), and that, in digging a drain on the said land, you are about to throw or place a portion of the earth and stones dug up upon the adjoining public road, so as to occasion risk of obstruction to persons using the road;

*or*

WHEREAS it has been made to appear to me that you and a number of other persons (*mention the class of persons*) are about to meet and proceed in a religious procession

## SCHEDULE V.—(*continued*).

## FORMS—(*continued*).

sion along the public street, &c. (*as the case may be*), and that such procession is likely to lead to a riot or an affray;

*or*

WHEREAS, &c., &c. (*as the case may be*):

I do hereby order you not to place, or permit to be placed, any of the earth or stones dug from land on any part of the said road;

*or*

I do hereby prohibit the procession passing along the said street, and strictly warn and enjoin you not to take any part in such procession (*or as the case recited may require*).

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

---

### XXII.—MAGISTRATE'S ORDER DECLARING PARTY ENTITLED TO RETAIN POSSESSION OF LAND, &C., IN DISPUTE.

(*See section 145.*)

IT appearing to me, on the grounds duly recorded, that a dispute, likely to induce a breach of the peace, existed between (*describe the parties by name and residence or residence only if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*), situate within the local limits of my jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and being satisfied by due inquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said (*name, or names, or description*) is true:

I do decide and declare that he is (*or* they are) in possession of the said (*the subject of dispute*) and entitled to retain such possession until ousted by due course of law, and do strictly forbid any disturbance of his (*or* their) possession in the meantime.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature*).

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### XXIII.—WARRANT OF ATTACHMENT IN THE CASE OF A DISPUTE AS TO THE POSSESSION OF LAND, &C.

(*See section 146.*)

To the Police-officer in charge of the Police-station at
[*or* To the Collector of .]

WHEREAS it has been made to appear to me that a dispute likely to induce a breach of the peace existed between (*describe the parties concerned by name and residence, or residence only if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*), situate within the limits of my jurisdiction, and the said parties were thereupon duly called upon to state in writing their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and whereas, upon due inquiry into the said claims, I have decided that neither of the said parties was in possession of the said (*the subject of dispute*) [*or* I am unable to satisfy myself as to which of the said parties was in possession as aforesaid]:

This is to authorize and require you to attach the said (*the subject of dispute*) by taking and keeping possession thereof, and to hold the same under attachment until the decree or order of a competent Court determining the rights of the parties, or the claim to

SCHEDULE V.—(*continued*).

FORMS—(*continued*).

possession, shall have been obtained, and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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XXIV.—MAGISTRATE'S ORDER PROHIBITING THE DOING OF ANYTHING ON LAND OR WATER.

(*See section 147.*)

A DISPUTE having arisen concerning the right of use of (*state concisely the subject of dispute*) situate within the limits of my jurisdiction, the possession of which land (*or* water) is claimed exclusively by (*describe the person or persons*), and it appearing to me, on due inquiry into the same, that the said land (*or* water) has been open to the enjoyment of such use by the public (*or, if by an individual or a class of persons, describe him or them*), and (*if the use can be enjoyed throughout the year*) that the said use has been enjoyed within three months of the institution of the said inquiry (*or if the use is enjoyable only at particular seasons, say* "during the last of the seasons at which the same is capable of being enjoyed").

I do order that the said (*the claimant or claimants of possession*), or any one in their interest, shall not take (*or* retain) possession of the said land (*or* water) to the exclusion of the enjoyment of the right of use aforesaid, until he (*or* they) shall obtain the decree or order of a competent Court adjudging him (*or* them) to be entitled to exclusive possession.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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XXV.—BOND AND BAIL-BOND ON A PRELIMINARY INQUIRY BEFORE A POLICE-OFFICER.

(*See section 169.*)

I (*name*), of , being charged with the offence of , and after inquiry required to appear before the Magistrate of ,

*or*

and after inquiry called upon to enter into my own recognizance to appear when required, do hereby bind myself to appear at , in the Court of , on the day of next (*or* on such day as I may hereafter be required to attend) to answer further to the said charge, and, in case of my making default herein, I bind myself to forfeit, to Her Majesty the Queen-Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

I hereby declare myself (*or* we jointly and severally declare ourselves and each of us) surety (*or* sureties) for the abovesaid that he shall attend at , in the Court of , on the day of next (*or* on such day as he may hereafter be required to attend), further to answer to the charge pending against him, and, in case of his making default therein, I hereby bind myself (*or* we hereby bind ourselves) to forfeit, to Her Majesty the Queen-Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

## SCHEDULE V.—(*continued.*)

### FORMS—(*continued.*)

#### XXVI.—Bond to prosecute or give Evidence.

(*See section 170.*)

I (*name*), of (*place*), do hereby bind myself to attend at , in the Court of , at o'clock, on the day of next, and then and there to prosecute (*or* to prosecute and give evidence) (*or* to give evidence) in the matter of a charge of against one *A. B.*, and, in case of making default herein, I bind myself to forfeit, to Her Majesty the Queen-Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

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#### XXVII.—Notice of Commitment by Magistrate to Government Pleader.

(*See section 218.*)

The Magistrate of hereby gives notice that he has committed one for trial at the next Sessions; and the Magistrate hereby instructs the Government Pleader to conduct the prosecution of the said case.

The charge against the accused is that, etc. (*state the offence as in the charge*).

Dated this day of , 18 .

(*Signature.*)

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#### XXVIII.—Charges.

(*See sections 221, 222, 223.*)

##### (I.)—Charges with one Head.

(*a*) I [*name and office of Magistrate, etc.*] hereby charge you [*name of accused person*] as follows —

(*b*) That you, on or about the day of , at , waged war against Her Majesty the Queen-Empress of India and thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognizance of the Court of Session [*when the charge is framed by a Presidency Magistrate, for* Court of Session *substitute* High Court].

On Penal Code, section 121

(*c*) And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate*]

[*To be substituted for* (*b*)]:—

(*a*) That you, on or about the day of , at , with the intention of inducing the Hon'ble *A. B.*, Member of the Council of the Governor-General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and thereby committed an offence punishable under section 124 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 124.

(*g*) That you, being a public servant in the Department, directly accepted from [*state the name*], for another party [*state the name*] a gratification, other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 161.

SCHEDULE V.—(*continued*).

FORMS—(*continued*).

(4) That you, on or about the day of , at , did [*or* omitted to do, *as the case may be*] , , such conduct being contrary to the provisions of Act , section , and known by you to be prejudicial to , and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 166.

(5) That you, on or about the day of , at , in the course of the trial of , before , stated in evidence that " ", which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 193.

(6) That you, on or about the day of , at , committed culpable homicide not amounting to murder, causing the death of , and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 304

(7) That you, on or about the day of , at , abetted the commission of suicide by *A B.*, a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court.]

On section 306.

(8) That you, on or about the day of , at , voluntarily caused grievous hurt to , and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 325.

(9) That you, on or about the day of , at , robbed [*state the name*], and thereby committed an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 392.

(10) That you, on or about the day of , at , committed dacoity, an offence punishable under section 395 of the Indian Penal Code and within the cognizance of the Court of Session [*or* High Court].

On section 395.

[*In cases tried by Magistrates substitute* "within my cognizance" *for* "within the cognizance of the Court of Session," *and in* (*c*) *omit* "by the said Court"].

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(II.)—CHARGES WITH TWO OR MORE HEADS.

(*a*) I [*name and office of Magistrate, &c.*] hereby charge you [*name of accused person*] as follows :—

(*b*) *First.*—That you, on or about the day of , at , knowing a coin to be counterfeit, delivered the same to another person by name *A. B.*, as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 241.

*Secondly.*—That you, on or about the day of , at , knowing a coin to be counterfeit, attempted to induce another person, by name *A B.*, to receive it as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

(*c*) And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate.*]

## SCHEDULE V.—(*continued*).

### FORMS—(*continued*).

[*To be substituted for (b)* ] :—

(2) *First.*—That you, on or about the day of , at , committed murder by causing the death of , and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On sections 302 and 304.

*Secondly.*—That you, on or about the day of , at , by causing the death of , committed culpable homicide not amounting to murder, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

(3) *First* —That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On sections 379 and 382

*Secondly.*—That you, on or about the day of , at , committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

*Thirdly.*—That you, on or about the day of , at , committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

*Fourthly.*—That you, on or about the day of , at , committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

(4) That you, on or about the day of , at , in the course of the inquiry into , before , stated in evidence that " ", and that you, on or about the day of , at , in the course of the trial of , before , stated in evidence that " ", one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193, of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Alternative charges on section 193.

[*In cases tried by Magistrates substitute* "within my cognizance" *for* "within the cognizance of the Court of Session ;" *and in* (*c*) *omit* " by the said Court".]

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### (III.)—Charge for Theft after Previous Conviction.

I (*name and office of Magistrate, &c.*) hereby charge you (*name of accused person*) as follows :—

That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* $\frac{\text{High Court}}{\text{Magistrate}}$, *as the case may be*].

And you, the said (*name of accused*), stand further charged that you, before the committing of the said offence, that is to say, on the day of , had been convicted by the (*state Court by which conviction was had*) at of an offence punishable under Chapter XVII. of the Indian Penal Code with imprisonment for a term of three years, that is to say, the offence of house-breaking by night (*describe the offence in the words used in the section under which the accused was convicted*), which conviction

SCHEDULE V.—(*continued*).

FORMS—(*continued*).

is still in full force and effect, and that you are thereby liable to enhanced punishment under section 75 of the Indian Penal Code.

And I hereby direct that you be tried, &c.

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XXIX.—WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A MAGISTRATE.

(*See sections 245 and 258.*)

To the Superintendent (*or* Keeper) of the Jail at .

WHEREAS, on the day of , 18 , (*name of prisoner*) the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar for 18 , was convicted before me (*name and official designation*) of the offence of (*mention the offence or offences concisely*) under section (*or* sections) of the Indian Penal Code (*or* of Act ), and was sentenced to (*state the punishment fully and distinctly*) :

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*prisoner's name*) into your custody in the said jail, together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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XXX.—WARRANT OF IMPRISONMENT ON FAILURE TO RECOVER AMENDS BY DISTRESS.

(*See section 250.*)

To the Superintendent (*or* Keeper) of the Jail at .

WHEREAS (*name and description*) has brought against (*name and description of the accused person*) the complaint that (*mention it concisely*), and the same has been dismissed as frivolous (*or* vexatious), and the order of dismissal awards payment by the said (*name of complainant*) of the sum of rupees as amends ; and whereas the said sum has not been paid, and cannot be recovered by distress of the moveable property of the said (*name of complainant*), and an order has been made for his simple imprisonment in jail for the period of days unless the aforesaid sum be sooner paid :

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), subject to the provisions of section 69 of the Indian Penal Code, unless the said sum be sooner paid, and on the receipt thereof forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature*).

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XXXI.—SUMMONS TO WITNESS.

(*See sections 68 and 252.*)

To of .

WHEREAS complaint has been made before me that of has (*or* is suspected to have) committed the offence of (*state the offence concisely with time and place*), and it appears to me that you are likely to give material evidence for the prosecution :

SCHEDULE V.—(*continued*).

FORMS—(*continued*).

You are hereby summoned to appear before this Court on the day of next, at ten o'clock in the forenoon, to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the Court; and you are hereby warned that, if you shall, without just excuse, neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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XXXII.—PRECEPT TO DISTRICT MAGISTRATE TO SUMMON JURORS AND ASSESSORS.

(*See section 326.*)

To the District Magistrate of .

WHEREAS a Criminal Session is appointed to be held in the Court-house at on the day of next, and the names of the persons herein stated have been duly drawn by lot from among those named in the revised list of jurors and assessors furnished to this Court; you are hereby required to summon the said persons to attend at the said Court of Session at 10 A.M. on the said date, and, within such date, to certify that you have done so in pursuance of this precept.

(*Here enter the names of jurors and assessors.*)

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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XXXIII.—SUMMONS TO ASSESSOR OR JUROR.

(*See section 328.*)

To (*name*) of (*place*).

PURSUANT to a precept directed to me by the Court of Session of , requiring your attendance as an assessor (*or* a juror) at the next Criminal Session, you are hereby summoned to attend at the said Court of Session at (*place*) at ten o'clock in the forenoon on the day of next.

Given under my hand and the seal of office, this day of , 18 .

(*Seal.*) (*Signature.*)

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XXXIV.—WARRANT OF COMMITMENT UNDER SENTENCE OF DEATH.

(*See section 374.*)

To the Superintendent (*or* Keeper) of the Jail at .

WHEREAS, at the Session held before me on the day of 18 , (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar at the said Session, was duly convicted of the offence of culpable homicide amounting to murder under section of the Indian Penal Code, and sentenced to suffer death, subject to the confirmation of the said sentence by the Court of :

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*prisoner's name*) into your custody in the said jail, together with this warrant, and him there safely to keep until you shall receive the further warrant or order of this Court, carrying into effect the order of the said Court.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

## SCHEDULE V.—(*continued*).

## FORMS—(*continued*).

### XXXV.—WARRANT OF EXECUTION ON A SENTENCE OF DEATH.

(*See section 381.*)

To the Superintendent (*or* Keeper) of the Jail at .

WHEREAS (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar at the Session held before me on the day 18 , has been, by a warrant of this Court, dated the day of , committed to your custody under sentence of death; and whereas the order of the Court of confirming the said sentence has been received by this Court:

This is to authorize and require you, the said Superintendent (*or* Keeper), to carry the said sentence into execution by causing the said to be hanged by the neck until he be dead, at (*time and place of execution*), and to return this warrant to the Court with an endorsement certifying that the sentence has been executed.

Given under my hand and the seal of the Court, this day of . 18 .

(*Seal*) (*Signature.*)

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### XXXVI.—WARRANT AFTER A COMMUTATION OF A SENTENCE.

(*See sections 381 and 382.*)

To the Superintendent (*or* Keeper) of the Jail at .

WHEREAS, at a Session held on the day of 18 , (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar at the said Session, was convicted of the offence of , punishable under section of the Indian Penal Code, and sentenced to , and was thereupon committed to your custody; and whereas, by the order of the Court of (a duplicate of which is hereunto annexed) the punishment adjudged by the said sentence has been commuted to the punishment of transportation for life (*or as the case may be*).

This is to authorize and require you, the said Superintendent (*or* Keeper), safely to keep the said (*prisoner's name*) in your custody in the said jail, as by law is required, until he shall be delivered over by you to the proper authority and custody for the purpose of his undergoing the punishment of transportation under the said order,

*or*

*if the mitigated sentence is one of imprisonment, say, after the words,* " custody in the said jail," "and there to carry into execution the punishment of imprisonment under the said order according to law."

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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### XXXVII.—WARRANT TO LEVY A FINE BY DISTRESS AND SALE.

(*See section 386.*)

To (*name and designation of the Police-officer or other person or persons who is or are to execute the warrant*).

WHEREAS (*name and description of the offender*) was, on the day of 18 , convicted before me of the offence of (*mention the offence concisely*), and sentenced to pay a fine of rupees , and whereas the said (*name*), although required to pay the said fine, has not paid the same or any part thereof:

SCHEDULE V.—(*continued*).

FORMS—(*continued*).

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (*name*) which may be found within the district of ; and, if, within (*state the number of days or hours allowed*) next after such distress, the said sum shall not be paid (*or* forthwith), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said fine, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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XXXVIII.—WARRANT OF COMMITMENT IN CERTAIN CASES OF CONTEMPT WHEN A FINE IS IMPOSED.

(*See section 480.*)

To the Superintendent (*or* Keeper) of the Jail at .

WHEREAS at a Court holden before me on this day (*name and description of the offender*) in the presence (*or* view) of the Court committed wilful contempt;

And whereas for such contempt the said (*name of offender*), has been adjudged by the Court to pay a fine of rupees , or in default to suffer simple imprisonment for the space of (*state the number of months or days*):

This is to authorize and require you, the Superintendent (*or* Keeper) of the said jail, to receive the said (*name of offender*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*) unless the said fine be sooner paid; and, on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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XXXIX.—MAGISTRATE'S OR JUDGE'S WARRANT OF COMMITMENT OF WITNESS REFUSING TO ANSWER.

(*See section 485.*)

To (*name and designation of officer of Court*).

WHEREAS (*name and description*), being summoned (*or* brought before this Court) as a witness, and this day required to give evidence on an inquiry into an alleged offence, refused to answer a certain question (*or* certain questions) put to him, touching the said alleged offence, and duly recorded, without alleging any just excuse for such refusal, and for his contempt has been adjudged detention in custody for (*term of detention adjudged*):

This is to authorize and require you to take the said (*name*) into custody, and him safely to keep in your custody for the space of days, unless, in the meantime, he shall consent to be examined and to answer the questions asked of him, and on the last of the said days, or forthwith on such consent being known, to bring him before this Court to be dealt with according to law, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

## SCHEDULE V.—(*continued*).

## FORMS—(*continued*).

### XL.—WARRANT OF IMPRISONMENT ON FAILURE TO PAY MAINTENANCE.

(*See section 488.*)

To the Superintendent (*or* Keeper) of the Jail at .

WHEREAS (*name, description, and address*) has been proved before me to be possessed of sufficient means to maintain his wife (*name*), [*or* his child (*name*), who is, by reason of (*state the reason*) unable to maintain herself (*or* himself)], and to have neglected (*or* refused) to do so, and an order has been duly made requiring the said (*name*) to allow to his said wife (*or* child) for maintenance the monthly sum of rupees , and whereas it has been further proved that the said (*name*), in wilful disregard of the said order, has failed to pay rupees , being the amount of the allowance for the month (*or* months) of ; and thereupon an order was made adjudging him to undergo simple (*or* rigorous) imprisonment in the said jail for the period of .

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody in the said jail, together with this warrant, and there carry the said order into execution according to law, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature*)

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### XLI.—WARRANT TO ENFORCE THE PAYMENT OF MAINTENANCE BY DISTRESS AND SALE.

(*See section 488.*)

To (*name and designation of the Police-officer or other person to execute the warrant*).

WHEREAS an order has been duly made requiring (*name*) to allow to his said wife (*or* child) for maintenance the monthly sum of rupees , and whereas the said (*name*), in wilful disregard of the said order, has failed to pay rupees , being the amount of the allowance for the month (*or* months) of ;

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (*name*) which may be found within the district of , and, if, within (*state the number of days or hours allowed*) next after such distress, the said sum shall not be paid (*or* forthwith), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said sum, returning this warrant, with an endorsement certifying what you have done under it immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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### XLII.—BOND AND BAIL-BOND ON A PRELIMINARY INQUIRY BEFORE A MAGISTRATE.

(*See sections 496 and 499.*)

I (*name*), of (*place*), being brought before the Magistrate of (*as the case may be*), charged with the offence of , and required to give security for my attendance in his Court and at the Court of Session, if required, do bind myself to attend at the Court of the said Magistrate on every day of the preliminary inquiry into the said charge,

## SCHEDULE V.—(*continued*).

## FORMS—(*continued*).

### XLVIII.—Warrant of Commitment of the Surety of an Accused Person admitted to Bail.

(*See section 514.*)

To the Superintendent (*or* Keeper) of the Civil Jail at .

Whereas (*name and description of surety*) has bound himself as a surety for the appearance of (*state the condition of the bond*), and the said (*name*) has therein made default, whereby the penalty mentioned in the said bond has been forfeited to Her Majesty the Queen-Empress of India; and whereas the said (*name of surety*) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him, and the same cannot be recovered by attachment and sale of moveable property of his, and an order has been made for his imprisonment in the civil jail for (*specify the period*):

This is to authorise and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody with this warrant, and him safely to keep in the said jail for the said (*term of imprisonment*), and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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### XLIX.—Notice to the Principal of Forfeiture of a Bond to keep the Peace.

(*See section 514*).

To (*name, description, and address*).

Whereas, on the day of , 18 , you entered into a bond not to commit, etc. (*as in the bond*), and proof of the forfeiture of the same has been given before me and duly recorded:

You are hereby called upon to pay the said penalty of rupees , or to show cause before me within days why payment of the same should not be enforced against you.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

---

### L.—Warrant to attach the Property of the Principal on Breach of a Bond to keep the Peace.

(*See section 514*).

To (*name and designation of Police-officer*), at the Police-station of .

Whereas (*name and description*) did, on the day of , 18 , enter into a bond for the sum of rupees , binding himself not to commit a breach of the peace, etc. (*as in the bond*), and proof of the forfeiture of the said bond has been given before me and duly recorded; and whereas notice has been given to the said (*name*) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum:

## SCHEDULE V.—(*continued*).

## FORMS—(*continued*).

This is to authorise and require you to attach by seizure moveable property belonging to the said (*name*) to the value of rupees which you may find within the district of , and, if the said sum be not paid within , to sell the property so attached, or so much of it as may be sufficient to realise the same, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

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### LI.—Warrant of Imprisonment on Breach of a Bond to keep the Peace.

(*See section 514*).

To the Superintendent (*or* Keeper) of the Civil Jail at .

Whereas proof has been given before me and duly recorded that (*name and description*) has committed a breach of the bond entered into by him to keep the peace whereby he has forfeited to Her Majesty the Queen-Empress of India the sum of rupees ; and whereas the said (*name*) has failed to pay the said sum, or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (*name*) in the civil jail for the period of (*term of imprisonment*) :

This is to authorize and require you, the said Superintendent (*or* Keeper) of the said civil jail, to receive the (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), and to return that warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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### LII.—Warrant of Attachment and Sale on Forfeiture of Bond for Good Behaviour.

(*See section 514.*)

To the Police-officer in charge of the Police-station at .

Whereas (*name, description, and address*) did, on the day of , 18 , give security by bond in the sum of rupees for the good behaviour of (*name, &c., of the principal*), and proof has been given before me and duly recorded of the commission by the said (*name*) of the offence of . whereby the said bond has been forfeited; and whereas notice has been given to the said (*name*), calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum :

This is to authorize and require you to attach by seizure moveable property belonging to the said (*name*) to the value of rupees which you may find within the district of , and, if the said sum be not paid within , to sell the property so attached, or so much of it as may be sufficient to realize the same, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

## SCHEDULE V.—(*concluded.*)

## FORMS—(*concluded.*)

### LIII.—Warrant of Imprisonment on Forfeiture of Bond for Good Behaviour.

(*See section 514.*)

To the Superintendent (*or* Keeper) of the Civil Jail at .

Whereas (*name, description, and address*) did, on the day of , 18 , give security by bond in the sum of rupees for the good behaviour of (*name, &c., of the principal*), and proof of the breach of the said bond has been given before me and duly recorded, whereby the said (*name*) has forfeited to Her Majesty the Queen-Empress of India the sum of rupees , and whereas he has failed to pay the said sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (*name*) in the civil jail for the period of (*term of imprisonment*):

This is to authorize and require you, the Superintendent (*or* Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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